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| **Direction Decision** |
| **by Nigel Farthing LLB** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 November 2023** |

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| **Ref: ROW/3310152**  **Representation by Mark Osborn**  **Cornwall County Council**  **Application to add a footpath from Castle Drive to the beach below Curlews, St Mawes, St Just-in-Roseland CP (OMA ref. WCA 766)** |
| * An application was made by Mark Osborn to Cornwall County Council (the Council) for an order to modify its Definitive Map and Statement of Public Rights of Way (‘DMS’) under Section 53(2) of the Wildlife and Countryside Act 1981 (‘the 1981 Act’) (‘the application’). The Council’s reference for the application is WCA 766 * The certificate attached to the application, as required under Paragraph 2(3) of Schedule 14 of the 1981 Act, is dated 6 October 2021. * A representation has been made by the applicant under Paragraph 3(2) of Schedule 14 of the 1981 Act seeking a direction from the Secretary of State to be given to the Council to determine the application. The representation is dated 27 October 2022. The Council was consulted about the representation on 16 May 2023 and its response is dated 29 June 2023. |
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Decision

1. The Council is directed to determine the application not later than twelve months from the date of this decision.

Reasons

1. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the DMS.
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(3) of Schedule 14.
3. Current guidance is contained within Rights of Way Circular 1/09 Version 2, October 2009 published by the Department for Environment, Food and Rural Affairs. This explains, at paragraph 4.9, that 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. Each case must therefore be considered in light of its particular circumstances.
4. The claimed public footpath is supported by maps, photographs and a quantity of user evidence statements.
5. As of June 2023, the application was positioned at 128 out of 279 on the Council’s list of applications awaiting determination.
6. The Council determines applications in accordance with its Revised Policy Statement for Dealing with Modification Orders issued in June 2006. This effectively provides for applications to be placed in one of three categories. Category B is reserved for exceptional circumstances, and for those matters where a Direction pursuant to Schedule 14 has been made. Category C is used for those applications which fall within one of four criteria, including that the path is, or links to a ‘Gold Path’ as defined by the Council’s Public Path Improvement Plan. All other applications are assigned to category D.
7. At June 2023 there were 19 matters within category B, 143 within category C and 115 in category D.
8. The present application is assigned to category B as the claimed route links to a route which qualifies as a Gold Path.
9. The Council do not consider there to be any exceptional circumstances attaching to the application route and its policy requires matters in each priority band to be dealt with in date order. On this basis the Council predicts that this application will be determined in 5 – 7 years.
10. The applicant does not suggest that there are any exceptional circumstances attaching to this application, but he does draw attention to the period of time that will elapse if no direction is made and the fact that the application relies upon user evidence, the quality and possibly quantity of which will diminish over time.
11. The Council has a statutory duty to keep the DMS up to date. Circular 1/09 is clear that Authorities should ensure sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way.
12. The applicant is entitled to expect his application will be determined within a finite and reasonable period and the legislation gives rise to an expectation of a determination within 12 months under normal circumstances. My task is to balance the legitimate expectation of the applicant against the approach of the Council. I am satisfied that the policy adopted by the Council is reasonable and I recognise that this has resulted in the application reaching an elevated position on the list. However, almost two years have elapsed since the application was submitted, and the Council have not been able to put forward any exceptional circumstances justifying further delay.
13. It is appreciated that the Council will require some time to carry out its investigation and to make a decision on the application. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined.

**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 County Council to determine the above-mentioned application not later than 12 months from the date of this decision.

Nigel Farthing

INSPECTOR