
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

Site visit made on 12 March 2020

File Ref: MCA/NQP7/0/1

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Tater Du Lighthouse

- 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 NQP7, Land's End to Carn Barges, was made by [REDACTED] on 5 July 2019. The land in the report to which the objection relates is route sections NQP-7-S108 to NQP-7-S110 as shown on Map 7g.
- The objection is made under paragraphs 3(3)(a) and 3(3)(c) 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 NQP7. There were 2 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 representatives of the objector, NE and the National Trust (NT).

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-7-S108 would diverge from the existing South West Coast Path (SWCP) and descend towards the coastline. It would pass seaward of Tater Du Lighthouse and then continue close to the coastline before rejoining the SWCP at NQP-7-S112. The area is remote. The closest villages providing access to the trail are Porthcurno about 7km along the trail to the west and Lamorna Cove about 2km to the east. There are no car parks nearby.
11. Tater Du Lighthouse is accessed by a long set of steps owned by the Corporation of Trinity House (Trinity House), who also own the lighthouse and its immediate curtilage. The top of the steps is situated adjacent to the SWCP. The land to either side of the steps and the land beyond the curtilage of the lighthouse is owned by NT. NT has given permission for land within its ownership situated landward of the trail to be included within the coastal margin. No access is proposed to the curtilage of the lighthouse or the steps and they have not been included within the landward coastal margin.

The Objection

12. Trinity House state that the lighthouse is unmanned and remote and that its curtilage is unmarked. Trespassers are currently deterred due to the lighthouse's visual discreteness when viewed from the SWCP, its remoteness from the footpath and the fact that the approach is down a very obviously private stepped track with a gate and signage.

¹ Approved by the Secretary of State on 9 July 2013

13. There is concern that the trail would bring walkers very close to the lighthouse building and that it could become a destination for walkers, for example as a meeting point, a lunch stop, a place to shelter from the wind, a toilet stop, or a "walk as far as" point. The lighthouse would gain a much higher profile encouraging exploration around the building which does not happen at present. The low flat-roofed element seaward of the tower is easily reached and is used from time-to-time to accommodate equipment. Deliberate vandalism or unauthorised access may cause the aid to navigation to fail and put mariners/shipping at risk.
14. The private access steps could be used to provide a convenient connection between the trail and the existing public footpath above, thereby facilitating additional walking options, including circular walks. The steps are easier to use than the surrounding land, which although landward coastal margin, is challenging.
15. In order to address the security issue, Trinity House would need to consider fencing off the property. Fencing could be erected using permitted development rights, but its installation and subsequent maintenance would be at considerable expense to the public and would be an unfortunate visual intrusion.
16. The proposal restricts the operational potential of the station. Lighthouse stations are often required to accommodate navigational equipment other than lights, such as DGPS systems which provide integrity and increased accuracy to shipping using GPS navigation, AIS systems and Hazard Warning Systems. Until recently the hazard warning emitter was positioned externally on the flat roofed element of the lighthouse building. It is considered that the proposed route would severely restrict the ability to adapt the station to meet changing navigational requirements. The existing SWCP is attractive and it does not seem necessary to bring the public close to a sensitive installation such as Tater Du.
17. Trinity House request that the existing SWCP is used as the trail, and that the lighthouse property is explicitly excluded from the coastal margin.

The Response by Natural England

18. It is acknowledged that the proposed route would bring walkers close to Tater Du lighthouse in an area which has previously been largely inaccessible to the public. However, the route passes seaward of the lighthouse on land owned by NT. The land owned by Trinity House falls landward of the trail and is not included in the coastal margin. No right of access is being proposed to that land, albeit that the land to either side, which is owned by NT, has been included in the landward coastal margin, with the permission of NT.
19. The lighthouse is remote and there are no car parks near the site and no public rights of way other than the SWCP. The coast path in this area is likely, in the main, to be frequented by long distance walkers, rather than, for instance, people who wish to follow a circular dog walk. The overwhelming majority of national trail users act in a responsible and respectful way and NE would not expect there to be an increase in people unlawfully accessing the lighthouse or its curtilage, particularly if it was

made clear using informal management measures that access is not permitted.

20. The objector points out that the curtilage of the lighthouse is currently unmarked. There are 4 white marker stones spaced around the structure and a low wall on its seaward side which suggest a boundary but do not provide a continuous physical demarcation. NE would be willing to fund and arrange the installation of a post and rail fence around the main lighthouse building to indicate the extent of the coastal margin and also provide a supply of "end of access land" roundels which could be placed on the fence in order to clarify access rights.
21. NE propose to realign the route from the existing SWCP in order to take the trail closer to the sea, provide much enhanced sea views and an opportunity to access the sea. This meets the criteria of the Scheme in terms of proximity to the coast and fits with NTs plans to promote public access to its land in this area. The landowner to the east of the NT land was also keen for the path to be aligned as close to the cliff edge as possible in order to reduce the amount of land within the coastal margin.
22. NE does not believe that the introduction of a national trail seaward of the lighthouse would have an adverse impact on the facility's ability to operate effectively or see any reason why the trail would affect the ability of Trinity House to develop or adapt the site in the future, given that the site would remain unavailable for public use.
23. If the trail followed the existing SWCP, the lighthouse and its curtilage and the steps would fall within the coastal margin. The lighthouse and curtilage would be excepted from coastal access rights. This means that it would not be possible to implement a direction to exclude access as requested by the objector. Such a direction would have no legal effect due to there being no public access rights to exclude from the land. There is no mechanism for the removal of excepted land from the seaward coastal margin. Furthermore, in NEs opinion the steps from the SWCP down to the lighthouse would be likely to be subject to the new coastal access rights because they are a "means of access" and would therefore not be excepted land.

Representations

24. Representations have been received from the Cornwall Countryside Access Forum and the South West Coast Path Association. They both state that the route constitutes a considerable improvement on the existing route of the SWCP as it gives better and more consistent sea views and the added interest of the lighthouse.

Discussion and Conclusions

25. The proposed route adheres to the periphery of the coast and provides spectacular views of the sea and coastline. It would take walkers seaward of, but close to, the Tater Du Lighthouse. I agree with NE that, given the remoteness of this section of the trail, the majority of people in the vicinity of the lighthouse are likely to be long distance walkers who it could be expected would behave in a responsible manner. Nevertheless, I accept that

the lighthouse is a feature which is likely to be attractive to some walkers. At my site visit I noted the marker stones and low wall which are perhaps suggestive of a boundary, but I do not think that these would be apparent to most walkers. In the absence of better demarcation of the curtilage it is likely that some walkers would approach the lighthouse and in doing so would trespass within the curtilage, perhaps under the mistaken impression that they were within the landward coastal margin.

26. Both NE and Trinity House refer to the possibility of fencing the area in order to dissuade or prevent walkers from approaching the lighthouse. This would introduce a further manmade feature into the landscape, but in my opinion a post and rail fence as suggested by NE need not be visually intrusive. Although insufficient to deter a determined trespasser such a boundary demarcation together with end of access land roundels is likely to dissuade most walkers from entering.
27. The lighthouse building is unmanned but all equipment is located inside and it benefits from considerable security measures. At the time of my visit there was no equipment on the flat roofed part of the building and I see no reason why walkers would be likely to attempt to climb onto that area. Although Trinity House suggest that equipment may be located there in the future, no details have been provided. Overall there appears little opportunity for a walker to cause damage, even if they were so inclined.
28. The objector suggests that the SWCP be used as the trail. This would have the effect that the lighthouse, its curtilage and steps, and large areas of adjoining land, would fall within the coastal margin. The lighthouse and its curtilage would be excepted land, although this would not necessarily be apparent on the ground to a walker unless measures were taken such as fencing. It is not possible to exclude the lighthouse and its curtilage by means of a direction.
29. The lighthouse is not prominent in views from the SWCP and this would therefore limit the number of walkers attracted into the coastal margin by it. However, given that a means of access does not fall within the definition of a building and is not therefore excepted land, it is possible that walkers could use the steps as access. Access to the lighthouse could also be gained from adjoining areas of coastal margin.
30. At my site visit I walked the relevant parts of the existing SWCP which the objector proposes should be used as the trail. It is situated considerably further from the sea than the proposed route and although elevated, views of the sea are in places restricted due to vegetation. Although the Scheme makes it clear that where there is an existing national trail NE would normally propose that it be adopted as the line for the England Coast Path that is subject to the caveat that the alignment makes sense in terms of the statutory criteria and principles set out in the Scheme. These criteria and principles include that the route should adhere to the periphery of the coast and provide views of the sea.
31. The proposed route adheres to the periphery of the coast and provides continuous views of the sea which are not available from the existing SWCP. Even if the SWCP was used as the route, walkers would have the right to access land close to the lighthouse. There is no evidence from which it is

possible to conclude that the proximity of the proposed route would be likely to lead to a significant impact on the operation of the lighthouse either now or in the future. Neither the lighthouse nor its curtilage would be available for public use and trespass within the curtilage can be discouraged by the provision of fencing and information if required. Taking all of these matters into account I conclude that the proposals do not fail to strike a fair balance.

Recommendation

32. 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