

**ENVIRONMENT SERVICE, COUNTRYSIDE ACCESS TEAM**

**STATEMENT OF REASONS**

**WILDLIFE & COUNTRYSIDE ACT 1981 SECTION 53**

**THE CORNWALL COUNCIL (ADDITION OF A FOOTPATH THROUGH WOODS AT TOLVER IN THE PARISHES OF LUDGVAN AND MADRON) MODIFICATION ORDER 2021**

**THIS STATEMENT DOES NOT FORM PART OF THE ORDER**

**FILE REF: WCA 578**

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 test for an event in *Section 53(3)(c)(i)* of the Act and has made an Order to add a Footpath in the Parishes of Ludgvan and Madron.

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)(i) The discovery of evidence of a hitherto-unrecorded right of way***  
*Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that a right of way subsists, or has been reasonably alleged to subsist.*

- Cornwall Council has discovered evidence of deemed dedication of a footpath under Section 31 of the Highways Act 1980. This evidence is

sufficient to show that between points A-C on the Order map a footpath is reasonably alleged to subsist and that the map and statement should be amended accordingly.

## **HOW THE EVIDENCE MEETS THE TESTS FOR THE INFERENCE OF DEDICATION AT SECTION 31 OF THE HIGHWAYS ACT 1980:**

*Section 31 sets out a test for the statutory inference of dedication 'where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it'.*

- In regard to the claim for the footpath shown between points A-C on the Order map, Cornwall Council as the relevant surveying authority has considered evidence of use on foot against the following required criteria:
  - that the public right of way has been shown to follow a defined route and is not an area over which the public have wandered to establish multiple alternative routes;
  - that 'actual enjoyment' of the way has been shown over a period of 20 years sufficient to demonstrate use by the public;
  - that use has been by the public at large, not simply by a class of people such as employees in exercise of access to a workplace, or customers accessing a business;
  - that use has been 'without interruption' for the full period of 20 years;
  - that use has been 'as of right' without force, secrecy or permission;
  - that for the purposes of calculating a 20 year period retrospectively the date when the public's right to use the way was 'brought into question' was in 2010 with the physical obstruction by erection of gates and notices;
  - that there is no relevant evidence prior to this date of a landowner's negative intention to dedicate represented with an overt contemporaneous act by way of erecting a notice, evidence to show a gate had been locked, or lodging a declaration under Section 31(6) of the Highways Act 1980 to bring to the attention of the public their contrary intention.
  
- In respect of evidence of public use of the route on foot between points A-C on the Order map the Council has concluded all the tests have been met sufficient to show the way has been used as of right for the relevant 20 year

period before rights were brought into question and therefore has been dedicated as a public footpath.

## **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 adding, upgrading or removing 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 578 on the Cornwall Council website at the following address:

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

Alternatively, redacted versions of the reports can be viewed by appointment at Pydar House, Pydar Street, Truro, TR1 1XU. To make an arrangement to view a copy of the report, or to discuss your concerns about this order, please contact the Countryside Access Team at the address above; Tel: 0300 1234 202; Email: [DMMOOrders@cornwall.gov.uk](mailto:DMMOOrders@cornwall.gov.uk)

**10 June 2021**