



Direction Decision

by Helen Heward BSc (Hons) MRTPI

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 4 February 2019

Ref: FPS/D0840/14D/26

**Representation by Peter Richardson
Cornwall Council**

Application for addition of a Restricted Byway from U6066 to the foreshore at Tregatreath, Mylor Bridge (OMA ref. WCA627)

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking a direction to be given to Cornwall Council to determine an application for an Order, under Section 53(5) of that Act.
 - The representation made by Peter Richardson is dated 10 August 2018.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 31 July 2017.
 - The Council was consulted about the representation on 11 September 2018 and the Council's response was made on 22 October 2018.
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Decision

1. The Council is directed to determine the above-mentioned application.

Reasons

2. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within twelve months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
3. The Secretary of State in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
4. The Council advises that it has a very large backlog and that they determine 8 to 10 definitive map modification order applications per year. The application was No 76 and is now No 73 on the Council's list of applications. The applicant considers that on the current rate of progress it could take over 20 years for the application to reach the top of the Council's list. The Council predicts a determination within 7 to 8 years with the current level of resources.
5. It is noted that this application is just less than 18 months old. The Council stresses that they have applications that have been on the register for much

¹ Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs.

longer than this and rely on witness evidence which could be lost with further delay. But an applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application within 12 months under normal circumstances.

6. Circular 1/09 also makes it clear that Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way, and the Council has statutory duties to keep the definitive map up to date. A lack of resources is not a sufficient excuse for a significant delay in determining any application and does not amount to exceptional circumstances.
7. In the circumstances, I have decided that there is a case for setting a date by which time the application should be determined. However I am minded to allow 24 months in view of the relatively short period of time that this application has been with the Council and in order to allow the Council time to carry out its investigation and make a decision on the application.

Direction

8. On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** the Cornwall Council to determine the above-mentioned application not later than 31 January 2021.

Helen Heward

INSPECTOR