

03 JUN 2019



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 ...

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 C0297 Gridref: SW72794919

to: Wheal Butson Road U6073 Gridref: SW73004941

(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

.....

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 ATTACHED
.....
.....
.....
.....

Signed:  Dated: 28 May 2019

Documentary Evidence

Our Path Reference: 318/R59

Grid Reference: SW728493

Parish: St Agnes

Map of Path:

Claimed route shown in blue.



Description of Path:

Path starts at County Road C0297 SW72794919 and ends at Wheal Butson Road U6073 SW73004941

Vehicular Track, Western End Mostly unsealed, Eastern End access to properties along the way.

Current Recorded Status:

Path is not recorded on the Definitive Map

Status being claimed: Restricted Byway

Notes:

Path is not believed to be obstructed.

Path is believed to be walked, ridden and cycled
Path is believed to be used by motors

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, 1888 to 1913

Sheet 346 - 1895 Path is clearly shown as a road.

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

Cornwall LVI.4 Published: 1880 Path is clearly shown as a road or lane, plot no. 2004 and no gates.

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

Cornwall LVI.NE Surveyed: 1878 to 1879 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 37 - 1903 Path is shown as Road.

Johnston's Motoring Touring maps of England and Wales

Path is 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, 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.

IR128/5/659 uncoloured track clearly excluded from hereditaments indicating public road.

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 Agnes map 7. Not shown, unenclosed common.

Other Evidence:

Land Ownership

The Land Registry shows path is excluded from registration yet plots either side are all registered.

Summary and Statement of Reasons:

The Inland Revenue map shows all the road excluded from the adjacent hereditaments this is very good evidence that it was excluded as being a public road. The combination of the evidence from Old Maps, Inland Revenue map 1910 gives very strong indication that the path is highway and now should be recorded with Restricted Byway Status. All the old maps, which were intended for public navigation, show the route consistently as a road. This is very strong supportive evidence of the status of the route as a public road. The lane is given unique plot number which is consistent with being of highway status. It is significant that the old lane is excluded from all adjacent Land Registry registrations.

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.