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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: 26 April 2024** |

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| **Ref: ROW/3327996****Representation by Peter Greening****Cornwall Council****Application to add a footpath from parish boundary GR SW 8799 6789 to classified road GR SW 8804 6818 (OMA ref. WCA 744)** |
| * 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.
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| * The representation is made by Peter Greening, dated 14 August 2023.
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| * The certificate under Paragraph 2(3) of Schedule 14 is dated 28 March 2021.
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| * The Council was consulted about the representation on 18 October 2023 and the Council’s response was made on 29 January 2024.
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Decision

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

Reasons

1. On 26 March 2021 Peter Greening made an application to Cornwall Council. This sought to record on the Definitive Map and Statement (DMS) a public footpath from the parish boundary to a classified road. The evidence adduced in support of the claimed footpath includes historical documentary evidence.
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. The Council’s statement of priorities states that priority will be given to applications where the effect of the path is: to enhance the safety of the user by providing off road connections to centres of work and schools including links to the school transport network; to provide links with existing public rights of way, enhancing the path network or offering onward connections to nearby communities; to maximise sustainable transport links; to promote and encourage healthy active lifestyles by forming part of a longer recreational route; to improve access to nature, including green and blue spaces and public interest points for both local communities and visitors; to potentially offer a more accessible route to users; and has a time sensitive element. It also states that applications supported by evidence of use should be expedited. It operates a two-tier system whereby higher priority is given to routes which meet these defined criteria.
6. The application route falls within at least three of the defined criteria and is currently positioned at number 56 on the Council’s priority list. On review, the position may change as cases are processed and new cases are added with some falling into the priority categories. The Council has not provided an estimated timeframe for when this application will be determined.
7. There is no suggestion that the Council’s prioritisation system is unreasonable. I daresay that most, if not all, applicants would consider their application is important and deserving of priority. There are many other applications ranked higher in the Council’s list which are ‘high’ priority. The Council submits to issue a direction to make a determination would disadvantage that it would also invariably delay other applications warranting greater urgency under the Council’s prioritisation system.
8. The applicant points to the unreasonable length of time that has elapsed since his application was submitted. He notes that the Council does not regard this as a priority case. However, he argues that if more priority cases are received annually than can be processed in that time, the non-priority cases will never be determined. Indeed, his own application is constantly slipping further down the list.
9. Meanwhile public access along the application route is being denied, with signage in place deterring use of the route. The applicant argues that resolving this anomaly of a cul-de-sac footpath, by establishing the status of this way, would create a 4km off road walking route.
10. 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