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| **Direction Decision** |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 6 November 2023** |

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| **Ref: ROW/3314249**  **Representation by Mr R Fraser on behalf of the Ramblers’ Association**  **Cornwall Council**  **Application to add a footpath from Classified Road C15 to Public Footpath 30 Mawan at Helford Passage in the Parish of Mawan** |
| * 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 Robert Fraser on behalf of the Ramblers Association, dated 27 December 2022. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 6 August 2021. |
| * The Council was consulted about the representation on 16 February 2023 and the Council’s response was made on 27 March 2023. |
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Decision

1. The Council is directed to determine the above-mentioned application not later than 6 months from the date of this Direction.

Reasons

1. On 27 July 2021 Mr R Fraser made an application to Cornwall Council. This sought to record on the definitive map a public footpath between Helford Passage and Trebah in the parish of Mawnan. The evidence adduced in support of the public footpath included a number of user evidence forms.
2. Schedule 14 of the 1981 Act sets out provisions for applications made under section 53(5) for an order which makes modifications to the Definitive Map and Statement (DMS).
3. 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.
4. 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 DMS 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.
5. In this case the Council states the authority’s policy involves a two-tier system. Higher priority is given to cases that have preferential status under the policy and meet a defined set of criteria. This application relates to adding a footpath, which links to rights of way categorised ‘Gold’ (as defined by the Public Path Improvement Programme approved by the Executive in April & October 2005). It therefore meets the criteria set out in the policy and has been given a higher priority.
6. Currently the application is positioned at 129 on the priority list and the Council has stated that it will be at least another 5-8 years before a decision is made. Authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the DMS up to date.
7. The application was made as a result of obstruction of the path and adverse notices on site. This application is based on the evidence of 20 witnesses supported by some documentary evidence. Some of the individuals are said to be elderly and the applicant fears that the state of affairs will soon be that these witnesses will not be able to give evidence or otherwise engage with the process due to poor health. The applicant believes that the Council does not intend to interview any of the witnesses until the application reaches the top of the priority list, which is unlikely to be before 2028-2031. The applicant considers it imperative that this is done, at least, to avoid evidence being lost.
8. This is not an acceptable situation; applicants should be able to expect a decision within a finite and reasonable time. In the circumstances, I have therefore decided that there is a case for setting a date by which time this application should be determined. However, it is appreciated that the Council will require some time to carry out its investigation and make a decision on the application. Accordingly, I propose to allow a further period of 6 months for a decision to be made.

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.

Charlotte Ditchburn

INSPECTOR