
Report to the Secretary of State for Environment, Food and Rural Affairs

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an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 17 April 2020

Marine and Coastal Access Act 2009

Objection by [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Newquay to Penzance

Objection Ref: MCA/NQP3/0/1

Gooden Heane, Lighthouse Hill

- On 20 June 2019, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Newquay and Penzance under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to Report NQP3, St Agnes Head to Gwithian, was made by [REDACTED] on 8 August 2019. The land in the report to which the objection relates is route section NQP-3-S037 as shown on Map 3e.
- The objection is made under paragraph 3(3)(d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.

Procedural Matters

1. On 20 June 2019 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Newquay and Penzance. The period for making formal representations and objections to the reports closed on 15 August 2019.
2. There were no other objections to report NQP3 and no relevant representations. I have been appointed to report to the Secretary of State on this objection.
3. I carried out a site inspection on 12 March 2020 accompanied by the objectors and by representatives from NE.

Main Issues

4. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:
 - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
5. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the

coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.

6. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
7. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
8. NE's Approved Scheme 2013¹ ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
9. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

10. The trail at NQP-3-S037 follows the route of the existing South West Coast Path along a road known as Lighthouse Hill. The objectors own land seaward of the trail, which includes their house and garden. It also includes an area of cliff and headland which is shown on the map as existing access land. There are 2 public footpaths on the headland which lead from Lighthouse Hill to a landmark known as the Pepperpot and then loop back towards the cliff edge where the paths are truncated due to the land having fallen into the sea.

The Objection

11. The objectors state that Map 3e wrongly identifies a large section of land within their ownership as "existing access land" rather than as private land over which there are 2 rights of way. The map also suggests that there is an accessible stretch of land between the edge of the garden and the cliff edge. The South West Coast Path used to pass on the seaward side of the garden but, when the land fell into the sea many years ago, it was diverted along Lighthouse Hill. The Council erected barriers to try to prevent walkers from attempting to traverse the dangerous edge of the cliff and also put up "Danger" signs.
12. The objectors have tried to maintain the barrier put up by the Council and to replace it where necessary in order to prevent walkers from attempting to access the cliff edge, which is now extremely dangerous. However, walkers do still try to access the area and have broken down the gate and fence before becoming stranded and then necessarily trespassing into the private garden.

¹ Approved by the Secretary of State on 9 July 2013

13. The objectors are concerned that Map 3e will encourage more people to trespass and endanger themselves in the incorrect belief that there is coastal access in this location. However, there is no path and no access to the seaward side of the garden. It is suggested that the map should show all the land as private and not suggest that there is any possible access other than the 2 public footpaths.

The Response by Natural England

14. It is not appropriate to include landowner boundary information on Map 3e. The map is available to the public and shows the route of the coast path, any landward coastal margin and public rights of way. It also shows public access rights in existence prior to implementation of coastal access.
15. Most of the land in the objectors' ownership is Registered Common Land. It is part of a 5 mile long strip of clifftop, cliffs and shore habitat (land and islands in E and W coast boundaries of Camborne/Redruth – CL334), extending to mean low water in most area. All of the Registered Common Land and an additional area of land on the headland is designated as Open Access land under the Countryside and Rights of Way Act 2000 (CROW). Therefore, a public right of access on foot to these areas currently exists unless they fall under one of the "excepted land" categories at schedule 1 to CROW or the right is formally restricted or excluded by direction by the provisions in Chapter 2 of CROW. A map showing the area of Registered Common Land and the area covered by the Open Access land designation is provided and labelled "Map B – Existing Access Land".
16. NE is aware that the original route of the South West Coast Path followed a public right of way along the cliff edge which was severed as a result of an erosion event. This resulted in the permanent diversion of the route onto the road at Lighthouse Hill. It is proposed to align the trail along the road as there is insufficient space seaward of the objectors' garden to reinstate a route. As the line of the public right of way along the cliff has fallen away into the sea, Cornwall Council are currently in the process of arranging the installation of notices at either end of the foundered path to inform walkers that there is no route along the cliff edge at this location.
17. The depiction of existing access land and coastal margin reflects the legal rights of access on foot, rather than the physical ability to access a particular area. These areas may include land which is not easily accessible such as steep coastal slope or cliff faces and therefore does not necessarily suggest that there is a continuous route along the cliff edge. It is possible that the Ordnance Survey (OS) base map no longer accurately reflects the situation on the ground in relation to the position of the cliff edge. OS carries out periodical reviews of their Mastermap data for changes to the natural environment and produces new maps on a rolling basis.
18. A key principle of the coastal access legislation is that visitors should take primary responsibility for their own safety when visiting the coast and should be able to decide for themselves the level of personal risk they wish to take (see section 4.2.1 of the Scheme). The legislation does not give NE the power to exclude access by direction for public safety reasons, unless the danger is manmade.

19. The alignment of the trail along the road will steer walkers away from the eroding cliff edge and notices at the end of the foundered path will inform walkers that there is no route along the cliff edge. The majority of coast path walkers are "destination walkers" who for the most part will want to follow the line of the trail in order to complete their objective of walking from A to B.
20. Although the presence of coastal margin indicates a legal right of access on foot it will often include areas which are not easily accessible, such as densely vegetated areas, steep coastal slope or cliff faces, as at Gooden Heane. Section 5.2.4 of the Scheme states that there is no expectation that the wider corridor should be managed to facilitate public access.
21. NEs experience is that the majority of national trail users act in a responsible and respectful way. Any damage to private property or signs is a criminal offence and NE is sorry to hear that the objectors have experienced damage to their property in the past. However, NE do not feel that there will be a significant increase in the number of people attempting to access the land seaward of the property. The notices to be installed by Cornwall Council should go some way to deter people from accessing the coastal margin in this area.
22. Should there be issues with walkers attempting to access the garden once the coastal access rights are live in this area, NE would be happy to provide a supply of "end of access land" roundels which could be placed at the boundary of the garden in order to clarify access rights.

Discussion and Conclusions

23. It is not the purpose of Map 3e, or indeed any of the maps prepared as part of NE's reports, to show land ownership. I agree with NE that it would not be appropriate to show the extent of private land ownership on the map. Map B provided by NE shows the extent of existing access land and this is correctly shown on Map 3e. I agree with NE that a public right of access on foot to the areas shown already exists and that this is in addition to the public rights of way shown on Map 3e. The objectors' suggestion that the map should show no public access other than to the 2 public footpaths on the headland is therefore inappropriate.
24. However, it was apparent at my site visit that a significant part of the land shown on Map B no longer exists. More specifically much of the land immediately seaward of the objectors' garden along which the South West Coast Path used to run, has fallen into the sea. For ease of reference I shall refer to this land as the Eroded Land.
25. I have no doubt that allowing public access to the Eroded Land would be highly dangerous and should be prevented if possible. It is due to this danger that the South West Coast Path was diverted and that the Council erected barriers in the past. These barriers have decayed over the years and I saw at my site visit that, although difficult, it would be possible to access either end of the Eroded Land and that, at least for a short distance, there appears to be some form of path which may encourage a walker to try to continue. It is clear however, that any such attempt would be likely to

result in a walker either having to retrace their steps or escape from the Eroded Land into the objectors' garden.

26. Although the OS map used as a base map may be out of date in its depiction of this area as land, the Eroded Land remains Registered Common Land to which there is a right of access. The depiction on Map 3e is therefore legally correct and should not be amended. Nevertheless, I accept that this depiction may give walkers the impression that there is access to this land and that steps should be taken to alert the public to the dangers of this area.

27. I note that Cornwall Council are in the process of arranging for the installation of notices at either end of the Eroded Land to inform walkers that there is no route along the cliff edge at this location. Any such notices should also make it clear that the cliff edge is dangerous. In addition, I note that the 2 public footpaths which lead from Lighthouse Hill to the Pepperpot continue to the edge of the Eroded Land, as in the past the path would have continued along what is now the cliff edge. A walker who wishes to continue along the coastal path but has followed one of the public footpaths on the headland to the edge of the Eroded Land may well be tempted to try to continue along the cliff edge rather than returning all the way to Lighthouse Hill. Accordingly, I consider it to be important that Cornwall Council also install signs on the public footpaths, where they loop away from the Pepperpot towards the Eroded Land, to inform walkers that there is no through route.

28. I agree with NE that many walkers on the trail will be "destination walkers" and that it is unlikely that there would be a significant increase in the number of people attempting to access the Eroded Land. The signage discussed above should deter any such attempts. However, if it appeared that some people were still accessing the Eroded Land and, from there, entering the objectors' garden I agree that "end of access land" roundels could be used to clarify access rights.

29. Taking all of these matters into account I conclude that the proposals comply with the duty in Section 297 of the Act, but that for the safety of the public, signage should be installed to make it clear that there is no route through the Eroded Land and that the cliff edge is dangerous.

Recommendation

30. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

Alison Lea

APPOINTED PERSON