
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

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to St Mawes to Cremyll

Objection Ref: MCA/SMC2/0/1

Boswinger Farm, Gorran

- On 20 June 2019, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between St Mawes and Cremyll 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 SMC2, Nare Head to Dodman Point, was made by [redacted] on 5 August 2019. The land in the report to which the objection relates is route sections SMC-2-S094 to SMC-2-S097 shown on Map 2g.
- The objection is made under paragraphs 3(3)(b), (d) and (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.

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 St Mawes and Cremyll. The period for making formal representations and objections to the reports closed on 15 August 2019.
2. This is the only objection to report SMC2 and there are no relevant representations.
3. I carried out a site inspection on 7 October 2020 accompanied by [redacted] and [redacted] senior and by representatives from NE and a representative from Cornwall Council.

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. It is proposed that trail sections SMC-2-S094 to SMC-2-S097 will follow the existing alignment of the South West Coast Path (SWCP). The area has been subject to substantial coastal erosion in the past and Map SMC2g shows a public footpath seaward of the SWCP. In places, that footpath has fallen into the sea. Roll-back is proposed, with details of any roll-back subject to SSSI assent.

The Objection

11. [Redacted] is the owner of Boswinger Farm. He states that due to erosion the fence line at trail sections SMC-2-S096 and SMC-2-S097 has been moved a considerable distance inland in order to ensure the public's safety and the safety of cattle but that this has led to the loss of farmland used for grazing. Although he has no issue with the need for roll back in such circumstances he objects to and questions the legality of there being no right to compensation to the landowner for the loss of land to accommodate the new route.
12. Trail section SMC-2-S097 crosses a field used for grazing. [Redacted] is concerned that some walkers may try to take a shortcut landward of the trail across this field to his farm track and leave the gate open. In his opinion the fact that some sections of the coastal route have additional landward access is likely to lead to the public not always being aware of the status of the path they are on and will lead to trespass in places where there is no additional access. This will lead to potential problems for livestock farmers in keeping their enclosures stock proof. He states that farmland is "a place of work and not a recreation park for all and sundry to trample through" and that landowners must have rights and control over their property.

¹ Approved by the Secretary of State on 9 July 2013

The Response by Natural England

13. In the event of roll back having to be invoked, the path would occupy the same "corridor width" as it will do along its initial alignment along the line of the existing SWCP. As the cliff is lost over time to any natural erosion processes, the path will move back with it. NE do not see any need for it to "jump" further inland and thereby create a larger area of coastal margin than applies initially.
14. The issue of compensation was discussed during the passage of the legislation. Parliament considered that because of the range of controls built into the coastal access arrangements, financial compensation for the creation of any new rights was not justified.
15. The built-in controls include: the duty for NE to aim to strike a fair balance between public and private interests when developing its proposals, and the provision for objections on this point to be independently determined; the inherent flexibility of the path alignment power, including when roll-back is invoked, to enable sensible decisions to be made in all the circumstances; the commitment to discuss alignment issues with the owner or occupier of affected land, including when roll-back has to be invoked because of natural processes; the inherent limitations on the application of coastal access rights through the automatic exception of the most unsuitable categories of land from their application, even where they occur in the coastal margin and the national restrictions on the activities people may pursue while exercising any new rights; and NE's ability to avoid any unreasonable impacts being caused by any new rights that will potentially apply, by giving legal directions to exclude or restrict them to the extent necessary on the grounds set out in CROW Part 1 Chapter 2.
16. For these reasons NE do not think that a need for compensation arises in this case.
17. [Redacted]'s land does not include any additional landward coastal margin and this will be shown on the OS Explorer Series maps. This, coupled with clear way marking of the trail, will encourage people to stick to the path as they pass through his land.
18. Experience shows that the overwhelming majority of national trail users behave in a responsible way and will react positively to sensible access management measures. NE also knows that the majority of coast path walkers are "destination walkers" – for the most part they will want to follow the line of the trail in order to complete their objective of walking from A to B.
19. England Coast Path users are encouraged to follow the Countryside Code, in particular the core message "leave gates and property as you find them and follow paths unless wider access is available". NE is willing to talk to [redacted] about any additional signage that he feels needs to be erected on his land, over and above the normal waymarking, to encourage path compliance. This might for example include the posting of "no open access" roundels to indicate that there is no public access landward of the trail.

Discussion and Conclusions

20. I agree with NE that in the event of further erosion in this area which requires the trail to roll back, it is unlikely that there would be any need for the trail to "jump" inland. Rather it would stay close to the cliff edge and would occupy a similar corridor width to the trail as currently aligned. I appreciate that as land is lost to the sea the size of [redacted]'s landholding will reduce and this will affect the amount of his single farm payment. However, if the trail had to roll back, this would not result in any further loss of land as the land on which the trail was located would still be available to [redacted]. The legislation does not include provision for compensation in these circumstances, although I note that [redacted] questions the legality of this.
21. At the site visit it was apparent that walkers heading east on the SWCP could easily be misled into following a track made by cattle landward of route section SMC-2-S097. There were also places on other route sections where walkers could be tempted to head inland using tracks apparent on the ground. NE have agreed to install 2 waymark posts with arrows and plaques attached requesting that walkers follow the signposted route. In addition, NE have agreed to send [redacted] brown "end of access" roundels which he can install where required. I am satisfied that these measures will be sufficient to ensure that the vast majority of walkers will keep to the trail and not stray landward across [redacted]'s land. In the unlikely event that [redacted] does find that walkers stray onto his land in the future he will be able to discuss further informal management techniques with NE.
22. Taking all these matters into account I conclude that the proposals do not fail to strike a fair balance.

Recommendation

23. 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