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

by Alison Lea MA (Cantab) Solicitor

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/NQP4/0/2

Beachside Holiday Park, Hayle

- 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 NQP4, Gwithian to Clodgy Point, was made by [REDACTED] on 14 August 2019. The land in the report to which the objection relates is route sections NQP-4-S011 and NQP-4-S012 as shown on Map 4b.
- 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 2 objections to report NQP4 but this is the only one that I determined to be admissible. There were 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 13 March 2020 accompanied by representatives of the objector and of 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-4-S011 and S012 is located within dunes. Landward of the trail is an area of dunes within the ownership of the Beachside Holiday Park and which is shown as landward coastal margin. It extends landward to meet an area of grassed amenity space and also continues round the sides of that amenity space, close to holiday accommodation.

The Objection

11. The objector states that the land owned by Beachside Holiday Park is excepted land as it is a regulated caravan and camping site. Land situated landward of the trail should not be included within the coastal margin as sections 4.8.6 and 4.8.8 of the Scheme make it clear that the coastal margin (seaward and landward of the trail) will not be spreading room if it is excepted land. Section 7.10.6 states that "all dunes will normally be included in spreading room whether seaward or landward of the trail, unless they are excepted land". Section 4.8.17 states that "only in exceptional circumstances would we propose the inclusion of additional areas that lie landward of the trail for this reason if the landowner disagreed with us doing so".
12. The shading of excepted land as landward coastal margin will cause confusion and misinterpretation by the general public. The holiday park and its facilities are on private land and admission is only granted to paying customers. The ability to enforce this is important, for example where there are disagreements between members of the public and customers, persons suspected of graffiti, vandalism or theft or young persons causing a noise or disturbance nuisance.

¹ Approved by the Secretary of State on 9 July 2013

13. The business is reliant on offering a quiet, peaceful environment for guests and this can only be maintained if the public are restricted from entering the holiday park. The holiday park does not permit dogs and many guests choose to stay as it is a safe environment for children, without dogs or dog mess. The local area struggles with adequate parking for local people to access the beach during the summer months and the holiday park struggles for parking at busy times. Opening the land to public access would most likely lead to people who are not staying on site turning up and parking without permission.
14. There is potential to greatly disrupt the operation of the holiday park which would be contrary to section 5.2.1 of the Scheme. Enforcement is likely to increase pressure on staff and introduce additional staffing and security costs. There would also be likely to be unknown additional costs which could result in an increase in holiday prices. It seems unfair to penalise paying customers in order to provide public access to a holiday park.
15. It would be much easier to deal with people on the land if it were possible to point to a map which showed that the area was not Coastal Margin rather than have to argue the definition of Excepted Land.
16. There are also concerns about the possibility of the coastal footpath being relocated in response to any future erosion event. The objector would not wish to allow public access to the amenity area at the front of the park.

The Response by Natural England

17. The objection relates to an area of dune totalling 1.41 hectares which is included in the coastal margin landward of the trail. Section 4.8.8 of the Scheme details the specific coastal land types which are included automatically in the coastal margin where they fall landward of the trail. These include "any cliff, bank, barrier, dune, beach, flat or area of section 15 land which either touches the foreshore itself at some point, or connects indirectly with it by touching another part of the coastal margin that itself touches the foreshore at some point". Therefore, under the coastal access legislation, any dunes directly landward of the trail would be included in the landward coastal margin by default rather than being a specific proposal made by NE.
18. Section 4.8.17 of the Scheme refers to where NE has a discretion to propose additional landward areas within the coastal margin specifically for the purpose of securing public enjoyment of the coast. The inclusion of dunes within the landward margin at this location occurs by default and therefore this paragraph is not relevant to this case as NE are not making use of any discretionary powers.
19. Section 2.3.6 of the Scheme sets out a discretionary power which can be used to reduce the area of default coastal margin for reasons of clarity. This power would allow the boundary of the landward coastal margin to be aligned to a physical feature seaward of the full extent of the dunes specifically for the purpose of clarifying the extent of walkers' coastal access rights. NE were unable to exercise this discretion in this case as the holiday park is not fenced on the seaward side and there is no other physical

feature present which could provide a clear and recognisable boundary for the landward coastal margin.

20. It would not be appropriate for excepted land to be permanently removed from the coastal margin given the potential for land use to change over time. The legislation provides no mechanism for the removal of excepted land from the coastal margin. Designation as coastal margin does not automatically mean that the public has a right of access on foot nor that the land is publicly accessible and safe to use. NE has no role in deciding whether land is excepted from the new rights. Landowners should make their own decision and are within their rights to erect signs detailing the extent of access rights over their property as long as they are not misleading. The owners of Beachside Holiday Park are free to follow this approach.
21. OS maps come with a clear, concise explanation in the key that not all land within the margin is subject to coastal access rights. This coupled with any signs the holiday park wish to erect regarding the extent of excepted land should ensure that the current management would not be adversely affected by the introduction of coastal access rights nearby.
22. Despite parts of the holiday park falling within the landward coastal margin, there would be no new right of access to the excepted areas nor to the wider site which is outside the coastal margin.
23. The majority of national trail users act in a responsible and respectful way. Even if parts of the holiday park were accessible under the new legislation NE would not expect an increase in antisocial behaviour. Parking is prohibited for non-customers, there are car parking facilities at Sandy Acres adjacent to the holiday park and NE sees no reason why the proposals would result in an increase in people parking on site without consent. NE considers that the introduction of coastal access rights will not result in an increase in people unlawfully accessing the site from the seaward site and does not agree that the proposals would result in the business incurring "unknown additional costs" or place any financial burden on the objector.
24. The proposal for use of the rollback provision in this area reflects the shifting dune environment and the likelihood that the line of the coast path will need to alter at some point in the future. This could be to a more seaward location (effectively a roll-forward) or a more landward location. The path has not moved for a number of years and NE does not foresee any immediate need for the route to alter.
25. However, if it is no longer possible to find a viable route seaward of the holiday park, NE would hold detailed discussions with all relevant interests to find a new route. The legislation allows the installation of an "access strip" through regulated caravan or campsites even though they are excepted land but before taking such action NE would have full regard to the views of the site manager and would look to agree whether a route through the site is appropriate or whether it is better for the operational needs of the business for the route to be aligned to the landward side of the site.

Discussion and Conclusions

26. The objector refers to section 4.8.8 of the Scheme. This section makes it clear that dunes are automatically included in the landward coastal margin. I agree with NE that there is no discretion regarding inclusion of this land. Section 4.8.17, which is also referred to by the objector, relates to the inclusion of additional areas that lie landward of the trail for the purpose of securing or enhancing public enjoyment of the coast. This is at NEs discretion and is not relevant in this case where, as NE state, the area of dunes is included by default.
27. Section 2.3.6 also refers to a discretionary power. However, as Beachside Holiday Park has no physical boundary on the seaward side, I agree with NE that the discretionary power to reduce the area of default coastal margin by reference to a boundary or other physical feature is not available in this case.
28. The objector is correct that section 7.10.6 states that dunes will normally be included as spreading room whether seaward or landward of the trail "unless they are excepted land or subject to long-term exclusions". NE state that landowners should make their own decision as to whether land is excepted land and suggest that landowners are within their rights to erect signs detailing the extent of access rights as long as the signs are not misleading.
29. Ultimately whether or not land is excepted land is a matter for the courts. However, section 7.10.7 of the Scheme states that "dunes are generally unlikely to be excepted land unless they form part of the playing area of a golf course or are subject to military byelaws. Older, stabilised dunes may include other types of excepted land such as buildings and gardens".
30. This area of dunes does not fall within any of the exceptions referred to in section 7.10.7. Although a caravan and camping site is excepted land it does not appear that the dunes function as part of the site in the way that, for example, the grassed amenity space clearly does. Even if the dunes were excepted land, the legislation provides no mechanism for the permanent removal of excepted land from the coastal margin as requested by the objector.
31. The lack of a physical boundary on the seaward side of the holiday park means that guests can freely access the dunes and the beach from their accommodation and from the amenity area. This also means that there is nothing to prevent members of the public on the beach or the trail from accessing the holiday park or its amenity space. I appreciate the wish to provide a quiet, dog free environment for guests and note that there are signs on the amenity area about dogs. However, there do not appear to be any signs to make it clear that the holiday park is private property and the objector's concerns appear to relate to use of the amenity area and other facilities rather than the dunes. There is nothing to stop the landowner from erecting signs on the amenity area to make it clear that that area and beyond is private.
32. Similarly, although I agree with NE that it is difficult to see why the inclusion of the dunes within the landward coastal margin should result in an

increase in parking, it would be possible to erect signs to make it clear that parking is not permitted other than by guests.

33. The objector refers to section 5.2.1 of the Scheme which states that “flexible alignment powers under the 2009 Act should in general ensure that coastal access rights will not interfere in any significant way with the operational needs of coastal businesses...” In this case, it is only the dunes which fall within the landward coastal margin. I agree with NE that it seems unlikely that this would result in an increase in anti-social behaviour which would require significant enforcement action or additional expenditure. Any potential increase in use of the holiday park’s amenities by non-guests should be able to be adequately controlled by appropriate signage and I do not accept that inclusion of the dunes in the landward coastal margin would result in interference with the operational needs of the holiday park.
34. With regard to rollback I note that NE does not consider that this is likely in the near future. I also note NEs commitment to holding detailed discussions with all relevant interests and to taking full account of the site manager’s views should roll-back be required. I consider this to be a fair approach.
35. Taking all of these matters into account I conclude that the proposals do not fail to strike a fair balance.

Recommendation

36. 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