



ENVIRONMENT SERVICE, COUNTRYSIDE ACCESS TEAM

STATEMENT OF REASONS

WILDLIFE & COUNTRYSIDE ACT 1981 SECTION 53

**THE CORNWALL COUNCIL (UPGRADE OF FOOTPATH TO RESTRICTED BYWAY AT
POUGHILL IN THE PARISH OF BUDE STRATTON) MODIFICATION ORDER 2022**

THIS STATEMENT DOES NOT FORM PART OF THE ORDER

FILE REF: WCA 632

Under the Wildlife & Countryside Act 1981, local authorities have a statutory duty to keep the definitive map and statement under continuous review and under Section 53(2)(b) by Order make such modifications to the definitive map and statement as appear to be requisite in consequence of the occurrence of events.

After assessing the available evidence The Council is satisfied there is sufficient evidence to meet the tests for events in *Section 53(3)(c)(ii)* of the Act and has made an Order to upgrade Footpath 8 Bude-Stratton to a Restricted Byway at Poughill in the Parish of Bude Stratton.

Notice of the Order has been advertised on the site in question and in the local press. This provides an opportunity for the public to make representations or objections to the proposed change. This statement has been prepared to explain the Council's grounds for making the Order which are set out below:

THE COUNCIL'S REASONS FOR MAKING AN ORDER

Section 53(3)(c)(ii) The discovery of evidence that a right of way should be recorded with a different status Before making an order the surveying authority must have discovered evidence that (when considered with all other relevant evidence available to the authority) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

- Cornwall Council has discovered evidence of deemed dedication of a Restricted Byway at common law. This evidence is sufficient to show that on the balance of probabilities between points A-D on the Order map a length of Public Footpath shown on the definitive map and statement ought to be there shown as a Restricted Byway and that the map and statement should be amended accordingly.

HOW THE EVIDENCE MEETS THE TESTS FOR THE INFERENCE OF DEDICATION AT SECTION 32 OF THE HIGHWAYS ACT 1980:

Section 32 sets out that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto

- As part of the process of determining this matter Cornwall Council has undertaken extensive documentary research involving: the Thomas Martyn Map 1748/49, the Greenwood Map 1826/27; Tithe Map and Apportionment Register for the Parish of Poughill; the Incremental Value Duty Records of the Finance Act 1910; the Definitive Map record; Ordnance Survey County Series maps; Land Registry Documents; and aerial photos.
- In this case Cornwall Council has placed particular weight on evidence found in the Tithe Survey and District Valuation Map, supported by small-scale commercial maps.
- The Tithe Survey shows that in the 1840s the section between A-D on the Order map was recorded as 'Parish Roads and River' at the end of the Apportionment with no tithe payable for this and with no claimed ownership, shown no differently to other roads in the area that are now included on the 'list of streets' maintainable at public expense and therefore part of the same highway network at the time.

- This is supported by evidence contained in District Valuation Maps produced under the Finance Act 1910 where the route identified on the Order map between B-D is depicted as uncoloured road. The fact almost all individual pieces of land in private ownership were recorded on these maps (identified by coloured boundaries) enables one to deduce valuable information about the existence of untaxed public roads which were generally excluded from parcels of private land. This is indicative that this part of the claimed route therefore benefitted from public vehicular rights and was recognised as a carriageway at the time.
- *Definitive Map Orders: Consistency Guidelines – revised in April 2016'* published by the Planning Inspectorate indicates that tithe maps are generally good evidence of the topography of roads, especially those that form boundaries with tithable land, understanding their full value can only be determined by consideration of all available tithe documents and in conjunction with other reputable maps, but they are statutory documents that provide evidence to which appropriate weight should be given. Furthermore, the guidelines also identify that documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value.
- It is considered that documentary evidence, especially the Tithe Survey supported by the incremental value duty records from the Finance Act 1910, but additionally the Martyn Map 1748, Greenwood Map 1827 and other small-scale commercial maps where the lane also appears as a clearly defined highway, indicates the route (A-D) was dedicated as a public carriageway at an unknown date in the past. No evidence has been discovered which indicates that public rights along the way have subsequently been stopped up.

RECORDING A RESTRICTED BYWAY ON THE DEFINITIVE MAP:

- While the evidence points to the fact a public carriageway has been dedicated over the route between A-D on the Order map, Section 67 of the Natural Environment and Rural Communities Act 2006 extinguishes certain existing public rights of way for mechanically propelled vehicles unless the way qualifies under one or more exceptions introduced in subsection 67(2), then subsection 70(1) of the above act provides for restricted byways to be established and recorded on the definitive map and statement. In this instance none of the five exceptions in subsection 67(2) are met, so the route between points A-D on the Order map can only be added as a restricted byway.

- Given anticipated and understandable concerns from landowners about possible restrictions on their use of motorised vehicles to access their homes when rights they previously believed existed are extinguished under subsection 67(1), it is worth noting that subsection 67(5) of the NERC Act 2006 provides a private right of way for mechanically propelled vehicles for those persons who have reasonable need for access by mechanically propelled vehicle to land in which they have an interest and this extends to landowners, occupiers, tenants and includes lawful visitors to the land including business, trade or professional.

GROUNDINGS ON WHICH REPRESENTATIONS AND OBJECTIONS MAY BE MADE UNDER WILDLIFE & COUNTRYSIDE ACT 1981 SECTION 53

The right of objection to an order is a statutory right, but it should be exercised in a reasonable manner. Definitive Map Modification Orders do not create new rights. Relevant representations or objections are those based on evidence of the existence or non-existence of rights, evidence that shows a path does or does not exist. Representations or objections to a Definitive Map Modification Order, upgrading a way to the map which concern privacy, suitability, desirability, damage or the safety of users or landowners, or which claim that new rights are being created are not relevant to the existence of public rights of way.

The order will come into effect only after it has been confirmed. Making and advertising the order simply provides an opportunity for representations or objections to be made.

Reports containing the evidence upon which the determination was based are available for consultation under file reference WCA 632 on the Cornwall Council website at the following address:

<https://www.cornwall.gov.uk/environment/countryside/dmmo-reports>

A copy of the Order and Order map can be downloaded from Cornwall Council's website at the following address:

<https://www.cornwall.gov.uk/environment/countryside/definitive-map-modification-orders/made-definitive-map-orders/>

and may also be viewed and copies requested at:

Bude Library and Information Service
The Wharf
Bude
EX23 8LG

And

County Hall
Treyew Road
Truro
TR1 9EQ

Copies of the Order and Order map may also be requested as follows:

- by email from DMMOOrders@cornwall.gov.uk
- by telephoning 0300 1234 202
- in writing by post to the Senior Natural Environment Records Officer, Cornwall Council, Environment Service, PO Box 676, Threemilestone, Truro TR1 9EQ

DATE OF DOCUMENT

9 March 2022