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# **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**

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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/NQP8/0/1

**Objection Ref: MCA/NQP8/0/1**

**Seahaven, Raginnis Hill, Mousehole**

- 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 NQP8, Carn Barges to Penzance Station, was made by [REDACTED] on 2 August 2019. The land in the report to which the objection relates is route section NQP-8-S029 as shown on Map 8c.
- The objection is made under paragraphs 3(3)(d) and 3(3)(e) 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.

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**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 NQP8 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 [Redacted – the objector] 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 2013<sup>1</sup> ("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-8-S029 follows the route of the existing South West Coast Path along a minor road known as Raginnis Hill. The objectors own land seaward of the trail, which land includes their house and garden together with an area of land described by the objectors as meadows. That land is located seaward of the house and garden and slopes steeply down towards the sea. It is heavily vegetated. For ease of reference I shall refer to it as "the coastal slope".

### **The Objection**

11. The objectors express concern about walkers becoming stranded by the tide below the coastal slope and requiring life-boat call outs and helicopter trips to hospital. They are also concerned about potential disturbance to wildlife and point out that they are elderly, already have people crossing their land, and cannot cope with "roamers" on their land due to their lack of physical or financial strength.

### **The Response by Natural England**

12. Walkers will have a legal right of access to the coastal margin at this location, excluding the house and garden which will be excepted land. The coastal slope is not easily accessible due to dense undergrowth seaward of the objectors' garden. The adjacent land is similar in character with no existing formal paths or entrance points facilitating access to this area. In addition, it would be difficult to access this part of the coastal margin from the seaward side due to the rugged and rocky terrain above the foreshore

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<sup>1</sup> Approved by the Secretary of State on 9 July 2013

and the steep, heavily vegetated nature of the coastal slope. 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.

13. For these reasons NE do not expect a significant increase in the number of people accessing this area of coastal margin as a result of the proposals. Accordingly, an increase in emergency services call outs is very unlikely. This is supported by the number and nature of RNLi lifeboat callouts in the Mousehole/Newlyn/Penzance area between January and September 2019. In total there were 36 RNLi lifeboat callouts. All of these were called out to assist vessels or individuals taking part in water sports (kayakers, surfers, divers and swimmers); activities which are not covered by the coastal access legislation. There were no callouts in this area to assist people cut off by the tide. During 2018 the National Coastwatch Institution recorded 8 incidents of people cut off by the tide from their 56 stations around the coast of England. These figures would indicate that such incidents are less frequent than the objection suggests.
14. A full assessment of any potential impacts on wildlife and habitats was undertaken as part of the preparation of the proposals. The results are detailed in the Nature Conservation Assessment. NE also engaged with internal specialists and relevant organisations locally – including Cornwall Wildlife Trust, Royal Society for the Protection of Birds, Cornwall Seal Group and Cornwall Area of Outstanding Natural Beauty – to consider any potential for impacts on key sensitive features. No particular issues were raised by any of these groups in relation to the Mousehole area. The land in question is not subject to any statutory nature/wildlife designations.
15. The topography of the land within the coastal margin, density of vegetation and lack of access points would deter the majority of walkers and therefore not result in a significant increase in the number of people accessing this area of coastal margin. NE concludes that the proposals would not have a detrimental impact on the nature conservation interest of this area.
16. Landowners are not expected to manage areas of “spreading room” for public access, nor does the legislation place any financial burden on them in the ongoing management of coastal access rights. Section 5.2.4 of the Scheme says “While we may discuss with landowners or occupiers the scope for minor changes to their land management practices that would avoid conflicts with access, the legislation does not take land away from landowners or interfere with their freedom to manage it. Landowners maintain full control to manage their land as they see fit. The legislation does allow for spreading room to the seaward side of the path but it does not pass control of this land, or responsibility for it, to NE or the access authority. There is no expectation that this wider corridor should be managed to facilitate public access”.
17. A key principle of the coastal access legislation is that visitors should take primary responsibility for their own safety when visiting the coast and for the safety of any children or other people in their care and decide for themselves the level of personal risk they wish to take (Section 4.2.1 of the Scheme). In line with this, land subject to coastal access rights benefits

from the lowest level of occupiers' liability known in English law – considerably lower than the duty of care owed towards trespassers on private land, and this applies to both natural and man-made features (Section 4.2.2 of the Scheme). This makes it extremely unlikely in normal circumstances that an occupier could successfully be sued in relation to injury on land with coastal access rights.

18. Accordingly, NE does not agree that the introduction of coastal access rights will place any physical or financial burden on the objectors. However, in the unlikely event that there are issues with walkers attempting to access excepted land, NE would be happy to provide a supply of "end of access land" roundels which could be placed at the boundary of the garden to clarify the access rights.

### **Discussion and Conclusions**

19. The objectors' land is seaward of the trail and within the coastal margin. The house and garden are excepted land, but walkers will have a right of access to the coastal slope. However, there is no obvious access to the coastal slope from the trail, or indeed from adjoining coastal margin. My observations on site suggest that the only access to it is likely to be from the rocky beach at the foot of the slope, through other private gardens or by climbing over a locked gate. The land rises steeply from the sea and is densely vegetated; factors which will also deter access.

20. As pointed out by NE, the majority of coast path walkers are destination walkers and are likely to remain on the trail. I consider that this is particularly likely in this location where the trail clearly follows a minor road, with no apparent access from the road other than into private houses and gardens. Although the objectors' state that they have encountered the occasional person within their land, it seems unlikely, given the limited access points, topography and vegetation, that the proposals would result in significant numbers of people accessing the coastal slope.

21. I note the information provided by NE with regard to RNLI activity in the area. Taking this into account and given that I consider it unlikely that there would be a significant increase of walkers in this location, I consider there to be little substance in the objectors' concerns about lifeboat call outs and rescue helicopters.

22. Similarly, given that the various bodies consulted by NE have not raised any concerns about the impact on wildlife in this location and that the area is not subject to any designations, there is nothing to suggest that the proposals would have a detrimental impact on wildlife.

23. I note the content of Sections 4.2.1, 4.2.2 and 5.2.4 of the Scheme referred to by NE. Although I accept that, particularly given their ages, the objectors would not wish to have to take any action with regard to people "roaming" on their land, they would not have any obligations to manage the coastal slope in any way.

24. It was however apparent at my site visit that the boundary between the garden and the coastal slope is indistinct in places and that access between the two is available. It is therefore possible that a walker making use of the

coastal slope could inadvertently enter the objectors' garden. Although I consider it to be unlikely that more than a very occasional walker might attempt to enter the garden, NE have suggested that "end of access land" roundels could be placed on the boundary in order to clarify access rights. I consider that such roundels, if they proved to be necessary, would be likely to deter most walkers from entering the garden.

25. Taking all of these matters into account I conclude that the proposals are unlikely to have a detrimental impact on the objectors' interests.

### **Recommendation**

26. 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**