



## Direction Decision

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 8 July 2019

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**Ref: FPS/D0840/14D/27, 28 & 29**

**Representation by Nicola Cannon-Brookes and St Ives Town Council  
Cornwall Council**

**Application to add a footpath which runs from Footpath 13 and St Ives Bay Line Railway Bridge to sea/dune side of Railway Line to meet Footpath 13 where it crosses Railway Line (Cornwall Council ref: WCA 551)**

**AND**

**Application to add a footpath which runs from Footpath 13 and St Ives Bay Line Railway Bridge to foreshore (CC ref: WCA 552)**

**AND**

**Application to add a Footpath from Green Lane to Footpath FP/113/13 (CC ref: 568)**

- 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 is made by Nicola Cannon-Brookes and St Ives Town Council, dated 22 November 2018.
  - The certificates under Paragraph 2(3) of Schedule 14 are dated 9 June 2006 (WCA 551 and WCA 552), and 4 October 2010 (WCA 568).
  - The Council was consulted about your representation on 24 January 2019 and the Council's response was made on 12 March 2019.
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### Decision

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

### 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. 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 applicant<sup>1</sup>.

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

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3. The applications relate to access to Porthkidney Beach, a public beach and also a RSPB reserve. The applications listed above were submitted between 9 and 13 thirteen years ago. The applicant, Nicola Cannon-Brookes, has been in regular contact with Cornwall Council and, on the basis of her discussions, estimates that it could be at least a further five years before the applications are determined. Her concern is that the applications could be prejudiced as the availability of witnesses potentially decreases over time. There is also an additional concern arising from a developer seeking the residential development of land that could affect the routes in question.
4. In response, Cornwall Council explains that it processes applications in accordance with a revised policy statement published in June 2006. Other than in exceptional circumstances, the revised policy statement indicates that the County Council will give priority to applications to modify the Definitive Map if the path is categorised as a 'Gold Path'; is within the "Coastal Corridor"; links to "Open Access" land; or links to Public Open Spaces. These applications had been added to the higher priority list and, with the current rate of progressing 10 applications to determination per year, the County Council anticipates that these applications would reach the top of the list in approximately five years from now.
5. The County Council considers that the case advanced by the applicant in seeking these directions amounts to a personal preference rather than constituting special circumstances. Moreover, the County Council considers that directing these applications to be determined would displace other applications that are equal merit, which would be unfair on those applicants. The County Council is utilising the resources that are available to it in accordance with the revised policy statement of 2006, and is performing its statutory duty set out in the Wildlife and Countryside Act 1981.
6. Authorities are required to investigate applications as soon as reasonably practicable. 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. In your case, more than 13 years have passed since the first of your applications were submitted. That cannot be considered reasonable by any standard, even taking into account all the considerations that the County Council has outlined in its response.
7. It is appreciated that the County Council will require some time to carry out its investigation and make a decision on the application. A further period of 6 months has been allowed.

### **Direction**

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 applications not later than 6 months from the date of this decision.

*Paul Freer*

INSPECTOR