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| **Direction Decision** |
| **by Charlotte Ditchburn BSc Honours MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 January 2024** |

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| **Ref: ROW/3323320**  **Representation by Ken Sharp, The Ramblers**  **Cornwall Council**  **Application to add a footpath from end of Sancreed Footpath No 1 to junction with Sancreed Bridleway No 5 (OMA ref. WCA 739)** |
| * 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 (the Council) to determine an application for an Order, under Section 53(5) of that Act. |
| * The representation is made by Ken Sharp on behalf of The Ramblers, dated 21 May 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 18 March 2021. |
| * The Council was consulted about your representation on 27 June 2023 and the Council’s response was made on 20 July 2023. |
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Decision

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

Reasons

1. On 18 March 2021 Ken Sharp made an application to the Council. This sought to record on the Definitive Map and Statement (DMS) a public footpath between Sancreed Footpath No 1 and Sancreed Bridleway No 5 in the parish of Sancreed. The evidence adduced in support of the public footpath included a number of historic documents.
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 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 does not meet the criteria set out in the Council’s policy and has therefore been given the lower priority. Currently the application is positioned at 113 on the priority list and the Council has stated that it will be at least another 8-10 years before a decision is made.
6. This application is based on documentary evidence. The application was made as a result of obstruction of the path with users reporting difficulties in accessing the route and in response to planning application PA22/09337. The planning application was withdrawn in 2022 but the applicant believes it is likely that further applications may be made to make the obstructions permanent through the planning process. Therefore, determination of the application route before this stage would bring clarity and certainty to all interested parties.
7. The applicant also considers that there is a breach of the European Convention under Article 6: The Right to a Fair Trial, due to the determination being beyond 'a reasonable time'.
8. This is not an acceptable situation; authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the DMS up to date, 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