



# Direction Decision

by **Susan Doran BA Hons MIPROW**

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

Decision date: 22 August 2019

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**Ref: FPS/D0840/14D/37**

**Representation by Matthew Haden**

**Cornwall Council**

**Application to upgrade to Restricted Byway the entire length of Bude-Stratton Footpath 8, as identified on the Definitive Map from Northcott Mouth Road U6192 (grid ref SS21865 08176) to Stibb Road C0030 at Poughill (grid ref SS22714 08240) (OMA ref. WCA 632)**

- 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 dated 6 May 2019 is made by Matthew Haden.
  - The certificate under Paragraph 2(3) of Schedule 14 is dated 15 December 2017.
  - The Council was consulted about your representation on 28 May 2019 and the Council's response was made on 8 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 applicant<sup>1</sup>.
3. Cornwall Council's current policy statement is based on a two-tier system. This application fulfils the criteria for preferential status and has been given a higher priority. Nevertheless, it currently stands at number 77 in their priority list of undetermined Definitive Map Modification Order (DMMO) applications, in part due to other applications having been promoted above it following successful appeals to the Secretary of State for directions to make determinations. The Council anticipates processing between 8 and 10 DMMO applications each year

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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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based on current resource levels and estimates this application will be determined in approximately 8 years, although the Applicant estimates a much longer period given current circumstances.

4. This application was made in late 2017 and validated in early 2018, so is relatively recent in terms of the Council's backlog of DMMO claims. The Council does not consider there to be any mitigating factors or exceptional circumstances in this case to warrant its promotion over and above other similar cases awaiting determination. Indeed, it notes the application route is currently open and available to all users and the application is based on documentary evidence rather than on user evidence - the loss of which would arguably create a more pressing need for earlier determination.
5. Whilst the Council believes that a direction in this instance would be to the detriment of other cases on their priority list, 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. It is acknowledged that only some 18 months have passed since the application was submitted, but no exceptional circumstances have been indicated by the Council for its non-determination. It is not reasonable for the applicant to have to wait a further 8 years (or more) for the application to be considered.
6. In the circumstances 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 investigation and make a decision on the application. A further period of 6 months has been allowed.
7. The Applicant refers to their rights under Article 6(1) of the Human Rights Act 1998. This provides that in the determination of their civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. However, my decision as to whether the authority has investigated and determined the application as soon as reasonably practicable in accordance with paragraph 3(1) of Schedule 14 of the 1981 Act does not amount to a determination of the applicant's civil rights and obligations. Article 6(1) is not applicable to this decision.

### **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 application not later than six months from the date of this decision.

*S Doran*

**Inspector**