



Direction Decision

by **Martin Elliott BSc FIPROW**

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

Decision date: 31 July 2019

Ref: FPS/D0840/14D/36

Representation by Dr Peter Perry

Cornwall Council

Application for the addition of a Footpath from NE corner of field 3767 to SW corner of field 3767 at Trevithal hamlet, Paul, Penzance (OMA ref. WCA 636)

- 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 Dr P Perry, dated 6 April 2019.
 - The certificate under Paragraph 2(3) of Schedule 14 is dated 7 February 2018.
 - The Council was consulted about the representation on 18 April 2019 and the Council's response was made on 10 June 2019.
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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. 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.
3. 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 this case 17 months have passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the 1981 Act. Furthermore, the Council anticipate, at the current rate of determination of applications, that the application will not be determined for 13 to 15 years.

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

4. It is noted that the Council is determining its applications in accordance with its revised policy statement of 2006 and it reasonable for the Council to determine applications in accordance with its policies. It is also acknowledged that the application does not satisfy the criteria set out in that policy statement for determination in order of receipt (higher priority). As a consequence the application will be considered when resources permit and in the Order of receipt (lower priority).
5. Whilst the Council contends that it is carrying out its statutory duties in respect of the continuous review of the definitive map it is unreasonable, given the expectation of a determination within 12 months, for the determination of the application to take 13 or more years. No exceptional circumstances have been put forward by the Council as to the cause of any delay in determining the application. The determination of the application will be considered in date order when resources permit. In terms of resources Circular 1/09 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.
6. The Council acknowledge that applications for definitive map modification orders may suffer from the fact that evidence of use of some witnesses may not be available for cross-examination at a future public inquiry. I also note the suggestion that this could, to some extent, be overcome by witnesses preparing sworn statements. However, the issue to be considered is whether the Council have determined the application as soon as reasonably practicable.
7. Bearing in mind the above I have decided that there is a case for setting a date by which time the application should be determined. It is appreciated that the Council will require some time to carry out its investigations and make a decision on the application. A period of 6 months is considered appropriate.
8. It is acknowledged that a direction to determine will have an impact on the determination of other applications. I also note the observation of the Council that the inclusion of an appeal process under Schedule 14 of the 1981 Act recognises the fact that applications will not be determined within 12 months. Nevertheless applications should be determined as soon as reasonably practicable. A determination of an application taking 13 years or more cannot be seen as a determination which is as soon as reasonably practicable.
9. The applicant has provided an analysis of the evidence relating to the application. However, this is not a matter for consideration at this stage.

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** Cornwall Council to determine the above-mentioned application not later than 6 months from the date of this Direction Decision.

Martin Elliott

INSPECTOR