

# **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]

Regarding Coastal Access Proposals by Natural England

Relating to Marsland Mouth to Newquay

**Objection Ref: MCA/MNQ2/0/2**  
**Wanson Mouth, Poundstock, Bude**

- 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 3 December 2019. The land in the report to which the objection relates is route sections MNQ-2-S091 to MNQ-2-S096 shown on Map 2g.
- The objection is made under paragraphs 3(3)(b),(c),(d),(e) and (f) 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 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 are no relevant representations.
3. I carried out a site inspection on 8 October 2020 accompanied by the objector 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 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. The trail follows the existing alignment of the South West Coast Path (SWCP). The objector owns a gated and locked track which leaves the trail at MNQ-2-S096 and gives access to the beach at Wanson Mouth. At the end of route section MNQ-2-S096 the trail joins and then follows a minor road. A public footpath gives access to the beach at Wanson Mouth from that road at MNQ-3-S001.

### **The Objection**

11. The objector states that NE has omitted to show hillside steps, kissing gates and a vehicular bridge/emergency services access on the maps even though all of this infrastructure has already been put in place to obviate any requirement for roll back of the route. NE has also omitted to specify the landward boundary of the route sections.
12. The track to the beach from MNQ-2-S096 is not a public right of way and is owned by the objector. It is described by the objector as a private track (the Private Track) and is used by the objector and her holiday guests for access to a privately owned beach. She states that it is subject to heavy erosion caused by the action of the river and water run-off from the surrounding cliffs and fields and that any increased footfall would increase erosion and danger. In her opinion the route is already unsuitable for disabled persons, the elderly, the infirm and young families. A CROW appeal decision confirms the exemption of any public right of way other than any dedicated footpaths.
13. The objector considers that the existing public right of way from the minor road to the beach is more suitable for anyone with a disability and is a shorter walking distance over safer terrain because of the lack of erosion and the level footing. NE has suggested that it is less used due to the lack of car parking opportunities but the car parking opportunities that exist are

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

immediately adjacent to MNQ-3-S001 with which the public right of way adjoins.

14. Since NE's visit to the site planning permission has been obtained for a second beach house which is now up and running and is successful due to the unique location of the beach business. Weddings and special events are advertised on a website.

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

15. Where the trail follows the existing SWCP as currently walked and managed the existing infrastructure is not shown on the maps. This is explained in the legend for the maps and is why the steps, gates and bridge are not annotated on map MNQ2g. The report does not specify the landward boundary of margin as it is intended that the trail assumes the default legal width of 2m either side of the route line for the route sections the subject of the objection. This is because during the mapping exercise it was not clear whether there was a distinct physical boundary within the scrub woodland on the landward side of the route.
16. The objector notes that adjacent to route sections MNQ-2-S092 to MNQ-2-S093 and MNQ-2-S095 to MNQ-2-S096 there is part hedge line and fence line. NE is willing to amend Table 2.3.1 in report MNQ2 to reflect this fact, specifying that the landward boundary of margin along these route sections is "hedge line/fence" for "clarity and cohesion" reasons. However, in practice it will make little difference because the walker will continue to walk along the obvious path and is very unlikely to stray from it.
17. The Private Track to the beach is seaward of the trail. Land between the trail and mean low water becomes coastal margin by default. The legislation does not require NE to give details within reports of the land falling within this coastal margin because the extent of the seaward margin does not form part of NE's proposals. Therefore, report MNQ2 does not specifically mention the Private Track which is currently well used by many people – coastal path walkers, local residents and surfers to access the beach at Wanson Mouth. The path is becoming eroded by the adjacent river and users currently need to exercise caution.
18. NE is not actively promoting the use of this track to walkers. Local signage similar to that currently used elsewhere on the objector's land could be erected by the beach to inform visitors who had not passed the existing signs on their walk. The field gate could be replaced at the start of the Private Track where it diverges from the coast path to enable stock control. A sign could be placed on the gate stating that the beach is privately owned and the track is not a public right of way. Local signage is acceptable as long as it is not misleading i.e. it cannot state "no public access" once the coastal access rights come into force. The landowner would have to erect the gate and signs at their own expense.
19. The Access Authority has agreed to improve signage to make the route of the coast path clear to users so that they don't unintentionally head down to the beach. They will also replace the signpost on the road verge at route section MNQ-3-S001, report MNQ3, to direct walkers along the existing public right of way which provides a better and safer route to access the beach.

20. With regard to the CROW appeal decision submitted, under the coastal access legislation, coastal access rights apply throughout the coastal margin and they replace other access rights provided under Part 1 of CROW on land which forms part of the coastal margin. This would include access rights over open country, registered common land and any land previously dedicated for access under section 16 of CROW. The omission of the objector's land from Open Access maps does not prevent coastal access rights applying.
21. The objector has not asked for a direction to exclude access but has ticked the relevant box on the objection form as a ground of objection. NE therefore speculates that she may wish to apply in the future for a restriction and/or exclusion by direction under section 24 of the CROW Act to use the land in the coastal margin for private functions.
22. As outlined in section 2.4.12 of the Approved Scheme, after commencement of the coastal access rights, further restrictions or exclusions may be necessary locally, if situations arise that could not be foreseen initially. Once the new rights have commenced, if the objector believes that the new rights are incompatible with the management of the businesses NE encourage her to submit her concerns, along with supporting evidence, to NE. NE will then process the application in the normal way in compliance with the CROW Act.

### **Discussion and Conclusions**

23. I agree with NE that there is no reason to show existing infrastructure on the map. However, as stated by NE, the landward boundary could be specified as the hedge line/fence where appropriate.
24. At the site visit I did not access the Private Track due to the presence of a locked gate and the objector's concerns about the safety of anyone using it due to the erosion which has taken place. I note her concerns about future use of the Private Track and I agree that the current SWCP signage could be improved to ensure that walkers do not unintentionally head down the Private Track to the beach. Signage could also encourage those who wish to access the beach to use the public footpath and to return the same way.
25. Following the site visit NE confirmed that a "To the Coast Path" sign will be installed at the bottom of the public footpath on Wanson Beach. It will point back up the public footpath, thereby encouraging anyone who has used the footpath to access the beach to return the same way rather than attempting to cut across towards the Private Track. In addition, the finger post on the SWCP which can be seen from Wanson Beach and which may also encourage walkers to use the Private Track to join the trail, will be removed. A waymark post showing the route of the trail will be installed on the coast path opposite the gated end of the Private Track. I consider that all of these measures are likely to discourage walkers from trying to access the Private Track.
26. I note NE's comments with regard to coastal access rights and the relationship of those rights with rights under Part 1 of the CROW Act and have nothing to add.
27. As stated by NE the objector has not asked for a direction to exclude access to the part of the beach within her ownership. However, she has referred to the holding of private functions on the beach. If in the future the objector

considers that public access to the beach is incompatible with her business needs, she can apply to NE, with appropriate evidence, for a direction excluding access.

28. Taking all of these matters into account, I am satisfied that the proposals strike a fair balance between the interests of the public and the interests of those with a relevant interest in affected land.

### **Recommendation**

29. 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**