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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: 22 April 2024** |

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| **Ref: ROW/3336234**  **Representation by Barry Murphy, Ramblers**  **Cornwall Council**  **Application for the addition of restricted byways at Ruthvoes in the parish of St Columb Major, Cornwall (OMA ref. WCA 640)** |
| * 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 Barry Murphy, on behalf of the Ramblers, dated 29 December 2023. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 7 June 2018. |
| * The Council was consulted about the representation on 18 January 2024 and the Council’s response was made on 29 February 2024. |
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Decision

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

Reasons

1. On 23 March 2018 Barry Murphy, on behalf of the Ramblers, made an application to Cornwall Council. This sought to record on the Definitive Map and Statement (DMS) restricted byways at Ruthvoes. The evidence adduced in support of the claimed routes included user evidence forms.
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; 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 routes claimed in the application fall within at least three of the defined criteria and is currently positioned at number 46 on the Council’s priority list with the Council stating that the application is already being investigated by a case officer. On review, the position may change as cases are processed and new cases are added with some falling into the priority categories. With current levels of resources, the Council estimates it will determine the outstanding cases supported by evidence of use within 3 years.
7. The applicant believes this estimate is too optimistic as it does not allow for the outstanding and potential future directions relating to other applications, which would delay determination of this one. The applicant points to the unreasonable length of time that has elapsed since his application was submitted. 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.
8. Meanwhile parts of the claimed routes have been blocked and public access is being denied by verbal challenges and physical obstructions including the construction of a concrete slab which the applicant speculates could be foundations for a new outbuilding. Therefore, determination of the application routes 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 if planning permission were to be sought and for enforcement action to be taken to assert the right of the public.
9. An applicant’s right to seek a direction from the Secretary of State gives rise to the expectation that the application will be determined within 12 months under normal circumstances as authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the definitive map and statement up to date. In this case nearly 6 years have already passed since the Council received the certificate under paragraph 2(3) of Schedule 14 to the Wildlife and Countryside Act 1981.
10. Although the Council states that work has begun on the application routes and predicts that all user evidence cases would be determined in 3 years, the applicant should be able to expect a decision within a finite and reasonable time and I have therefore decided that there is a case for setting a date by which time these application routes should be determined. 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