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| **Direction Decision** |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 March 2024** |

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| **Ref: ROW/3334261****Representation by Robert Fraser, Ramblers’ Association****Cornwall Council****Application for the addition of a footpath, the addition of a restricted byway and the upgrade of a footpath to a restricted byway at Forgue in the parishes of Ladock and Probus, Cornwall (OMA ref. WCA 771)** |
| * 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.
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| * The representation made by Robert Fraser on behalf of the Ramblers’ Association is dated 23 November 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 21 November 2021.
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| * The Council was consulted about the representation on 1 December 2023 and the Council’s response was made on 19 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. Guidance on directions 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 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 be considered in light of its particular circumstances.
3. The application seeks to have recorded an upgrade and additions to the rights of way network in Cornwall. The applicant has explained that the application was made as a result of obstructions to paths, adverse notices on site and the owner of part of the land informing walkers that they should not be using the routes. It is commented that this is a cause of distress to local residents and the wider community and is deterring use of the routes. Cornwall Council (the Council) is yet to determine the application.
4. The submission in support of a direction explains that the path is close to the rural village of Ladock and used by local people for recreational walks and also shown on the Slow Ways website as a recommended longer route between larger settlements.
5. The applicant sets out that, at the time of verification, the application stood at No.156 on the Council’s priority list of applications. By August 2022, it was No 150 and by June 2023 it was No 130. The applicant considers that even with the application being in a high priority category, with only those subject of a direction in a higher category, it could take up to 5 years for the application to be determined and that it would be to the benefit of all the parties for it to be decided without further delay.
6. The Council has set out its published statement of priorities, which is based on a matrix scoring system, and which allocates weight to applications where their effect is to provide the most value to the public rights of way network according to the principles underpinning the Council’s Strategic Mission. It is explained that because of the circumstances of this application it has already been given a higher priority.
7. Additionally, the Council set out that because it has recently begun to encounter problems with applications supported by Public Path User Forms, due to the age of the evidence and availability of witnesses at the decision making and public inquiry stages, the latest policy is deliberately designed to clear the backlog of user based cases. Assuming the Council can fully implement its policy, without interference, it estimates clearing the outstanding cases supported by evidence of use within 3 years. It is argued that should it have to deal with applications the subject of directions, which would promote those cases over what it considers to be more pressing cases, then this would ultimately harm applications which the Council has judged, using its scoring system, to offer greater benefit to the public rights of way network in Cornwall.
8. It is explained that with the current levels of resource the Council estimates the determination of approximately 20 modification orders per year and the Council set out that the first 60 cases are actively in progress by case officers. At the time of the response from the Council in January 2024, the application was No 74 in the list, out of a total of 283 cases.
9. Drawing these matters together, the Council has put resources and a priority system in place to assist with the processing of applications for Definitive Map Modification Orders (DMMOs). Nevertheless, there is still a substantial backlog which will take some years to address.
10. It takes time to research and determine applications for DMMOs. Nevertheless, even given the number of cases, there is a need for applications to be determined within a reasonable period. 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. I am also conscious that the Council has set out a clear case for its priority system and the application has risen up the list. However, the application is still not within the top 60 applications which are being actively worked on at the present time, although the Council has explained that this application is due to be allocated a case officer for processing in the immediate future. Nevertheless, about 2½ years have passed since the application was submitted and it is important that the application is not unreasonably delayed for any reason going forward. There is a balance to be struck between issuing a direction which prioritises that application but which may then ultimately delay the determination of others.
11. In the light of the above details, given the circumstances of this case and the position of the application within the list, and having regard to the priority system that the Council operates in conjunction with the number of cases it is actively considering, a further period of 12 months would be appropriate to ensure that the application is advanced to a decision. I will make a direction to that effect.

**Direction**

1. 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 12 months from the date of this decision.

David Wyborn

INSPECTOR