

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

His Honour Judge Keyser KC sitting as a Judge of the High Court
14 February 2024



AC-2023-CDF-000149

B E T W E E N

THE KING
on the application of
BRITISH HORSE SOCIETY)

Claimant

-and-

THE CORNWALL COUNCIL

Defendant

CONSENT ORDER

UPON the Claimant having made an application under Section 53(5) of the Wildlife and Countryside Act 1981 (“the 1981 Act”), submitted to the Council on or around 11 September 2023, seeking to add a restricted byway to the definitive map and statement “*From County Road U6182, Altarnun ... to County Road U6182, Altarnun*” (“the Altarnun Application”).

AND UPON the Council, by an email to the Claimant dated 13 October 2023, having informed the Claimant that it would not register the matters set out in sub-paragraphs (a) to (f) of regulation 2(1) of the Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005, relating to the Altarnun Application, within the register of applications made under Section 53(5) and kept by the Council in accordance with Section 53B of the 1981 Act, until such time as the Claimant has provided the Council with certification of notification of the Altarnun Application on relevant owners and occupiers of land affected by the application under paragraph 2 of Schedule 14 to the 1981 Act (“the Decision”).

AND UPON the Claimant having applied for judicial review of the Decision to refuse to register the Altarnun Application.

AND UPON the parties agreeing to a Consent Order to dispose of the case

BY CONSENT IT IS ORDERED THAT:

1. Permission for the Claimant to claim Judicial Review is given.
2. The claim is allowed.
3. The Decision is quashed to the extent that it relates to the Altarnun Application.
4. The Defendant shall pay the Claimant's costs of the claim in the agreed sum of £13,000 by 8 March 2024.

Dated: 4 February 2024



Lisa Foster

Richard Buxton Solicitors

(For the Claimant)



Oliver Bradbear

Cornwall Council

(For the Defendant)

STATEMENT OF REASONS FOR MAKING THE ORDER

1. On 11 September 2023 the Claimant submitted to the Defendant an application for a Definitive Map Modification Order ("**DMMO**") recording a right of way on land located in Altarnun, Cornwall on the form prescribed by Reg.4 of and Sch.2 to the Wildlife and Countryside (Definitive Map and Statement) Regulations 1993 ("**the Altarnun Application**"). The Altarnun Application was accompanied by a map drawn to the prescribed scale and showing the right of way to which the Application related, as well as copies of documentary evidence in support of the Application [**CB/65-82**] and the making of the DMMO. The Claimant's 11 September 2023 letter also referred to an annex of 64 other pending applications for other locations within Cornwall ("**the Other Applications**").

2. At the time of making the Altarnun Application (and still) the Claimant had not served notice on every owner and occupier of the land to which the Altarnun Application relates. That was also the case in the Other Applications.
3. By an email dated 13 October 2023, the Council informed the Claimant that it would not register the Altarnun Application **[CB/50-51]** within the register of applications made under Section 53(5) and kept by the Council in accordance with Section 53B of the 1981 Act until such time as the Claimant provided the Council with certification of notification of the Altarnun Application on relevant owners and occupiers of land affected by the application under paragraph 2 of Schedule 14 to the 1981 Act (“the Decision”).
4. Following pre-action protocol correspondence, the Claimant lodged these proceedings on 18 December 2023 to challenge the Decision.
5. The Council accepts that the Altarnun Application was made in accordance with paragraph 1 of Schedule 14 to the 1981 Act. Following further consideration and advice, the Council accepts that it is required to register the matters set out in sub-paragraphs (a) to (f) of regulation 2(1) of the Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005 (“the 2005 Regulations”), relating to the Altarnun Application, within the register of applications made under Section 53(5) and kept by the Council in accordance with Section 53B of the 1981 Act. It therefore accepts that it cannot lawfully refuse to register those relevant details on the basis that it has not received certification of notification of the application on relevant owners and occupiers under paragraph 2 of Schedule 14 to the 1981 Act.
6. For the reasons stated in paragraph 5 above, the Council accepts that the contents of its email dated 13 October 2023, to the extent that it asserts that it was not obliged to register relevant details of the Altarnun Application, is not correct in law.
7. The Council has further confirmed that it will proceed to register the matters set out in sub-paragraphs (a) to (f) of regulation 2(1) of the 2005 Regulations, relating to the Altarnun Application, within 1 month from the date of the accompanying order.
8. The Council does not accept that it has a duty to register details of the matters set out in sub-paragraphs (a) to (f) of regulation 2(1) of the 2005 Regulations relating to the Other Applications because it has not determined whether those applications are within the scope of Section 53(5) or comply with paragraph 1 of Schedule 14 to the 1981 Act. The

Council has confirmed that it will work through the Other Applications and that it will (1) register the relevant details of any of the applications which have been made in accordance with Section 53(5) and para. 1 of Schedule 14, and (2) inform the Claimant of the details of any applications which are not considered to be made in accordance with Section 53(5) and para. 1 of Schedule 14, within 6 months of the date of this order.

9. The Council has agreed to the terms of this order to limit exposure to the risk of further costs. The figure agreed for costs is a commercial figure which has been the subject of negotiation.

10. The Council has agreed to this order on facts and circumstances of the Altarnun Application. All future applications will be considered on their own facts and merits.
