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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: 15 January 2024** |

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| **Ref: ROW/3319061**  **Representation by Robert Fraser, Ramblers**  **Cornwall Council**  **Application to add a restricted byway from the U6044 road at Penhallick to the U6044 road between Penhallick and Tregajorran (OMA ref. WCA 770)** |
| * 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 Robert Fraser on behalf of The Ramblers dated 21 March 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 26 October 2021. |
| * The Council was consulted about your representation on 23 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 25 October 2021 Robert Fraser made an application to the Council. This sought to record on the Definitive Map and Statement (DMS) a restricted byway between the U6044 road at Penhallick and the U6044 road between Penhallick and Tregajorran in the parish of Carn Brea. The evidence adduced in support of the restricted byway included user evidence and 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 relates to adding a restricted byway but does not meet the criteria set out in the policy so has not been given a higher priority. Currently the application is positioned at 258 on the priority list and the Council has stated that it will be approximately 15 years before a decision is made.
6. The application was made as a result of obstruction of the path with the Council having served an enforcement notice, reference EN21/00529, and in response to planning application PA22/04498. The Council state that they submitted an objection to the initial planning application on the basis that the claimed path represents a material constraint on the planning process. The planning application was refused in 2023 but the applicant believes the landowner wishes to make the obstructions permanent through the planning process as they have appealed the planning applications refusal. Therefore, determination of the application route before this stage would bring clarity and certainty to all interested parties so that if confirmed as a public path, the route would be a material consideration for the planning authority and for enforcement action to be taken to assert the right of the public.
7. This application is based on user evidence and 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.
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** the Cornwall Council to determine the above-mentioned application not later than 6 months from the date of this Decision.

Charlotte Ditchburn

INSPECTOR