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| **Interim Order Decision** |
| Site visit made on 4 June 2025 |
| **by Mrs A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 01 August 2025** |

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| **Order Ref: ROW/3332701** |
| * This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Cornwall Council (Addition of a restricted byway and footpaths together with the upgrade of a footpath to restricted byway at Trevegean in the Parish of St Just) Modification Order 2022. |
| * The Order is dated 8 February 2022 and proposes to modify the Definitive Map and Statement (DMS) for the area by the addition of a Restricted Byway from Footpath 12 St Just to Footpath 26 St Just, along with the addition of footpaths from a Restricted Byway to Footpath 27 St Just and from Footpath 26 St Just to Footpath 25 St Just, along with the upgrading of a length of Footpath 26 St Just to Restricted Byway, as shown on the Order Map and described in the Order Schedule. |
| * There was 1 objection outstanding when Cornwall Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is proposed to be confirmed subject to the modifications set out in the Formal Decision which require advertising.** |
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Procedural Matters

1. An application was made by the Ramblers (the applicant) in 2019 to add various routes in Trevegean to the DMS. In the course of its investigations the Council discovered further evidence indicating that a right of way of higher status existed over a section of Footpath 26 and subsequently determined to make an Order which included the upgrade as well as the routes as applied for by the Ramblers.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map and therefore attach a copy of this map. I made an unaccompanied site inspection on 4 June 2025 when I was able to walk all of the routes, albeit Footpath 26 (FP26) and Footpath 27(FP27) were obstructed by vegetation from just after the points D and E.

The Main Issues

1. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of the discovery of evidence as provided in sections 53(3)(c)(i) and (ii) of that Act.
2. The requirement of the legislation and what I must consider on the balance of probabilities, is whether the evidence discovered by the surveying authority, when considered with all other relevant evidence available, shows that (i), a right of way which is not shown on the Definitive Map and Statement subsists over land in the area to which the map relates; and (ii), a right of way that is shown on the Definitive Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description.
3. Whilst the objector raised issue about lack of user evidence, the claim is solely based on historical documentation. As regards the documentary evidence adduced, section 32 of the Highways Act 1980 (the 1980 Act) requires that I take into consideration any map, plan or history of the locality, or other relevant document provided as evidence, giving it such weight as is appropriate, before determining whether a way has been dedicated a highway. There are several records, before me, as evidence discovered, and in making my decision I have considered them below.
4. As this Order is concerned, in part, with possible unrecorded vehicular rights, should the route be confirmed as a restricted byway, it will be necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (NERC), which extinguished rights of way for mechanically propelled vehicles, subject to certain exceptions.

Reasons

*Tithe Map 1841-1843*

1. The Tithe Map and apportionment for St Just in Penwith shows the hamlet of Trevegean Veor accessed by a route from point A. The route leads directly to homestead 3726 and there is a line separating homestead 3726 from the other homesteads as pointed out by the objector. Nevertheless, it would appear that the access to the other homesteads in this hamlet would have needed to be from the claimed restricted byway between points A-C. The other claimed routes are shown radiating out from the hamlet and petering out into adjoining fields. A line can be seen across the route at point E of the claimed footpath B-E.
2. Although points A-D appear to be depicted in the same manner as other roads, the Tithe Maps did not differentiate between public and private roads, as the Tithe Commissioners were only concerned with the productiveness of the land. Roads marked upon them could have been private or public as both lessened the productivity of the land. Accordingly, I consider this map is good evidence of the existence of the claimed routes and is supportive for the route between A-C holding some level of public status, being the only access to the hamlet. It is less helpful when considering any public status the other Order routes may have held.

*Finance Act 1910 records*

1. Two sources of records were submitted in evidence, the working sheets and the record sheets, along with the accompanying Field Record Books. Both Finance Act maps show the route between points A-D uncoloured and falling outside of land holdings, bounded for the most part by solid lines. On the working sheets, a dashed line appears at point A, however this is not shown on the final Record Sheets. There are a number of buildings bordering or adjacent to the route between points A-C. At point C, a line is shown across the route on both sources. There are no buildings between points C-D and at point D an onward route is shown bordering some surrounding fields before terminating at a field boundary, where it appears to continue in the form of dashed lines heading east and notated F.P. The route from point C eastwards is already recognised as the legally recorded FP26.
2. I agree with the Council that where a route is shown uncoloured and excluded from hereditaments on these records, this can be considered strong evidence of public rights, possibly at vehicular status, however as pointed out by the objector there are other potential reasons for a road to be excluded, for instance if it were private and shared by several parties to access their land holdings. The Council pointed out that there were no easements recorded that would indicate that this was the case and they considered that the only possible explanation was that the surveyors considered the route between A-D to be a public carriageway at that date. Whilst I follow this reasoning, these records need to be considered alongside all other evidence.
3. Turning to the other Order routes, which radiate from points A-C, route C-F is coloured green and depicted by a single dashed line. A line can be seen across the route at point F, likely notating a boundary. Following the onward route from the dashed line of route C-F heading north, the notation F.P can be seen and this route is the recorded Footpath 25 (FP25). Route B-E is shown as an open area between buildings depicted partially in white and partially in green heading towards point E, where it joins a track coloured green and shown between solid double lines. There is a line across the route at point E, possibly depicting a gate. At the end of this track, appears to be another track heading generally eastwards and also notated F.P. Other than the short stretch between C-E, this whole route is recorded as FP27 today.
4. The existence of public rights of way effectively reduced the value of the land and liability for taxation and they were therefore included in this statutory survey. The accompanying valuation reference books indicate deductions for public rights of way on the hereditaments across which the Order routes and their recognised continuations pass. While the books do not specify individual routes, it is quite likely that they refer to the Order routes and the recorded footpaths that continue from them.

*Bartholomew’s Maps 1903 and 1944*

1. The Bartholemew’s Maps are small scale at half inch to the mile, and show only a route between points A-D. The route is bound between parallel lines and coloured white, in the same manner as other nearby unclassified roads and which the key denotes as ‘other road.’ There appears to be a line across the route at point A.
2. Albeit Bartholomew’s map was sold commercially, it did not address the public status of any routes shown and bore a disclaimer to that effect. Accordingly, this map is good evidence of the existence of the route A-D, but not of any public rights it may have held.

*Ordnance Survey (OS) Maps 1878, 1883, 1908, 1909, 1944, 1946, 1950, 1960*

1. All of the OS maps submitted appear to show the claimed routes albeit the smaller scale maps are less detailed and it is harder to distinguish the detail that is shown so clearly in the larger scale OS maps. What is apparent from these maps is while there are boundary or field gate lines almost consistently shown across the routes at points F and E, there is a more sporadic nature to any lines across the claimed route between points A-D.
2. The 1878 map shows a dashed line at point A, possibly indicating a change of surface, and a solid line at point C. The 1883 map shows a line possibly just east of point A, although it is difficult to determine on the map. In 1908, a dashed line appears again at point A and point C, but just the following year in 1909 the OS map shows no lines across points A or C. Later maps, which are mostly smaller scale depict the claimed routes in the same way, albeit the 1960 map appears to show a line some distance east of point A, a feature not shown on any other map before me.
3. Whilst the objector felt that as gates were noted on the claimed routes, it was highly likely that the routes were not available for public use, I agree with the Council that the presence of gates does not necessarily preclude the existence of a right of way. The presence of gates, whether consistent or sporadic, should be considered with the other evidence as a whole.
4. Ultimately, the purpose of OS maps was not to record public rights of way, but rather what features existed on the ground. From 1888, OS maps carried a disclaimer to the effect that representation of a track or a way on the map was not evidence of a public right of way. The disclaimer was presumed to apply to earlier as well as later maps. Furthermore, in 1905, surveyors were instructed *that ‘OS does not concern itself with rights of way and survey employees are not to inquire into them’*.
5. Subsequently these maps hold limited weight in demonstrating the status of rights of way but do demonstrate, as pointed out by the Council, that ways of a physical character suitable for use have existed for a very long time. As also remarked upon by the council, the OS records clearly illustrate the three claimed routes converging on Trevegean Veor.

*Definitive Map Records 1949-1998*

1. The Parish Survey Map of 1951 shows FP25, FP26 and FP27 all converging on Trevegean Veor and the accompanying survey cards all note either the starting or finishing point of each path as Trevegean Veor. This follows through to the Draft Map of 1957 and then the Definitive Map of 1966. Public notice would have been given of the Draft Map and Statement and anyone could object to their contents and challenge the status of the routes shown therein. There appears to be no objections to the designation of the recorded footpaths through the Definitive Map Process, however this resulted in the cul de sac paths, which this Order seeks to redress.
2. The Council drew attention to case law such as *Roberts v Webster 1967* and *Eyr V New Forest Highway Board 1892* and considered that it was inconceivable for surveyors to deliberately record three cul de sac paths with no place of popular resort at their termination points, without thinking that they were linked together, or at least linked to another publicly accessible highway. Whilst the objector did not agree with the Council’s view, they did not offer an alternative explanation.

*Aerial photographs 1946, 1988, 2000, 2005, 2016*

1. In general, the aerial maps show the existence of the Order routes, albeit from 2000 onwards the route B-E is more difficult to see and other than the 1946 image, the route between points C-D appears to narrow significantly. As pointed out by the objectors these photographs are not evidence of status.

**Other Matters**

1. The objector raised issues about erroneously installed waymarking signs and highway authority enforcement action, however these are not relevant to the legislation on which I must determine this case. There was also reference to the positioning of a fire hydrant and possible relevance to the claimed Order routes, however I afford no weight to the location of a fire hydrant in determining this matter. Other objections referred to lack of evidence of use of the Order routes, however the application does not rely upon dedication under Section 31 of the 1980 Act.
2. I note the comment made by the applicant regarding the northern end of FP25 at Kelynack also ending as a cul de sac path, in a similar manner to the southern end which is under consideration today. Whilst it would be within my power to modify the northern end of FP25, should I be minded to do so, it is not shown on the Order Map and I therefore am unable to consider the matter.

Conclusions

1. The objector considered that there was insufficient evidence to confirm the Order routes on the test of balance of probabilities, however I am inclined to agree with the applicant and the Council that the evidence is sufficient to draw conclusions in this regard. As a whole, the evidence submitted consistently portrays the existence of, or a physical character of, routes that could be used by the public from as far back as the mid 1800’s.
2. Looking first at the route A-C, it is clear from the Tithe Map that the only practical access to the homesteads in the hamlet would have been via this route. The Finance Act records show the route being uncoloured and falling outside of land holdings, which when considering the necessary access to the hamlet, point strongly in favour of vehicular rights having existed across this stretch. The commercial maps submitted, add support to this view and attest to the longevity of the route. Whilst some maps indicate a gate possibly being in existence at the junction of the route with an ‘unclassified road’, others do not show such a feature. When considering the sporadic nature of the depiction, against necessary access to the hamlet, I am not persuaded this is evidence against the use of the route by the public. I am therefore satisfied on the balance of probabilities, that this route was historically a vehicular way used by the public.
3. Section 67 of the NERC Act had the effect of extinguishing all unrecorded public rights for motorised vehicles from May 2006, with certain exemptions. I do not consider that any of the exemptions apply and as such public rights on the route between points A-C would be on foot, horseback, bicycle and by horse drawn carriage. Any private vehicular rights would not be affected.
4. Turning to the claimed routes of F-C and B-E, the Finance Act records clearly show these claimed routes adjoining to onward routes, which were later legally recorded as footpaths FP25 and FP27 during the Definitive Map process. These recorded paths converge on Trevegean Veor hamlet, but terminate as cul de sac paths just short of route A-C, which I have found to hold public vehicular rights.
5. There appears to be no individual public resort for these recorded cul de sac paths, and yet they are clearly shown on mapping since 1910. This would leave these recognised footpaths with no purpose and I consider it highly unlikely that the public would walk quite some distance along these paths, only to retrace their footsteps. With no evidence to the contrary, I am of the view that, on the balance of probabilities, FP25 and FP27 must have continued on, via the claimed routes F-C and B-E, to meet the route A-C. With regard to limitations, the line across the path at point F on mapping appears to be a boundary line, whereas the line at point E appears to be more in the character of a field gate. I note the limitation on the Order Schedule at point E and consider this to be an accurate reflection of what is shown on the mapping evidence.
6. The final route to address is the proposed upgrade of part of FP26 to a restricted byway, between points C to D. Of importance in determination of this section of route, which is currently a recorded footpath, is the purpose of its function as part of the highway network. Whilst I accept that this section of the footpath is also shown uncoloured on the Finance Act map and separate to hereditaments, there appears to be no utility or place of public resort to this particular route in terms of vehicular use. Whilst adjoining landowners would need to access their fields, the only through route is on foot. The mapping does not show any buildings on this section and does not appear suggestive of any through routes for vehicular traffic in the past. I see no reason why public vehicles, having reached the hamlet of Trevegean Veor, would have chosen to then travel past point C, across the boundaries of fields to point D, only to return again. I am therefore not persuaded that on the balance of probabilities that the route between points C-D was historically a public vehicular road.
7. Having regard to these and all other matters raised in the written representations, I conclude that the DMS should be modified to include the addition of a restricted byway between points A-C, along with the addition of two footpaths between points C-F and points B-E. I do not confirm the upgrade of FP26 between points C-D to a restricted byway. I therefore propose to confirm the Order with modifications.

Formal Decision

1. I propose to confirm the Order with the modifications detailed below. These modifications would have the effect of showing as a highway of one description, a way which is shown on the Order as a highway of another description.*HIGHWAY OF ONE DESCRIPTION*  It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

* On the Order title, line 6, **delete** *‘together with the upgrade of a footpath to restricted byway’.*
* On the Order at the first paragraph, lines 8-10, **delete** the section *‘and an event specified in Section 53(3)(c)(ii) of the Act, namely…….. shown as highway of a different description.’*
* On the Order at the section numbered 3., lines 2-3, **delete** *‘together with the Upgrade of a Footpath to Restricted Byway’.*
* On the Schedule, PART I, Description of Path or Ways to be Added, lines 8-9, **delete** *‘to be upgraded to Restricted Byway by this Order’*.
* On the Schedule PART I, **delete** ‘*Description of Path or Way to be Upgraded’* and **delete** all of the 2 paragraphs of text beneath that description.
* On the Schedule, PART II, Particulars of Paths or Ways to be added, for FP No.26 in the Location box, **delete** ‘*east of’*.
* On the Schedule, PART II, Particulars of Paths or Ways to be added, in the last box (that is unnumbered), in the Location box, **delete** *‘east of’* and in the Minimum Width box, **delete** *‘2m’* and **insert** *‘3m’*.
* On the Order Map title, **delete** *‘together with the upgrade of a footpath to restricted byway.’*
* On the Order Map key, **delete** *‘Footpath to be upgraded to Restricted Byway’* and **delete** the line style symbol below that text for a restricted byway.
* On the Order Map, **delete** the line style for restricted byway between point C and point D and **insert** the line style symbol for existing footpath.
* On the Order Map, **delete** the text box coloured blue that states *‘Footpath 26 St Just to be upgraded to Restricted Byway.’*
* On the final page of the Order, lines 8-9, **delete** *‘together with the upgrade of a footpath to restricted byway’*.

Mrs A Behn

Inspector

