

|  |
| --- |
| **Direction Decision** |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 February 2023** |

|  |
| --- |
| **Ref: ROW/3301999****Representation by Jenny Hart****Cornwall Council****Application for a bridleway from top of road through Wortha to junction of FP 632/4 & FP632/5 (OMA Ref. WCA 723)** |
| * 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 Jenny Hart, dated 24 April 2018.
 |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 28 September 2020.
 |
| * The Council was consulted about your representation on 5 September 2022 and the Council’s response was made on 14 October 2022.
 |
|  |

Decision

1. The Council is directed to determine the above-mentioned application by 31 July 2023.

Reasons

1. 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[[1]](#footnote-2).
2. The Council indicates that applications are dealt with in accordance with a published Definitive Map Modification Order Application Prioritisation register comprising of a list of applications that are presently awaiting processing. The accompanying policy explains that the Council deals with applications such as this on the basis of a two-tier priority scoring system which takes into account a number of factors, including where the path:
* Is categorised as or links with a ‘Gold Path’ (as defined by the Public Path Improvement Programme approved by the Executive (of the Council) in April and October 2005 or
* Is within the ‘Coastal Corridor’ (as defined in the South West Coast Path Strategy determined by the Countryside Agency (now Natural England) or
* Links to areas of ‘Open Access’ or land within areas of public access identified in the Environmental Stewardship Scheme (as defined by DEFRA) or
* Links to Public Open Spaces, Country Parks, Woodlands, Heritage Sites, Local Nature Reserves with approved or promoted access (as defined in the Cornwall Countryside Access Strategy 2006 to be determined by the Executive in September 2006).

AND

If a proposed path was to be added to the Map, it would be classified as a ‘Gold Path’ or as a ‘Silver Path’ as defined in the Public Path Improvement Programme.

All proposals which fall into the above category will be considered in the order that they are received.

1. The policy statement also makes it clear that any application falling outside this prioritisation will be considered as and when resources permit in the order that they are received. The application has not met any of the published criteria. While I have no reason to dispute that the Council’s policy and prioritisation procedures appear fair, timeliness is also a reasonable expectation.
2. The Council currently has some 275 applications awaiting determination and the current application is ranked 241st amongst these. The Council indicates that applications will be investigated on the basis of the prioritisation order but that similar recent successful appeals by the Secretary of State under Schedule 14 has resulted in applications having to be reprioritised and thus losing their place in the prioritisation table. The Council has indicated that this application is unlikely to be considered within the next five to ten years given staffing resources.
3. It appears from the evidence that the application relies at least in part, on user evidence to support the case. There does not appear to be any dispute between the parties that the interruption to the path is fairly recent and could be remedied so that access onto the moor may be restored. Where reliance is placed on user evidence, the longer period between the date of calling into question and the date of investigation, the more difficult it is to get to the truth of the matter and for any discrepancy in the route of the path to be reconciled.
4. The anticipated period for resolving the issue is not acceptable. Applicants should be able to expect a decision within a finite and reasonable time. I have therefore decided that there is a case for setting a date by which time this application should be determined.
5. Normally, 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, some 5 years will have passed in April since the application was submitted and it is estimated that a further five to ten years or more is likely to pass before it is determined. Whilst I have sympathy with officers who are genuinely trying to deal with the backlog of applications, the situation they find themselves in would suggest that the Council is failing to deploy sufficient resources to the determination of such applications.
6. It is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. I am encouraged by the positive stance taken so far by officers and also by the apparent willingness of landowners to reach an acceptable solution. Accordingly, I propose to allow a period of 6 months 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** Cornwall Council to determine the above-mentioned application not later than 31 July 2023.

Gareth W Thomas

INSPECTOR

1. Rights of Way Circular 1/09 Version 2, October 2009. Department for Environment, Food and Rural Affairs. [↑](#footnote-ref-2)