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| **Direction Decision** |
| **by Sue Arnott FIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 6 September 2022** |

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| **Ref: ROW/3301504****Representation by Mr R Fraser on behalf of the Ramblers’ Association****CORNWALL COUNCIL****Application to modify the definitive map and statement for the area by adding restricted byways between A390 and Chacewater at Penstraze in the Parish of Kenwyn**  |
| * This representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Cornwall Council to determine an application for an order (reference WCA 633) under Section 53(5) of that Act.
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| * The application was submitted to Cornwall Council on 17 January 2018 and the accompanying certificate under Paragraph 2(3) of Schedule 14 was dated 24 March 2018.
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| * The representation, dated 5 June 2022, is made by the applicant, Mr R Fraser, on behalf of the Ramblers’ Association.
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| * The Council was consulted about the representation on 5 July 2022 and its response was made on 16 August 2022.
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Decision

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

Reasons

1. On 17 January 2018 Mr J Deane made an application to CC. This sought to record on the definitive map a series of restricted byways between the A390, the Greenbottom C723 road and the Kenwyn parish boundary to the east of Penstraze, linking with Byway Open to All Traffic Chacewater 32 and Footpath Kenwyn 22. The evidence adduced in support of the claimed restricted byways included a number of historical maps and plans.
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 12 months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers in accordance with paragraph 2 of Schedule 14.
3. As required by Rights of Way Circular 1/09 (*Version 2, October 2009: Department for Environment, Food and Rural Affairs at paragraph 4.9*) 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. Thus, each case must be considered on its individual facts.
4. Cornwall Council’s statement of priorities states that all applications will be dealt with in order of receipt unless the claimed route falls within one of 4 categories. It operates a two-tier system whereby higher priority is given to routes which meet these defined criteria.
5. The routes claimed in the application do not fall into any of the priority categories. It is currently positioned at number 199 on the priority list. On review, the position may change as cases are processed and new cases are added with some falling into the priority categories. With current levels of resources CC estimates it will determine approximately 20 cases per year. With that as a guide, it predicts this case will be determined in 8-10 years’ time.
6. The applicant points to the unreasonable length of time that has elapsed since his application was submitted. He notes that CC does not regard this as a priority case. However, he argues that if more priority cases are received annually than can be processed in that time, the non-priority cases will never be determined. Indeed, his own application is constantly slipping further down the list.
7. Meanwhile parts of the claimed routes have been blocked and public access is being denied. The applicant argues that no action to remove these obstructions can or will be taken until the status of these ways is established.
8. In response CC reports that local residents have been advised to capture photographic evidence of alleged dumping or destruction of these routes so that the Council can, if required, take retrospective action for any offences.
9. CC submits that a direction to determine this application sooner than would otherwise be the case would ultimately be to the detriment of other cases on the priority list. In its view the applicant has failed to provide sufficient grounds to justify why this case should be elevated above others.
10. An applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances as authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the definitive map and statement up to date. In this case more than 4 years have already passed since CC received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981.
11. I recognise that the resources allocated by CC to this area of work limits its progress in determining outstanding applications and that a priority system is necessary. Nevertheless, the applicant is entitled to expect that the application is processed within a reasonable length of time. A delay of 4 years with the prospect of a further 8-10 years is well beyond the timetable anticipated by the legislation. I therefore consider that there is a case for setting a date by which time this application should be determined.
12. However, I accept that CC will require time to carry out its investigation and make an informed decision on this application. I also recognise that restrictions brought about by the Covid-19 pandemic have hindered research work recently and I must make a special allowance for that. In these circumstances I conclude it would be reasonable to allow a further 12 months for a decision to be reached in this case.

**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 12 months from the date of this decision.

Sue Arnott

**Inspector**