
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

Marine and Coastal Access Act 2009

Objections by [redacted] and [redacted] and by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Penzance to St Mawes

Site visits made on 6 October 2020

File Refs: MCA/PSM8/0/3 and MCA/PSM8/0/2

Objection Ref: MCA/PSM8/0/3

Porthkerris Cove, St Keverne

- 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 PSM8, Porthoustock to Carne, was made by [redacted] and [redacted] on 1 November 2019. The land in the report to which the objection relates is route sections PSM-8-S001 to PSM-8-S021 shown on Map 8a.
- The objection is made under paragraphs 3(3)(a), (b), (c) 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.

Objection Ref: MCA/PSM8/0/2

Land at Porthallow

- 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 PSM8, Porthoustock to Carne, was made by [redacted] on 10 November 2019. The land in the report to which the objection relates is route sections PSM-8-S022 to PSM-8-S026 shown on Maps 8a and 8b.
- The objection is made under paragraphs 3(3)(a) and (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 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. There are 3 objections to report PSM8. This report relates to 2 of them. The other objection is dealt with in a separate report. There are 3 representations relevant to route sections PSM-8-S001 to PSM-8-S027.

3. I carried out site inspections on 6 October 2020 accompanied by [redacted] and [redacted] in respect of route sections PSM-8-S001 to PSM-8-S021 and [redacted] in respect of route sections PSM-8-S022 to PSM-8-S026 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 2013¹ ("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. The proposed route would follow the coastline between Porthoustock and Porthallow, at times close to the sea and at other times on cliff tops. It would cross rugged terrain with a history of quarrying. At Porthkerris it would cross the beach from where [redacted] and [redacted] run a diving centre.

¹ Approved by the Secretary of State on 9 July 2013

11. At PSM-8-S001 the route would leave Porthoustock on an existing walked route until PSM-8-S008 where a new route would be created. It would then join another existing walked route at PSM-8-S009 until PSM-8-S015 where a new route would be created until PSM-8-S022 where it would meet an existing public footpath into Porthallow. None of the route would follow the existing South West Coast Path (SWCP) which is situated inland between Porthoustock and Porthallow. Roll-back is proposed, the detail of which would be subject to SSSI assent. For the majority of these sections of route no landward boundary of coastal margin is specified. However, in sections where there is an existing fence line, that is specified as the landward boundary for reasons of clarity and cohesion. Where the route crosses Porthkerris beach there is landward coastal margin due to the beach being a coastal land type.
12. NE considered aligning the trail along the route of the existing SWCP between Porthoustock and Porthallow. However, the report states that the proposed route was chosen because it is closer to the sea and maintains views of the sea, it is safer as it does not follow narrow public roads and it struck the best balance in terms of the criteria in the Approved Scheme. NE also considered aligning the trail along the route of existing farm tracks between Pencra Head and Porthkerris (PSM-8-S001 to PSM-8-S011) and along a historic walked route and an existing farm track between Porthkerris and Porthallow (PSM-8-S012 to PSM-8-S027) but in both cases opted for the proposed route because it is closer to the sea and maintains views of the sea and struck the best balance in terms of the criteria in the Approved Scheme.

The Objection by [redacted] and [redacted]

13. The objectors set out their concerns under headings as follows.
14. **Loss of value to property:** The objectors state that they bought Porthkerris Farm over 30 years ago and that one of its main appeals and uniqueness was its total privacy. It consists of about 100 acres of farmland, scrub land, cliffs and beach and has no public footpath running through it due to it previously having been a quarry with dangerous quarry workings remaining.
15. They have been advised that if opened up to the public there would be a substantial decrease in value and if requested, they are prepared to obtain a formal valuation. Permissive access is allowed which gives the objectors the right to restrict access if necessary for safety reasons such as coastal erosion or business reasons when there is a need for privacy such as film location work or clay pigeon shooting or for security reasons in low season when the gates into the property are locked due to previous thefts. They query how it can be right that there is no compensation awarded for loss of value to property, especially when Welsh landowners received compensation under the same scheme.
16. **Concerns about liability:** The objectors state that they do not agree that this should fall on the landowner when they neither want nor agree to public access on their land. In their opinion liability should fall on NE as NE is responsible for implementing the route. The objectors already pay a lot of money for insurance and increasing public access increases the risk of liability which in turn will increase insurance premiums.

17. **Substantial loss of earnings suffered if the property doesn't have the ability to be private:** The objectors state that a lot of their business comes through film location work and that the big appeal to location scouts is the fact that the property is unique in its ability to become completely private and secure and that this would be compromised. They refer to references in the Approved Scheme to the aim of preventing loss of income to coastal businesses and the prospect of inclusion of specific proposals to prevent such loss. They state that they have discussed the issue at length with NE but that there is no mention in the report of alleviating the concerns so that they can continue to run the film location business and clay pigeon shoots.
18. **The negative impact on other businesses which rely on the current coastal footpath:** The objectors refer to a café which set up business on the basis that the SWCP runs through the property. Diverting the path would have a big effect on that business. There is also no provision for compensating the owners by removing the current footpath to increase the value of the property.
19. **Potential use of roll-back:** There has been no formal consultation about roll-back. The Welsh section of the path has no provision for roll-back which makes it more acceptable to landowners. The provision gives NE the ability to slice through the property at their own will.
20. **Long term management of the footpath:** The objectors query whose responsibility it is to regularly assess health and safety, coastal erosion and landslide and whether NE will provide toilets and rubbish bins.
21. **Significant extra cost incurred by landowner:** The objectors suggest that there will be increased use of their toilet and shower facilities and extra maintenance costs such as litter picking for no financial gain. Existing customers cover the costs of using the facilities through either paying for parking or through staying or diving as part of the business. NE's only suggestion is to put code locks on the toilets so that walkers can't use them.
22. The objectors state that they would also incur extra costs by having to make extra checks on the property due to people camping whilst present customers pay for the facilities. Concern is also expressed that it has been suggested that, as a national trail, maintenance will become the responsibility of a local trail partnership which could include the landowner. The objectors do not want the cost of maintaining a mile-long path through cliff and scrubland.
23. **Concerns about the threat to security:** The area is very remote and isolated and property has been stolen in the past. Out of season, public access is totally restricted and gates to the property are locked. The objectors state that unrestricted public access will make the property extremely vulnerable and will prevent them from protecting their property and possessions.
24. **Concerns about threats to livestock:** The objectors' cows and sheep have grazed the fields and cliff land for over 30 years. The objectors state that the only dog attacks they have experienced have been in the fields next to the current public footpath. They are concerned that adding over a mile of extra footpath through their grazing will increase the risks of attacks on livestock

(physical dog attacks, animals being chased over cliffs or people leaving gates open).

25. **Concerns over complications with future development and business diversification ideas:** The objectors state that the footpath would compromise future development ideas.
26. **Concerns about the negative impact of margin land on nature conservation:** Wildlife, especially nesting birds and breeding seals use the margin land for seclusion and lack of disruption. The route allows the public and their dogs unlimited access to the entire land between the footpath and the sea with no limitations. This will have a massive impact on nature conservation and is contrary to what NE stands for.
27. **The unfair threat of the new coastal access route versus margin land:** The objectors state that NE has told them that if the coastal access route was not able to be moved and stayed where it was (ie the current route of the SWCP) then all of their land would become coastal margin and would as a result be made accessible to the public. This would also affect land belonging to several of their neighbours. The objectors state that they are "caught between a rock and a hard place" and effectively held to ransom.
28. **Legal issues:** The objectors query what legal documentation will be drawn up regarding access, liability and health and safety.
29. **Modifications:** The objectors propose various modifications. These are that the route should not go through their property; that their property should not become coastal margin; that the roll-back procedure should be removed as in Wales as it does not entitle a landowner to have any say over their own property and is unlawful; that landowners should be compensated for loss of value to property and loss of future income, as in Wales and that NE or other relevant body should take total responsibility for liability, maintenance and costs of the proposed route and margin land.

The response by Natural England

30. **Compensation:** 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.
31. The built-in controls include: the duty for NE to aim to strike a fair balance 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 on a site by site basis 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 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 giving legal directions to exclude or restrict them to the extent necessary for this purpose.

32. **Liability:** A key principle of 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).
33. In addition, 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 be sued successfully in relation to injury on land with coastal access rights.
34. Occupiers are responsible for insuring themselves against risk and insurers are best placed to advise on any impact the new arrangements will have on this. However, NE sees no justifiable reason why owners should experience an increase in premiums as a result of the introduction of the new right of access. NE has received no reports from landowners elsewhere in the country of an increase in premiums because of the introduction of the new coastal access rights over their land.
35. **Anticipated loss of income:** NE was made aware of the importance of filming, clay pigeon shooting and other income generating activities at an early meeting with the objectors. The objectors were subsequently informed that NE was minded to provide an outline direction which would allow the coastal path to be diverted due to these activities taking place. The objectors were asked to provide the necessary evidence to justify a direction but have not done so. Accordingly, NE has been unable to draw up an outline direction.
36. **Negative impact on neighbouring businesses:** The café mentioned by the objectors is not located within the objectors' holding boundary, nor do they have a legal interest in it. NE has been in communication with the owners of the café who have verbally informed NE that they are supportive of the proposals.
37. **Roll back:** Roll back has been proposed where evidence suggests that erosion or other types of coastal change may impact on the line of the coast path. The proposal for roll back in this location reflects the likelihood that the line of the coast path will need to alter at some point in the future due to coastal processes (Section 4.10 of the Approved Scheme).
38. Roll back can only be used in direct response to coastal erosion or other geomorphological processes, or significant encroachment by the sea or in order to link with other parts of the route that need to roll back for those reasons. NE confirms that, in the event that a route is no longer viable, detailed discussions will be held with all affected landowners and relevant interests to find a new route.
39. **Ongoing management and maintenance responsibilities:** NE is responsible for funding 100% of the establishment works currently via RDPE. After commencement of the new rights, local access authorities assume responsibility for maintaining any new sections of route as well as their

existing highways. They receive central government grant aid to help maintain the coast path to the high standards expected of national trails. NE has not proposed construction of new toilets or the placing of new rubbish bins on this section of coast.

40. It is not the responsibility of the landowner to carry out inspections nor to undertake maintenance activities such as litter picking. Cormac carries out annual inspections of the trail on behalf of Cornwall Council and there is a SWCP volunteer warden for the area who also monitors the condition of the trail. However, the public and landowners are encouraged to report to Cornwall Council/Cormac if they notice that the condition of the trail is inadequate or dangerous.
41. **Landowner extra costs:** NE notes that the objectors' camping area, toilet and shower facilities are landward of the proposed route and not located within the coastal margin. Walkers will therefore not have a right of access to these areas. Should there be issues with walkers attempting to access these areas and facilities NE would be happy to provide a supply of "end of access land" roundels which could be placed along the landward edge of the trail in order to clarify the access rights.
42. **Threat to security:** The intention of the Coastal Access legislation is for walkers to have the opportunity to engage in quiet enjoyment of the coast. In NE's experience the overwhelming majority of national trail users act in a responsible and respectful way and NE would expect there to be only a minimal increase, if at all, in people unlawfully accessing land landward of the trail. Roundels can be used to clarify access rights.
43. **Threat to livestock:** A great deal of land grazed by cattle and sheep has public access, showing that the 2 uses are generally compatible. Problems are significantly more likely where people bring dogs with them. However, it is an offence to allow dogs to attack or chase livestock. On land with coastal access rights a person with a dog must keep it on a short lead in the vicinity of livestock. The purpose of this provision is to prevent dogs from approaching livestock.
44. NE's proposals include the provision of stock fencing and gates at locations identified by the objectors. In addition, the proposed route is aligned as close to the coast as possible in order to minimise the area of default coastal margin seaward of the trail. As a result, the least possible grazing area will be accessible to the public. The trail will be the landward boundary of the coastal margin and no rights will apply on land landward of the trail.
45. **Future development and business diversification ideas:** Coastal access rights do not prevent any land from being developed or redeveloped in the future (Section 5.5.4 of the Approved Scheme). When this happens, the developed land is likely to become excepted land and therefore outwith the coastal access rights. NE will submit a variation report to the Secretary of State recommending a change to the trail or landward boundary of spreading room if either is affected in this way.
46. **Impact on wildlife:** NE is a non-departmental public body. Its statutory purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby

contributing to sustainable development. Its remit includes protected sites and landscapes, biodiversity, geodiversity, soils, protected species, landscape character, green infrastructure and access to and enjoyment of nature. NE believes that encouraging appropriate and responsible outdoor recreation is beneficial for the public, including by helping to foster an appreciation and enjoyment of nature.

47. NE does not believe that the proposal will significantly increase disturbance to nesting birds or breeding seals. 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. NE does not expect a significant number of people to access the coastal margin as a result of the proposals. The proposed route is generally very coastal, separated from the sea by steep cliffs that most dogs would not be able to scale. NE expects most dog walkers will keep their dogs with them while walking through this type of terrain in order to keep them safe. Much of the rocky offshore habitat favoured by seals is physically inaccessible.
48. Where the route crosses the beach at Porthkerris and along the track to the SeaSalt factory there is already human activity with the dive centre and factory. Similarly, the proposed route between Porthoustock and the historic tramway is a permissive track already used by walkers. NE does not believe that the proposal will significantly increase disturbance to wildlife.
49. **Unfairness of coastal access legislation:** NE has been tasked with implementing Government policy and has no power to amend the legislation.
50. **Legal issues:** The coastal access report is a statutory report which forms the legal basis of the coastal access rights. The approved methodology for implementing the coastal access legislation is set out in the Approved Scheme. Together they provide details regarding access, liability and health and safety. NE does not believe it is necessary to draw up further legal documentation.

Matters arising at and following the site visit

51. It is proposed that the trail would utilise the historic tramway leading to Porthkerris Beach. Due to concerns that the rockface is unstable, measures are proposed for stabilising the cliffs and protecting users from falling debris. The measures would include the use of restraining mesh which [redacted] considers would look unsightly.
52. I agree that it would be preferable if the cliff face could be left in its natural state without the addition of mesh netting. [redacted] suggests that improvement of the surface to make it accessible by machinery for ease of maintenance might obviate the need for the mesh. However, I note the advice NE received from the County Geologist² and accept that the measures will be required irrespective of what level of surface improvement works are carried out.
53. At the site visit the new section of path at PSM-8-S008 was found to be difficult to follow and potentially dangerous as it was situated close to the cliff

² Email dated 5 October 2018 from R Hocking, Soils and Materials Engineer re Site visit Porthkerris

edge. Subsequently a representative from Cornwall Council returned to review this section and consider other possible options. [redacted] suggested that heading south the route could continue slightly further inland and then cut down to join the existing permissive route. However, Cornwall Council considered that this would involve cutting a route across quarrying spoil which was likely to move³.

54. Another option considered was the possibility of continuing further along the existing higher walked route. However, this passes a cattle feeder and [redacted] is keen to minimise livestock disturbance.
55. I am informed by NE that having looked at other options it is considered that the route proposed in the report is the best option. Having again queried the safety of this route I am informed that in fact it will be 6 metres inland of the exposed route I walked on my site visit and that works to be carried out would include creating a level path using a mini excavator and the removal of a sycamore tree. In NE's opinion, due to the thickness of the line on the map, the route 6 metres inland of the exposed route, would fall within the width of the depicted line. I am also informed that where the route leaves the line of the existing walked route a gate will be provided to minimise livestock disturbance⁴.
56. Route section PSM-8-S015, where it leaves the level track from the SeaSalt factory to head uphill towards the existing path at PSM-8-S022, also appeared exposed and dangerous. Given the windy weather conditions at the time of the site visit, I decided that we should not attempt to walk it.
57. [redacted] suggested that a ramp be constructed in this area in place of the proposed steps in order that the trail could be easily maintained by machinery and to create a new emergency back route suitable for vehicles down to the SeaSalt factory. NE has explained that if the objectors wish to construct such a ramp the coast path could be aligned to that ramp but the specification and cost of providing a vehicle ramp would far outweigh those of creating pedestrian access and it is NE's duty to create a walking route.
58. Subsequently NE has informed me that the route proposed in the report is actually 8 metres inland of the route I decided it was too dangerous to attempt, and that in practice it may need to move a further metre inland following assessment of the underlying geology. I remain unclear whether I was shown an incorrect location for this route section or whether NE has moved the route further inland. In any event NE considers that the route now proposed falls within the width of the depicted line⁵.
59. In the circumstances I shall consider route sections PSM-8-S008 and PSM-8-S015 on the basis now described by NE rather than in the locations walked or shown to me on my site visit.

³ Letter dated 26 November 2020 from NE to [redacted] and [redacted]

⁴ Email dated 23 December 2020 from NE to Planning Inspectorate

⁵ Email dated 23 December 2020 from NE to Planning Inspectorate

60. Following the site visit NE sent me a plan showing details of the fencing which had been agreed. It consists of a total of 760m of fencing in 4 separate locations together with 3 field gates⁶.

The Objection by [redacted]

61. [redacted] states that it seems as if the new path is going to run alongside an existing path, making it twice as wide, which is unnecessary. He requests that only one path is used. He also queries where the path would go if there was a major cliff fall.

62. [redacted] points out that he has "rewilded" his land and it is now a nature reserve. He suggests that notices are required to inform people of nesting sites, to inform them that the area is a grass snake, slow worm and adder reserve and to warn people of the presence of adders. He is concerned that the route is not used very much at the moment and the increase in use will disturb the wildlife.

The response by Natural England

63. NE states that the proposed route does indeed run in close proximity to an existing public right of way. However, the proposed route is intended to be coincident with the public footpath as it is walked and managed on the ground. The line of the public footpath shown on Cornwall Council's definitive map does not correspond with the same footpath shown as a topographical feature in its own right on existing and historical OS maps. NE confirms that only one route will be signed on the ground and that the access authority is aware of that.

64. Rollback has been proposed on sections of the trail where evidence suggests that erosion or other types of coastal change may impact on the line of the coastal path. The proposal for use of the rollback provision in this location reflects the likelihood that the line of the coastal path will need to alter at some point in the future due to cliff erosion. NE confirms that in the event that a route is no longer viable detailed discussions with all relevant interests will take place to find a new route.

65. With regard to wildlife NE states that discussions will be held with Porthallow Village Association about including information on local wildlife on the interpretation panel at Porthallow. That panel is being updated with the new coastal access route between Porthallow and Porthoustock.

Matters arising at and following the site visit

66. [redacted] suggested that the route could go closer to the sea for a short distance. NE's position is that they would not wish to leave the existing path at that location as it would create a parallel route to the existing public footpath, which [redacted] does not want.

Representations

67. The Cornwall Countryside Access Forum and the South West Coast Path Association both state that the proposed route from PSM-8-S001 to PSM-8-

⁶ Indicative coastal access proposals for Porthkerris Maps 1-3

S027 is a substantial improvement on the route of the SWCP and is very strongly supported. They refer to the SWCP as using a substantial inland diversion, precluding virtually any sea views and using some lengths of road whereas the proposed route stays on the coast throughout and provides constant uninterrupted sea views as well as avoiding any use of roads. They state that the SWCP is unsatisfactory in environmental and safety terms and has long been a cause for concern.

68. The Ramblers' Association, Cornwall also state that they strongly support the proposed route and that it is a great improvement on the route followed by the present SWCP. They say that the SWCP has an inland feel, deviates a considerable distance from the coast, mostly follows narrow minor roads with few verges and generally lacks any views of the sea. In contrast the proposed route closely follows the coast, is mostly free of vehicular traffic, generally enjoys good coastal views and much of it has the benefit of being fairly flat easy walking. The landscape value of the coast is reflected in the AONB designation although some damage has occurred locally through past quarrying.
69. The Ramblers' do however state that they are concerned about the section between the bottom of the old tramway incline and Porthkerris as it can be difficult to get past a very short section of beach which is backed by a steep cliff and which can be impassable at high tide and with an onshore wind. In such conditions it would be a long detour for a walker to retrace their steps to Porthallow or Pothoustock and then follow the existing SWCP. It could lead to walkers taking a chance between waves in hazardous conditions. The Ramblers' suggest that it would greatly enhance the safety and convenience of walkers if an alternative high tide route were designated. They suggest a route following other private tracks in the area which they show on a plan.

The response by Natural England

70. The landowners informed NE that weather and tide conditions seldom make the proposed beach section north of the historic tramway at route section PSM-8-S011 impassable and that a short wait may be required only in exceptional circumstances. The proposals include signage at Pothoustock and Porthallow to advise walkers that the coastal path route at Porthkerris is occasionally subject to very high tides in places and that an inland route via existing public footpaths and roads is available ie the existing SWCP.
71. NE sought clarification from the Spatial Modelling Team to investigate how frequently and for what duration the route would become unavailable but was advised that there was no way of producing reliable data. However on the information available it appears that any interruption to walkers' ability to use the trail should be brief, and on the very occasional times that the trail is inundated by an exceptionally high tide, the inconvenience to walkers who would have to wait a while would be minimal.
72. Should new information become available the arrangements can be reviewed and a formal variation report submitted to the Secretary of State proposing the installation of an optional alternative route. If this were deemed necessary NE would consider the full range of options including the route identified by the Ramblers'.

Discussion

General

73. The proposed route between PSM-8-S001 and PSM-8-S026 adheres to the periphery of the coast and in many places provides spectacular views of the sea. The terrain is rugged and there are some steep climbs and exposed sections. Indeed, as previously referred to, NE has slightly revised 2 small sections of the route following my site visit as they were found to be particularly exposed and dangerous.
74. The section along the historic tramway at the bottom of cliffs may on occasion become impassable due to inundation by the tide. However, from the information available I agree with NE that, on most occasions, walkers are only likely to have to wait for a short while. Information will be provided in Porthoustock and Porthallow and walkers can therefore decide whether or not to embark upon this section of the trail.
75. It is unfortunate that utilising the tramway as part of the trail will require mesh to be affixed to the cliff face for safety reasons, as this will detract from the natural appearance of the cliff face. However, given the proximity of the tramway to the sea and the views that are available from it I consider that the need for mesh and any inconvenience caused by tidal inundation are clearly outweighed. I note that, if new information becomes available which suggests that the inconvenience to walkers may be greater than anticipated, NE will review the situation and if necessary, submit a variation report.
76. NE considered aligning the trail along the route of the existing SWCP. This route is generally inland, does not provide views of the sea and in places follows narrow public roads. I note the concerns of the Cornwall Countryside Access Forum, The South West Coast Path Association and the Ramblers in this respect. I agree that the route of the existing SWCP does not fit well with the criteria in the Approved Scheme.
77. I note the Ramblers' suggestion that the proposed route has the benefit of being "fairly flat easy walking". Although there are some sections on flat ground, for the reasons I have given, it is my opinion that it presents a considerably more challenging walk than the existing SWCP. However, I consider that the impact on safety and convenience is limited and taking into account the fact that the proposed route adheres to the periphery of the coast and for the majority of the way provides views of the sea, I agree that it fits well with the criteria in the Approved Scheme.

Specific to [redacted] and [redacted]'s objection

78. I note that the objectors consider that the coastal access legislation compares unfavourably with similar legislation in Wales, in particular with regard to the lack of compensation for any loss of value to their property and loss of future income, and in relation to roll back. However, any comparison with Wales is not a matter for me to comment on. Furthermore, as set out in detail in NE's response, the issue of compensation was discussed during the passage of the legislation and it was considered that financial compensation for the creation of any new rights was not justified. Again, this is not a matter for me to comment on.

OFFICIAL SENSITIVE

79. I note that the objectors also comment on the lack of compensation available to businesses who rely on the existing route of the SWCP and will be affected if the route moves. However, as the objectors do not own any of the land referred to, this issue does not fall within the scope of this objection.
80. In respect of any anticipated loss of income, the objectors have been asked to provide details of activities which may be adversely impacted by coastal access rights, such as filming and clay pigeon shooting. Details have not as yet been provided but, if necessary, NE will be able to provide an outline direction enabling the coastal path to be diverted when specified activities are taking place. Similarly, the route should not compromise future development and business diversification ideas as a direction could require diversion when necessary or, if appropriate, a variation report could be submitted.
81. The objectors suggest that the roll back procedure is unlawful and should be removed as it does not entitle a landowner to have any say over their own property. Again, this is not a matter for me to comment on. However, I note that roll back has been proposed where it is likely that the line of the path will need to change in the future due to coastal processes and that this is in accordance with the Approved Scheme.
82. The objectors consider the coastal access legislation to be unfair, and that they have been held to ransom. This is because NE has told them that if the route was on the line of the existing SWCP all their land and the land of several of their neighbours would become coastal margin and accessible to the public. They propose that the route should not go through their property and that their property should not become coastal margin. NE comments that they have been tasked with implementing Government policy and have no power to amend the legislation and I have nothing to add to this.
83. The objectors also have concerns relating to access, liability and health and safety which they suggest should be addressed by legal documentation. They also suggest that NE should take total responsibility for liability, maintenance and costs of the proposed route and margin land. The Approved Scheme provides details regarding these matters and does not provide for NE to take responsibility or for legal documentation.
84. NE has set out the provisions relating to liability in its response and I agree 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. NE has also set out the provision with regard to establishment costs and maintenance costs and I have nothing to add.
85. With regard to the possibility of extra maintenance costs and threats to security, I note that the facilities such as toilets and showers for campers are situated landward of the trail. Walkers have no right to access this land and I agree with NE that most walkers are unlikely to attempt to do so. However, "end of access land" roundels can be supplied to clarify rights and to discourage access.
86. I note the concerns about the potential for dog attacks on livestock. However, the alignment of the trail close to the coast will minimise the amount of grazing area accessible to the public and I note that stock fencing

and gates will be provided at locations which have been identified by the objectors.

87. The alignment of the trail and the fact that in many places it is separated from the sea by steep cliffs will also minimise any impact dogs could have on wildlife. Although there are flatter areas, such as the beach at Porthkerris and the track to the SeaSalt factory I agree with NE that there is already human activity associated with these areas and the increase which will result from use of the route is unlikely to cause a substantial increase in disturbance.

Specific to [redacted]'s objection

88. As acknowledged by NE, [redacted] is correct that the trail as proposed does not follow the existing public footpath as shown on the definitive map. However, it does follow the route as it exists on the ground. Paragraph 4.7.2 of the Approved Scheme states that "where the definitive line of a public right of way differs from the line already walked on the ground, it is the walked line that we normally propose, in discussion with the landowner, to use as the route". Although it is possible that a walker could insist on walking the route shown on the definitive map, that is unlikely to occur. I agree with NE that the sensible approach is to use the route as it exists on the ground rather than the route shown on the definitive map.

89. The route through [redacted]'s land is steep and there are intermittent views of the sea through the trees. [redacted] has suggested that a path could be made which would be closer to the sea for a short distance of about 50 metres. Such a path may also provide better views of the sea, although given that the cliff is wooded, that is not necessarily the case. Use of the existing footpath accords with the advice in paragraph 4.7.1 of the Approved Scheme that the clear walked path should generally be adopted as the trail if it is safe and practicable for the public to use, can be used at all times and the alignment makes sense in terms of the other statutory criteria and principles in the Approved Scheme. I consider that it does.

90. Furthermore, the creation of an additional path through the land would not automatically result in the extinguishment of the existing public footpath and contrary to [redacted]'s wishes, would result in the existence of 2 paths close to each other. As stated in paragraph 4.7.6 of the Approved Scheme, although it would be open to [redacted] to argue to the highway authority that the original footpath had "become redundant and should be extinguished", NE does not have the power to extinguish it.

91. [redacted] states that it is unclear where the path would go if there was a major cliff fall. I note that roll back is proposed and that in the event that the line of the path needed to be altered NE would hold detailed discussions with all relevant interests to find a new route.

92. [redacted] refers to the presence of wildlife on his land and the disturbance which may be caused by the increase in people using the path if it becomes part of the trail. I accept that there is likely to be a significant increase in use, but consider that, particularly given the steep and wooded terrain, most people are likely to stay on the path. I agree that notices referring to the presence of wildlife should be provided and suggest that the content of the

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notices should be agreed with both the Village Association and with [redacted], who is clearly knowledgeable about his land, the wildlife he promotes on his land and any protection required.

Conclusions

93. The route adheres to the periphery of the coast and for the most part provides views of the sea. Some walkers are likely to find parts of the route challenging and there may be some inconvenience to walkers. However, this should not be unexpected on rugged coastal terrain with a history of quarrying.
94. The route through [redacted] and [redacted]'s land utilises a permissive path in parts, but there will also be new sections, and I accept that there is likely to be a significant increase in walkers accessing the land. However, I consider that the impact on their business interests is likely to be very limited. The fencing and field gates proposed will minimise the impact on cattle, and the trail will pass seaward of most of their business activities. A direction can be provided which would prevent access on days on which activities such as filming or clay pigeon shooting were taking place.
95. I agree with NE that the impact on wildlife throughout this stretch will be limited. Given the nature of the terrain the majority of walkers are likely to remain on the trail and there is already activity in the places where the coastal margin is more accessible. The information boards proposed will also assist.
96. The alternative routes considered do not adhere to the periphery of the coast and at best provide limited views of the sea.
97. Taking all these matters into account, I conclude that the proposals do not fail to strike a fair balance.

Recommendation

98. 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 objections. I therefore recommend that the Secretary of State makes a determination to this effect.

Alison Lea

APPOINTED PERSON