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| **Direction Decision** |
| **by J Ingram LLB (Hons) MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 April 2025** |

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| **Ref: ROW/3357289**  **Representation by The Ramblers’ Association (Robert Fraser dec’d)**  **Cornwall Council**  **Application to add a restricted byway from the U6137 road at Treligga towards Treligga Common (OMA ref. WCA 852)** |
| * 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 The Ramblers’ Association, dated 11 December 2024. |
| * The certificate under Paragraph 2(3) of Schedule 14 is dated 8 November 2022. |
| * The Council was consulted about the representation on 12 December 2024 and the Council’s response was made on 28 January 2025. |
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Decision

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

Reasons

1. On 12 September 2022 Mr Fraser, on behalf of the Ramblers’ Association made an application to the Council. Mr Fraser has since passed away and therefore the central office of The Ramblers’ Association is now dealing with the application. This sought to record on the Definitive Map and Statement a restricted byway at Treligga. The evidence adduced in support of the claimed restricted byway is documentary evidence.
2. 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.
3. 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.
4. Although the application was made in September 2022, initially the Council believed it was not compliant with Paragraph (1)(b) of Schedule 14 of the 1981 Act. It was not until 15 February 2024, after further evidence was submitted, that the Council entered the application onto the Definitive Map Modification Order (DMMO) register.
5. The Council prioritises its applications in line with the Cornwall Council DMMO Priority Policy Statement 2024. This states that priority will be given to applications where the effect of the path is:
6. 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; and
7. to provide links with existing public rights of way, enhancing the path network or offering onward connections to nearby communities; and
8. to maximise sustainable transport links; and
9. to promote and encourage healthy active lifestyles by forming part of a longer recreational route; and
10. to improve access to nature, including green and blue spaces and public interest points for both local communities and visitors; and
11. to potentially offer a more accessible route to users; and
12. has a time sensitive element.
13. In addition to the above the Council states that they are currently trying to prioritise applications based on user evidence due to the backlog of applications causing problems with the availability of witnesses. The application is currently positioned at number 213. There are 477 applications currently on the register. The Council have not provided an estimate on the likely time period before this case will be determined. They do, however, accept that it will be an unreasonable amount of time.
14. There is nothing to suggest that the prioritisation system employed by the Council is unreasonable, however, authorities are expected to allocate sufficient resources to fulfil their statutory duty to keep the Definitive Map and Statement up to date.
15. The applicant believes this application should take priority over other outstanding applications, including some of their own. The claimed route is a cul-de-sac; however, it connects with a track on land owned by The National Trust (NT). This track continues to link with the coastal path. NT have indicated that they will dedicate a right of way on the track. The applicant is concerned that any delay in determining the application could result in the NT withdrawing their offer to dedicate the track. The applicant states that the claimed route coupled with the dedication would provide the locality with an excellent circular walk including the coastal path.
16. The Council accepts that the NT agreement could be withdrawn if it is not finalised soon. The Council understands the importance of this path for local people, and they state it would undoubtably be a useful asset to the area. However, they consider the application is contentious and not straight forward. They believe that it is not dissimilar to a number of cases they are dealing with. Therefore, the Council consider the current circumstances do not merit its promotion above the other outstanding cases.
17. I do recognise that there are a large number of applications awaiting determination, and that there is a policy of prioritisation to ensure fair ranking. However, the applicant is entitled to expect their application to be determined within a finite and reasonable period and the Council have a statutory duty to keep their Definitive Map and Statement up to date. Difficulty complying with this due to insufficient resources and a backlog are not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
18. 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. In this case 12 months have now passed since the application was registered and no exceptional circumstances for the delay have been indicated.
19. In the circumstances I have decided that there is a case for setting a date by which time the application should be determined. 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 12 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 12 months from the date of this decision.

J Ingram

INSPECTOR