
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

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Marsland Mouth to Newquay

File Ref: MCA/MNQ2/0/1

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Upton Cliff

- On 9 October 2019, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Marsland Mouth and Newquay 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 MNQ2, Duckpool to Wanson Mouth, was made by [redacted] on 25 November 2019. The land in the report to which the objection relates is route section MNQ-2-S059 shown on Map 2d.
- The objection is made under paragraphs 3(3)(a),(b),(c),(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, as proposed to be modified, do not fail to strike a fair balance.

Procedural Matters

1. On 9 October 2019 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Marsland Mouth and Newquay. The period for making formal representations and objections to the reports closed on 4 December 2019.
2. There are 2 admissible objections to report MNQ2. This report deals solely with this objection. There is one representation relevant to route section MNQ-2-S059.
3. I carried out a site inspection on 8 October 2020 accompanied by [redacted] and [redacted], and by representatives from NE and Cormac.

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. Route sections MNQ-2-S059 and MNQ-2-S060 as shown on Map 2d in the report follow what was the alignment of the South West Coast Path (SWCP) at the time the report was published. Route section MNQ-2-S060 is located seaward of Upton Terrace. Report MNQ2 notes at paragraph 1.2.18 that, as a result of on-going coastal erosion of the cliffs at Upton, the access authority has advised that the proposed route seaward of Upton Terrace cottages will soon have to be permanently closed. NE advises in the report that "When this happens, we will choose a route landward of them, following discussions with owners and occupiers". Map 2d also shows a bridleway leading from the Upton to Bude road, south of Upton Lodge and cutting across the field owned by the objector to meet the line of the SWCP (the Bridleway).
11. NE states that in December 2019, following further cliff falls and on the advice of their geologist, the Access Authority had to close the SWCP behind Upton Terrace cottages. They established a new route for the SWCP, stated as following the Bridleway, which NE then proposed should be the route of the trail. A revised map 2d was produced to show the trail following the alignment of the Bridleway.
12. At the site visit it became apparent that the new alignment of the SWCP does not follow the Bridleway and therefore that revised map 2d was incorrect. Approaching from the north, the new alignment of the SWCP follows the edge of the cliffs and then cuts across the field in a SE direction, seaward of the Bridleway, to emerge on the footway at a field entrance which also marks the start/end of the Bridleway. A further version of map 2d has now been produced which shows the trail following the new alignment of the SWCP,

¹ Approved by the Secretary of State on 9 July 2013

rather than the line of the Bridleway. Revised comments on the objection to reflect this modification have also been produced.

13. NE now requests the Secretary of State to approve the proposals with the modification shown on revised map MNQ2d, a copy of which is attached to this report. As a copy of NE's revised comments and of revised map MNQ2d have been sent to [redacted] I am satisfied that considering the modified, rather than the published, proposals would not prejudice the objector. I am informed that, given that the modification does not bring any new relevant interests into discussion, wider advertisement is not required prior to the submission of my report. Accordingly, I shall consider route section MNQ-2-S059 as proposed to be modified.

The Objection

14. The objector is the owner of land located seaward of the Upton to Bude road which includes a field, cliffs, foreshore and beach. He states that the sea comes in right up to the cliffs and that it is not possible to have a route along the beach as the cliff and rock structures extend into the sea. He considers that the beach and foreshore are very dangerous and that the public should not be encouraged onto the beach as, when the tide comes more than a quarter of the way in, people are vulnerable to being cut off. Lives have already been lost from falling rocks and a little girl was swept off the rocks by waves and was never found. In most places there is no phone signal and no form of communication is possible, and, even if there were, there is no suitable form of rescue and no rescue service helicopters anymore. No insurance would cover people's lives on the beach. A path on the beach would also interfere with wildlife.
15. [redacted] also states that as a result of Cornwall Council wanting to close the coastal footpath² he is in the process of agreeing an alternative route across his land which would run alongside a block constructed wall and out onto the pavement beside the road. In his view the new route should not be necessary for another 4 or 5 years unless there was a large cliff fall in front of the footpath at the south end of Upton Terrace. His objection includes a plan showing his proposed route. From the road it follows the boundary of a private house and garden, then continues across the field to join the SWCP.

The Response by Natural England

16. The cliffs, rocky foreshore and beach adjacent to route sections MNQ-2-S059 and MNQ-2-S060 are seaward of the proposed trail and therefore automatically become coastal margin. The route follows the SWCP along the top of the cliffs. It is highly unlikely that a walker on this stretch of coastal path would choose to divert off the route to visit the foreshore and beach due to the steepness and crumbliness of the cliffs. Neither NE nor the Access Authority, through the Coastal Access Programme, plan to encourage or signpost walkers onto the foreshore and beach. A "route along the beach" as feared by the objector, will not be created by the proposals.
17. The objection also refers to the potential for people on the beach being cut off by the tide and requiring rescue. A key principle of the coastal access

² The objection was submitted before the route of the SWCP was changed

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). To access the beach a walker would have to approach from along the adjacent foreshore, which itself is not easily accessible for many miles in either direction. Therefore, with the very low level of anticipated use of the beach in the coastal margin adjacent to route sections MNQ-2-S059 and MNQ-2-S060, NE thinks that it will be very unlikely that there will be an increase in emergency services call outs in this area.

18. With regard to concerns about landowner public liability insurance covering people on the beach, 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. This means that the objector's civil duty of care would be lower, if NE's proposals are approved, than it is currently.
19. 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 and Devon Wildlife Trusts, Royal Society for the Protection of Birds, Cornwall Seal Group, South West Peregrine Group and Cornwall Area of Outstanding Natural Beauty to consider any potential for impacts on key sensitive features. No issues were raised by any of these groups in relation to the land in question and there are no statutory nature/wildlife designations in this area. NE does not believe that there will be a significant increase in the number of people accessing this area of coastal margin and concludes that the proposals will not have a detrimental impact on the nature conservation interest of the area.
20. Since the objection was submitted NE has revised the proposals. It is now proposed that the trail follow the new route of the SWCP. The slightly different route proposed by the objector would, from the north, initially follow the SWCP and then run adjacent to a neighbouring property boundary to emerge onto the footway. This would require creating a new gap in the Cornish hedge bank.
21. NE agrees with the Access Authority that the route of the SWCP following an existing vehicle track is the most suitable route because it uses an existing gateway (the start/end of the Bridleway) and is more direct and convenient than the route proposed by the objector. His suggested alignment would result in a new path being created very close to the existing Bridleway, but rights to use the bridleway would remain in force. It would take walkers along the boundary of a private house and garden and would necessitate a new entrance being created through the hedge bank. The objector does not explain in his objection why he prefers this route and NE can see no

advantage from it over the route shown on map MNQ2d in terms of public or private interest.

Representations

22.The representation from the Ramblers' Association, Cornwall expresses concern about the width of a kissing gate. However, the kissing gate is not situated on the proposed revised route and the representation is therefore no longer relevant. There are no other representations relevant to this section of the trail.

Discussion and Conclusions

23.I agree with the objector that the cliffs and foreshore are dangerous and that, if accessed by walkers, it is an area where accidents could occur or where walkers could be cut off by the sea and require rescue. However, no new route along the foreshore is proposed and I agree with NE that it is highly unlikely that a walker using the trail would try to divert onto the foreshore at this location. For that reason, I also agree with NE that the proposals would not have a detrimental impact on the nature conservation interest of the area. I note NE's comments with regard to visitors taking primary responsibility for their own safety and landowner public liability insurance and have nothing to add.

24.Neither the proposed route, which follows the walked line of the SWCP, nor [redacted]'s route, follow the line of the Bridleway. The right to use the Bridleway will remain and there will therefore be 2 routes across the land regardless of whether the proposed route or [redacted]'s route is used as the trail.

25.At the site visit [redacted] suggested that the route he has proposed would be on higher and therefore drier ground. I agree that the land is slightly higher but I have no reason to believe that the proposed route is unacceptably wet. Any benefit that may be gained by [redacted]'s proposed route being situated on slightly higher ground is considerably outweighed by the fact that it would involve the creation of a new access point in the established hedge and would pass close to the neighbouring residential property.

26.For these reasons I am satisfied that the proposals as modified, as shown on revised map MNQ2d, strike a fair balance between the interests of the public and the interests of those with a relevant interest in affected land.

Recommendation

27.Having regard to these and all other matters raised, I conclude that the proposals, as proposed to be modified and shown on revised Map MNQ2d, 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