



Cornwall Council

FORM OF APPLICATION FOR MODIFICATION ORDER

Wildlife and Countryside Act 1981

Definitive Map and Statement for the former District / Borough* of Penwith / Kerrier / Carrick / Restormel / North Cornwall / Caradon*

To: Cornwall Council

of: New County Hall, Treyew Road, Truro TR1 3AY

I/We [REDACTED] **of** [REDACTED] hereby apply for an Order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

(a) Deleting the footpath / bridleway / restricted byway / byway open to all traffic*

from:Grid Ref.....

to:Grid Ref.....

(b) Adding Restricted Byway

from: County Road U61676 Gridref: SX40036832

to: County Road C0129 Gridref: SX40326872

(c) Upgrading to a

from:

to:

(d) Varying /adding to the particulars relating to the footpath/bridleway/restricted byway/byway open to all traffic *

from:Grid Ref.....

to:Grid Ref.....

by providing that *historical evidence has been discovered to establish a public right of way*

and shown on the map accompanying this application.

* Please delete text as applicable

I / We attach copies of the following documentary evidence (including statement of witnesses) in support of this application:

DOCUMENTARY EVIDENCE IS ATTACHED

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.....
.....
.....

Signed:

A black rectangular box redacting the signature.

Dated:

12 November 2019

Our Path Reference: COR-2135 Grid Reference: SX402684

Path starts at County Road U61676 SX40036832 and ends at County Road C0129 SX40326872

Documentary Evidence

Evidence from Maps:

Old maps provide very good evidence of the history of roads and other paths. Whilst such maps themselves do not record any user rights, any routes must have been significant enough to be mapped and the maps were intended for use by the public. If old maps clearly show the way marked as a road or old lane it is very good supportive evidence of the way being a road.

OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913

Sheet 337 - 1896 - Path is clearly shown as a major through road.

Ordnance Survey Maps - 25 inch England and Wales, 1841-1952

XXIX.12, 16, 1883, clearly shown, probably 4 gates. 1906, 1907 clearly shown, 2 gates.

OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913

Cornwall XXIX.SE 1884 - Path is clearly shown as a road.

Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

These half-inch to the mile (1:126,720) maps were produced with recreation use by motorists and tourists in mind, these maps were popular and influential.

Sheet 36 - South Devon 1903 - Path is clearly identifiable and shown as Road.

Primary Evidence:

Inland Revenue Valuation Records - Finance (1908-10) Act 1910

These maps on their own can provide very good evidence of a RoW. If a track is uncoloured on the map and lying between hereditaments, this is very good evidence that it was excluded as being a public road. Footpaths and bridleways are usually included in the hereditament (plot area) but there is a deduction for them in the valuation. It is often not easy to positively identify the routes of footpaths and bridleways for large hereditaments but it may be easier for smaller ones.

IR128/5/348, 352 white track clearly excluded from hereditaments.

Tithe Records

The tithe maps and apportionments are an important source of information about the history and topography of a parish. They provide details of land ownership and occupation, and the type of cultivation of the land. They were produced in order to assess the tithe payable in cash to the parish church for the support of the church and its clergy. Roads were specifically excluded from tithe payments and thus can provide valuable evidence for the existence of Rights of Way. The tithe apportionment often describes public tracks as "Common, wastes and roads" or sometimes "Roads and rivers", which are all areas which generated no tithes for the church. Often such areas excluded from tithe are shaded in a sienna coloured wash. Tithe records can provide reputable evidence on their own taken in support of other standards of public records.

St Dominick map 3, App p18, parcel 342, Berry Wood, Oak Coppice, Glebe. No roads or tracks beyond Radland Mill in 1841. Road through to the mill is shown contiguous with other county roads shaded yellow.

Other Evidence:

Land Ownership

Exclusion of a path from land registrations on either side is very indicative of public rights. However where an adjacent registration includes a path this does not give any indication against public rights. Land registrations sometimes deliberately or inadvertently extend ownership beyond that shown on the original deeds.

The Land Registry shows that most parts of the path is un-registered. Some plots on both sides are registered excluding the path. One short stretch is registered.

Summary and Statement of Reasons:

The Inland Revenue map shows all of the road excluded from the adjacent hereditaments. This is very good evidence that it was excluded because it was a public road. There is no evidence to suggest that the exclusion should not be interpreted in this way.

The path appears to postdate the Tithe Map

The OS 1 inch 1898 clearly shows the path as a major road. The OS 25 inch map showing the road as a separate plots as Road indicating the significance of the route. The southern plot also includes the county unclassified road to St Dominique.

Most of the lane is un-registered although much adjacent land is - this is very supportive of being public highway.

The combination of the evidence from Old Maps, Inland Revenue map 1910 gives good indication that the path is highway and now should be recorded with Restricted Byway Status.

In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. While no single piece of evidence is necessarily conclusive, the applicant believes that taken as a whole the evidence demonstrates highway reputation.