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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 26 February 2021**

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Marine and Coastal Access Act 2009

Objection by [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Penzance to St Mawes

File Ref: MCA/PSM7/0/1

**Objection Ref: MCA/PSM7/0/1**

**Puffins, North Corner, Coverack**

- On 18 September 2019, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Penzance and St Mawes 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 PSM7, Dolor Point to Porthoustock, was made by [redacted] and [redacted] on 1 November 2019. The land in the report to which the objection relates is route section PSM-7-S009 shown on Map 7a.
- The objection is made under paragraph 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 18 September 2019 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Penzance and St Mawes. The period for making formal representations and objections to the reports closed on 13 November 2019.
2. This is the only objection to report PSM7 and there are no relevant representations.
3. I carried out a site inspection on 6 October 2020 accompanied by [redacted] 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.

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 Approved 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 the trail will use the existing alignment of the South West Coast Path along North Road. The objectors own a residential property known as Puffins. It is located landward of North Road but the objectors also own land on the seaward side of the trail which includes the garden to Puffins and an area of beach as far as the low water mark. The beach is not accessible from the garden.

### **The Objection**

11. The objectors state that public access should be from the cliff edge to the low water mark, not from the coastal path to low water as it implies that the public have access to their garden. In their opinion making it clear that this is the situation would be better than adding a caveat later in the document stating that there is no access to garden areas. They also express concern about potential liability to members of the public as, although low risk, it is still possible and, in their view, should not be brushed aside when these changes are being made.

### **The response by Natural England**

12. The objectors propose a modification to exclude their garden from the coastal margin. Seaward coastal margin is an automatic consequence of the position of the trail. Under the coastal access legislation all land seaward of the trail as far as mean low water automatically becomes coastal margin regardless of land use. Once coastal access rights come into force the objector's garden will fall within the coastal margin. However, it would be excepted from coastal access rights under Schedule 1 of the Countryside and Rights of Way Act 2000 (CROW). NE would not be able to implement a direction to exclude access over excepted land because it would have no legal effect, due to there being no public access rights to exclude from the land.

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

13. The legislation provides no mechanism for the removal of excepted land from the seaward coastal margin. The objectors can erect signs if they wish stating that their garden is excepted land, but NE does not judge this to be necessary as in NE's view walkers are extremely unlikely to attempt to access land that is obviously for private use as a garden. Given the steep nature of the cliff, walkers would be extremely unlikely to cut across the garden in order to gain access to the beach.
14. 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 should be able to decide for themselves the level of personal risk they wish to take (Section 4.2.1 of the Approved Scheme).
15. In addition, in line with the principle of walkers taking responsibility for their own safety, land subject to coastal access rights benefits from the lowest level of occupiers' liability known under 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 Approved 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. NE does not believe that the introduction of coastal access rights on this stretch of coast will place any additional claim liability burden on the objectors from members of the public having access to the land.

#### **Additional comments provided by the objectors**

16. The objectors state that they should not need to erect signs because it has been decided that there is to be a change in the law. They have already erected a gate to try to stop people wandering into the garden and the next-door neighbours have put a chain and padlock on their gate. As there are only 2 properties with no buildings on the seaward side of the lane people assume access to the beach may be possible.
17. Walkers will not know the height of the cliff as it is not visible from the trail and there could be steps or a path to the beach as there are at other properties on the lane. Walkers would only find out that there was no access when they had walked through the garden and reached the cliff edge. The objectors query who is going police intruders.
18. The objectors also state that it is not enough to refer to the "lowest level of liability". They consider that the change which allows members of the public to have access to land will place an additional claim liability burden on them which cost will be reflected in insurance costs.

#### **Discussion and Conclusions**

19. There is little doubt that the objectors' land from the trail to the cliff is a private garden and would therefore be excepted land. This was very clear at the site visit. I agree with NE that there is no mechanism for excluding access to excepted land as there are no public access rights to exclude.
20. Nevertheless, I note the objectors' concerns that members of the public may not be aware that it is an area of private garden and may think that there could be access through the garden to the beach. I agree that it is not

apparent from the trail that access is not possible. I also note that the objectors do not wish to erect "private" signs at the entrance to their garden. At the site visit [redacted] stated that he believed such signage could be seen as confrontational.

21. I accept that it is possible that walkers could try to access the beach through the garden. However, it seems to me that signage could be provided which would dissuade accidental access without it having to appear in any way confrontational. For example, a "Puffins Garden" sign should be sufficient.

22. The objectors own an area of beach beyond the garden as far as low water mark. I note the concerns with regard to the potential for liability to members of the public on the land. However, I agree with NE that it is extremely unlikely in normal circumstances that an occupier could successfully be sued in relation to injury on land with coastal access rights.

23. Accordingly, I conclude that the proposals do not fail to strike a fair balance.

### **Recommendation**

24. 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**