



## Appeal Decision

**By J Burston, BSc (Hons), MA MRTPI, AIPROW**

An Inspector appointed by the Secretary of State for Environment Food and Rural Affairs pursuant to the Countryside and Rights of Way Act 2000 (the 2000 Act) and the Marine and Coastal Access Act 2009 (the 2009 Act) to determine the appeal.

**Site Visit held on:** 28 March 2023

**Decision date:** 1 June 2023

---

**Appeal Ref: ENV/MAC/3313183/PSM**

**Kennack Sands Beach, The Lizard, Cornwall**

- The appeal is made by [REDACTED], dated 12 December 2022, and relates to the carrying out of establishment works at Kennack Sands, Cornwall in the absence of an agreement with the owner or occupier of the land.
- The notice, dated 17 November 2022, given under section 37(1) of the 2000 Act, states that the appropriate authority intends to take all necessary steps for carrying out the works specified in that notice with respect to any means of access; and paragraph 3(3) of Schedule 20 of the 2009 Act that the appropriate authority intends to take all necessary steps for carrying out the works specified in that notice for the purposes of Natural England's discharging the coastal access duty.
- The coast path is proposed to be realigned on Thorny Cliff, (south of the road to Kennack Sands beach), further up the coastal slope to make use of an old track that is located at the top of the coastal slope, and to avoid a section of the existing path that is wet under foot. The coast path is also proposed to be realigned off the road which leads to Kennack Sands beach.
- The works required in the notice include:
  - 1) The clearance of scrub along the line of the new route
  - 2) The installation of way marker posts to sign the new route
  - 3) Creating a gap in the Cornish hedge that is adjacent to the road
  - 4) Installation of steps, a handrail and way marker post to allow safe access from the road to the realigned path.
  - 5) The clearance of scrub along the line of the new route which will run parallel with the road down to the beach.
  - 6) The installation of a way marker at the eastern end of the new route.

**Decision: The appeal is dismissed, and the Notice confirmed.**

---

## Procedural Matters

1. To mark the coronation of the King, the England Coast Path was renamed the King Charles III England Coast Path. Throughout this decision the path will be referred to as the 'King Charles III ECP'.
2. I conducted my site inspection on 28 March 2023 when I was accompanied by a representative of the landowner and Natural England (NE).
3. A map of the appeal site is attached for reference purposes at Annex A of this decision. A plan showing the locations of the required works is provided at Annex B.
4. It is apparent from the legislation that appeals such as this are not an opportunity to revisit the approved line of the King Charles III ECP, whether that be an argument to not implement the works or that works should be implemented on another alignment. The opportunity for an appellant to have made these points would have been during the statutory consultation period. In any event, I note that during the relevant consultation period the Appellant did not submit any representation or objection to the published proposals with respect to his land at Kennack Sands.
5. The Appellant states that he did not receive every consultation letter purported to be sent by NE. In this respect NE have provided a summary of relevant correspondence (Annex 1 attached to NE Statement of Case). This confirms that NE had been in regular contact with the Appellant since 2017 and therefore he was fully aware of proposals and was provided with ample opportunity to comment.
6. The Report 'PSM 6: Devil's Frying Pan to Dolor Point' was approved by the Secretary of State on 23 April 2020.

## Main Issues

7. The grounds for appeal under Section 38 of the 2000 Act states:  
*"An appeal against a notice under section 37(1) may be brought on any of the following grounds—*  
*(a) that the notice requires the carrying out of any works which are not necessary for giving the public reasonable access to the access land in question,*  
*(b) in the case of works to provide a means of access, that the means of access should be provided elsewhere, or that a different means of access should be provided, and*  
*(c) that any of the works have already been carried out."*
8. Relating to 'other works' concerning the Coastal Access Duty, paragraph 4 of Schedule 20 of the 2009 Act states:  
*(a) that the notice requires the carrying out of any works which are not necessary for the purpose of the coastal access duty,*

*(b) that any of the works have already been carried out, and*

*(c) that the period specified in the notice as the period after which steps are to be taken to carry out the works is too short.”*

9. None of the works as specified in the Notice (and detailed in the Coastal Access Proposal Report, dated 18 September 2019) have been carried out and all relate to physical works to facilitate access on the approved route of the King Charles III ECP (Penzance to St Mawes PSM 6: Devil’s Frying Pan to Dolor Point).
10. Accordingly, the main issue in this case is whether the works, as set out in the Notice, are necessary to facilitate reasonable public access to the King Charles III ECP, on the approved section PSM 6: Devil’s Frying Pan to Dolor Point.

## **Background**

11. The 2009 Act sets out the requirement to provide an appropriate footpath route round the coast of England. In the South West, given the presence of the South West Coast Path (SWCP), NE sought to ensure that the best available route was provided for both the SWCP and the King Charles III ECP.
12. The King Charles III ECP in the vicinity of the appeal site mainly follows the existing SWCP. However, there are places where NE have proposed improvements to the existing route, particularly at Cadgwith, Kennack Sands and Kennack Towans. The works are required to ensure that the new route meets the ‘National Trail Standards’, is safe to use and is adequately way marked.
13. Accordingly, NE proposed works to the route as set out in the banner heading to this decision and a realignment of the route, including:
  - Realignment of the route at Thorny Cliff so that it will run slightly further inland of the current route to take advantage of an old track, thus avoiding use of a wet length of the route, and;
  - Realignment of the route between Thorny Cliff and Kennack Sands car park so that it will run parallel to the road, inside of the existing field boundary, thus avoiding use of the road which currently carries the SWCP.
14. There are several protected designated sites affecting the length of coast along PSM 6 namely, The Lizard Special Area of Conservation (SAC), Lizard Point SAC, Caerthillian to Kennack Site of Special Scientific Interest (SSSI) for its geological/wildlife interest, Kennack to Coverack SSSI for its geological/wildlife interest, Coverack Cove and Dolor Point SSSI for its geological/wildlife interest, Promontory fort at Lankidden Scheduled Ancient Monument (SAM) and Promontory fort at Chynalls Point SAM. These designated sites were all taken into consideration by the Secretary of State in making her decision and by Natural England when designing the ‘work specification to establish the realigned coast path.
15. Where necessary an Appropriate Assessment in accordance with the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended)

was undertaken. For protected sites along this section of the King Charles III ECP it was concluded that the coastal environment along this length of coast is unlikely to be sensitive to the improvements to coastal access envisaged and therefore no special measures are needed in respect of the proposals.

## Reasons

16. The Appellant's primary concern relates to the provision of a new section of footpath that would run alongside the existing single-track road towards Kennack Sands Car Park. He states that the additional path is not necessary given the existing road and that the footpath would require the removal of a historic Cornish stone hedge; that there would be disturbance to biodiversity and the Area of Outstanding Natural Beauty (AONB); the existing road could not be re-aligned to take account of coastal erosion; and the path would reduce his ability to maintain the infrastructure that runs along a similar alignment to the proposed path.
17. As set out in paragraph 4 above, this appeal process is not an opportunity to revisit the approved line of the King Charles III ECP, rather a process for the consideration of works necessary to construct it. Whilst the Appellant has highlighted that s.37(1)(b) of the Act provides that "*In the case of works to provide a means of access, that the means of access should be provided elsewhere, or that a different means of access should be provided,..*" (*my emphasis*), given the context of the legislation it would appear to me that this relates to providing an access to the confirmed alignment of the path elsewhere, rather than providing access along another route.
18. The Appellant is concerned that the clearance of scrub along the line of the new route will adversely impact on wildlife and the biodiversity of the area, particularly in areas that are being managed for wildlife. However, the schedule of works confirms that works to remove vegetation will be restricted to outside of the bird nesting season (March to August inclusive) and an Appropriate Assessment was conducted as set out in paragraph 15. Therefore, any impact on biodiversity would be limited. I also note that the majority of cleared vegetation will be retained on site and new habitat would be created through the provision of a new section hedgerow, which would also assist in mitigating against any harm.
19. The installation of steps (if necessary), a handrail and way marker post are proposed at point D on the attached map (Annex B). This is said to allow for safe access to and from the road to the realigned path. As I saw on my site visit the ground levels drop from the road to the adjacent field, although it was not possible for me to see the precise gradient due to the vegetation cover. Whilst NE would prefer to use a graded slope rather than steps, the use of steps may be necessary for safety reasons.
20. The Appellant comments that schedule 20(2) of the 2009 Act does not provide for the excavation of a hillside to facilitate the installation of steps, only drainage, levelling works and the improvement of surface. Whilst this is the case, I consider that works to facilitate access over a change in levels would be considered as 'improvements to the surface'. I reach this conclusion based on the fact that the whole King Charles III ECP would be over varying gradients and to achieve such a route would of necessity involve steps. To preclude this

provision would result in much of the route being inaccessible which would be contrary to the coastal access duty.

21. I note the concerns raised regarding the proposed fencing. NE had proposed to block the existing coastal path at point C with a short length of post and rail fencing once the new King Charles III ECP route was complete. However, a new section of Cornish hedge is now proposed instead of the fencing, which will be more in keeping with the historic hedge boundaries present in this location and would alleviate the appellant's concerns.
22. The works will include the provision of a 1100mm wide gap, in the existing stone hedge at point D, which NE confirm would conform to British Standard BS5709:2018. The stone wall and hedge would be required to retain the local character. As I saw on my site visit the Cornish stone hedge runs concurrently with the road and no other accesses were readily available which could be used as an alternative. Accordingly, the provision of an access here, opposite the King Charles III ECP access to the west, is necessary for giving the public reasonable access to the approved route and would avoid users walking along the single-track road. It is not proposed to erect any additional fencing here, which I agree with the Appellant would be to the detriment of the character and appearance of the area.
23. The footpath would not damage or restrict the landowner's ability to manage his underground infrastructure, such as the mains electricity and water services. This is because the utility plans provided by the Appellant show these services running further inland from the alignment of the proposed footpath. In any event, there would be the ability to temporarily divert the footpath if it was necessary to access these services. Moreover, in terms of the potential to damage the services during construction works, the removal of roots and grading of the surface will be to a shallow depth and would be unlikely to impact any cables or pipes that are buried in the ground and the contractor will be made aware in advance of this matter.
24. NE accept that cliff erosion is a natural process, and the coastal footpath must be managed with this in mind. This management process is termed 'roll back' where NE consider how the coastal route could be capable of being repositioned at a later date should erosion occur. In this respect the Appellant is concerned that if significant erosion occurs the existing beach access road will become unsafe for vehicular traffic and given the location of the footpath the road would not be capable of being re-aligned. Nevertheless, the route of the King Charles III ECP is not necessarily a block to future development, subject to the relevant planning permissions. NE comment that it may be possible to re-align the road and move the coast path so it would then effectively use the 'old road'. Accordingly, the Appellant's fears in this regard can be alleviated.
25. Many of the Appellant's objections to the notice concern the confirmed alignment of the route, rather than the necessity of such works to facilitate reasonable public access. As set out in my reasoning above I consider that works are necessary to facilitate public access and no reasonable alternatives are available. I have also found that the mitigation measures proposed would ensure that the works would not negatively impact on local biodiversity or the landowner's interests.

26. Given that I have found no significant evidence to the contrary, I conclude on the main issue that the works, as set out in the Notice, are, on balance, necessary to facilitate reasonable public access to the King Charles III ECP, on the approved section PSM 6: Devil's Frying Pan to Dolor Point.

### **Conclusions**

27. Having regard to these and all other matters raised, I conclude that the appeal should be dismissed, and the Notice confirmed without modification.







*J Burston*

**INSPECTOR**



## ANNEX A – Appeal Ref: ENV/MAC/3313183/PSM

### PROPOSALS

#### Trail Sections

-  Trail using existing public right of way or highway
-  Trail using other existing walked route
-  Trail not using existing walked route
-  Alternative route
-  Trail shown on other maps
-  Approved or open England Coast Path

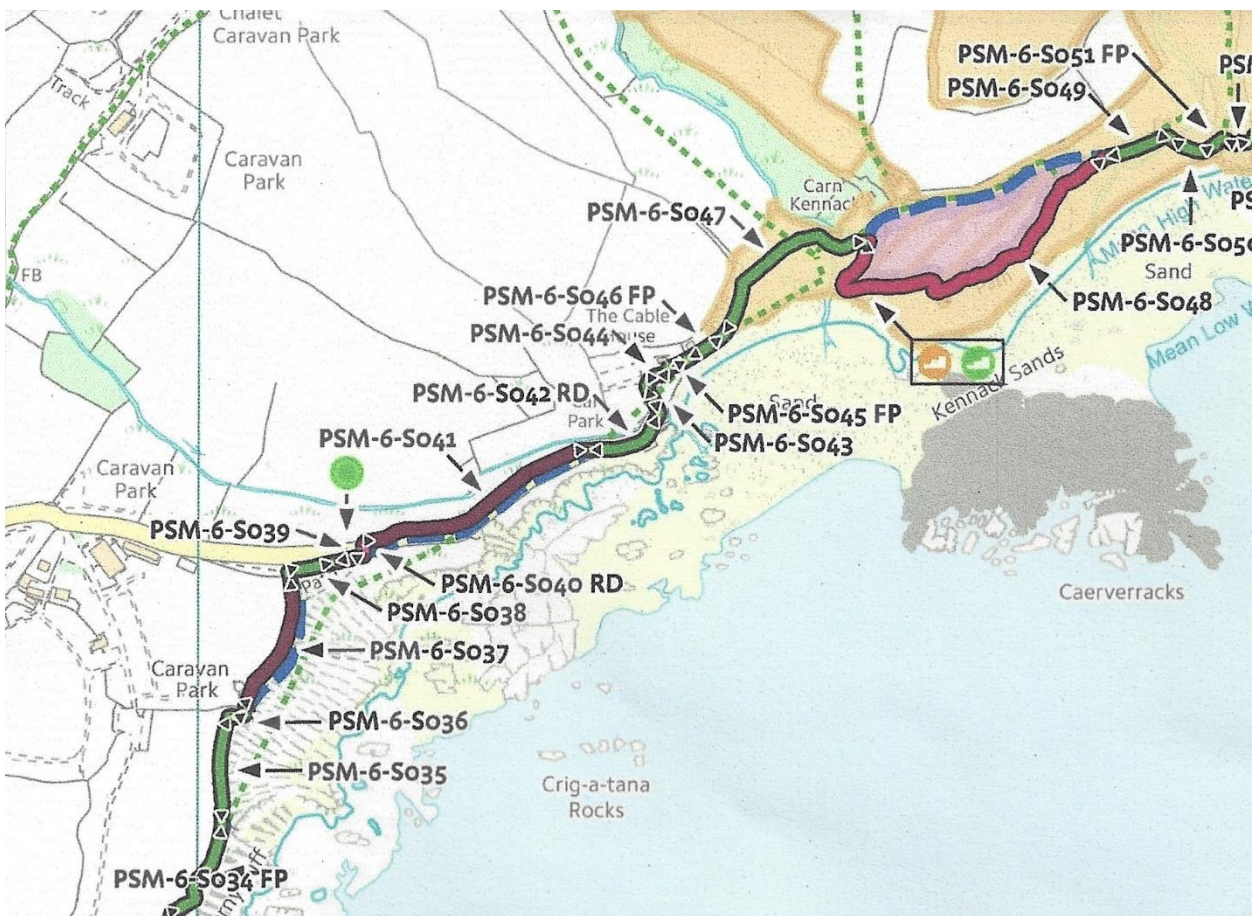
Maps that show sections of the trail that follow the existing South West Coast Path as currently walked and managed use the following trail categories. Information on the existing status and infrastructure is not shown.

-  Trail using existing South West Coast Path
-  Alternative or optional alternative route using existing South West Coast Path

#### Infrastructure status

Each symbol shown on the map is colour coded as appropriate, as in this example for a set of steps:

-  Existing steps to be retained
-  New steps required
-  Existing steps to be removed



**ANNEX B – Appeal Ref: ENV/MAC/3313183/PSM**

