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| **Direction Decision** |
| **By A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 March 2024** |

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| **Ref: ROW/3334378****Representation by Beverley Balin-Bull****Cornwall Council****Application to add a footpath from Newton Road to Tolcarne Road, Troon (Order Making Authority reference: WCA 786)** |
| * The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 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.
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| * The representation is made by Beverley Balin-Bull and is dated 1 December 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 8 July 2022.
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| * The Council was consulted about the representation on 4 December 2023 and the Council’s response was made on 22 January 2024.
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Decision

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

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.
2. As required by Rights of Way Circular 1/09 (Version 2, October 2009, Department for Environment, Food and Rural Affairs) 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.
3. The Council advises that its current Statement of Priorities is based on a matrix scoring system. That system allocates weight to those applications where their effect would provide the most value to the public rights network according to the Council’s strategic mission of ‘Working with communities for a carbon neutral Cornwall, where everyone can start well, live well and age well’. Priority is given to cases that score highly under the policy or where preferential treatment is necessary because they are supported by evidence of recent public use.
4. The Council notes that, as the present application is supported by ‘Public Path Forms’, the determination of this application has already been given priority. The Council advises that, as at the date of their response, there were 283 outstanding cases awaiting determination, and that the present application was positioned at number 67 on their priority list. The Council estimates the determination of approximately 20 modification orders per year and, assuming the Council can fully implement its current policy, anticipates that it will take approximately 3 to 4 years to clear the outstanding backlog of cases that are based on user evidence. However, the Council maintains that if applications subject to a Direction decision are promoted over cases where the Order Making Authority is seeking to ensure that valuable user evidence is not lost or diminished by delays, that would harm those other applications which the Council considers offer greater benefit to the rights of way network.
5. The present application was made on 9 May 2022, and validated by the Council on 21 July 2022. The Applicant has put it to me that the application was made as a result of an obstruction of the claimed footpath, and it would be to the benefit of the public for the matter to be decided without further delay. The application was based on user evidence, and the Applicant is concerned that, given the age of users, and the likely anticipated timescale for determination of the application, such witnesses might not be able to participate in any future Inquiry should that be necessary.
6. I acknowledge the Council’s concerns that making a direction in this case may undermine its revised priority system and could ultimately delay, and therefore be a detriment to, other applications that are also based on user evidence. I also accept that the approach taken by the Council in prioritising cases which are based on user evidence, is reasonable.
7. Nevertheless, 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. Whilst I accept that it is reasonable for the Council to determine applications in accordance with its revised policy system, I find that it is unreasonable to take the Council’s estimate of another 3 to 4 years for the determination of this application which, it has been agreed, is based on user evidence. The Council has a statutory duty to keep the Definitive Map and Statement up to date, and no exceptional circumstances for the delay in determining the present application have been indicated. In these circumstances, I have decided that there is a case for setting a date by which time the 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. Consequently, a further period of six months has been allowed.

**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 decision.

Mr A Spencer-Peet INSPECTOR