



The Planning Inspectorate

Report to the Secretary of State for Environment, Food and Rural Affairs

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 31 March 2022

MARINE AND COASTAL ACCESS ACT 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Cremyll to Kingswear

Report CKW-5 Mothecombe Beach to the Avon Estuary

CKW-5-S042 to CKW-5-S046FP

Site visit made on 2 November 2021

File Ref: MCA/CKW/03

<https://www.gov.uk/planning-inspectorate>

Objection Reference: MCA/CKW/03

Land at Folly Hill, Bigbury-on-Sea

- On 15 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear 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 ('the 2009 Act').
- An objection to Report CKW 5, Mothecombe Beach to the Avon Estuary, was made by [redacted] on 9 March 2020. The land in the report to which the objection relates is route sections CKW-5-S042 to CKW-9-S046FP shown on map 5f.
- The objection is made under paragraphs 3 (3) (b) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail 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 Report CKW 5 do not fail to strike a fair balance.

Procedural Matters

1. On 15 January 2020 Natural England ('NE') submitted reports to the Secretary of State setting out proposals for improved access to the coast between Cremyll and Kingswear. The period for making formal representations and objections to the reports closed on 11 March 2020.
2. There is one admissible objection to report CKW 5. In addition to the objection, various representations were made in relation to the CKW 5 report. Of these representations, those made on behalf of the Ramblers Association Devon refer specifically to those sections subject to the objection.
3. I have been appointed to report to the Secretary of State on an objection made to Report CKW 5. This report includes the gist of submissions made by the objector and those making representations, the gist of the responses made by NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs within this report. The land in Report CKW5 to which the objection relates is route section CKW-5-S042 to CKW-5-S046. [redacted]'s property is seaward of section CKW-5-S042.
4. I carried out an inspection of the land subject to the objection on 2 November 2021 accompanied by [redacted] and representatives of NE.

Main Issues

5. The coastal access duty arises under section 296 of the 2009 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:

Site visit made on 3 November 2021

File Ref: MCA/CKW/08

- (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.
6. The second objective is that, in association with the English Coast Path ('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 trail or otherwise. This is referred to as the coastal margin.
7. Section 297 of the 2009 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.
8. NE and the Secretary of State 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.
9. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. The Scheme forms the basis of the proposals of NE within the Report.
10. My role is to consider whether or not a fair balance has been struck. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

11. The trail, subject to the CKW 5 report, runs from Mothecombe Beach (grid reference 6095 4731) to the Avon Estuary (grid reference 6661 4402) as shown on maps 5a to 5f (points CKW-5-S001 to CKW-5-S049FP). The trail follows the existing South West Coast Path as currently walked and managed along most of the CKW 5 stretch including crossing the River Erme at low tide by fording on foot between the slipways at Mothecombe and Wonwell and by using the ferry service across the River Avon. The trail generally follows the coastline closely and maintains good views of the sea.
12. The section of the trail subject to the objection (EHS-5-S042 to CKW-5-S046) runs landward of Folly Hill, Bigbury-on-Sea.

The Objection

13. The proposal indicated by means of purple shading that all land seaward of the trail between CKW-5-S042 to CKW-5-S046 where it runs to the north of Folly Hill would become coastal margin and subject to a public right of access.

14. The residential curtilage of Rockhaven should not be included in the purple shading and the proposals plan should be amended accordingly. NE acknowledge that residential curtilages are excluded from the access rights associated with the coastal margin.
15. In addition to being the residential curtilages of all the dwellings along Folly Hill, the land shaded purple also includes steep, inaccessible cliff faces which is impossible and dangerous to access. It is not considered that any of the land along this particular length of cliff face should be designated as suitable for public access. It is noted that one of the principles of the Scheme is that the trail and its coastal margin should be 'safe and convenient for users'; this is not the case here.
16. There are periodic but regular rockfalls from the cliffs along this section of the coast. To actively encourage people to access this land would seem totally inappropriate given the risk and dangers present at this location.
17. The proposed trail would run on the landward side of the public road and would be disconnected from the cliff face. To access the cliff face would mean passing through residential curtilages which are excluded from the exercise of coastal margin rights.
18. It is submitted that the proposal maps should be modified to exclude residential curtilage and the steep cliffs from the coastal margin

Representation R1

19. The Ramblers Association submits that in the timeframe of approximately 2 hours either side of low tide it is possible to walk the foreshore and beach from the Burgh Island slipway to Cockleridge Ham. The foreshore route has been used on numerous occasions and is preferable to the 'inland' landward route via Mount Folly Farm being proposed. The foreshore route should be considered as an alternative.

The Response by Natural England

The Objection

20. The seaward coastal margin depicted by the purple colourwash to [redacted] refers is an automatic consequence of the position of the trail on the landward side of Folly Hill. Under the coastal access legislation all land seaward of the trail as far as mean low water automatically becomes coastal margin irrespective of land use. Once the coastal access rights come into force the residential properties and their curtilages will fall within the coastal margin, however those houses and their gardens would be excepted from coastal access rights under Schedule 1 to the Countryside and Rights of Way Act 2000 ('the 2000' Act).
21. The legislation does not provide a mechanism whereby land seaward of the trail can be removed from the coastal margin, and this is so even where the terrain is unsuitable for public access or where land use makes the land incompatible with public access. Where this is the case, the legislation deals with such conflicts through either the Schedule 1 excepted land provisions or by directions to exclude or restrict access under Part 1 of the 2000 Act.

22. It would not be possible for NE to implement a direction to exclude access over excepted land (such as the residential property and its garden) because such a direction would have no legal effect due to there not being any public access rights to exclude from the land.
23. [redacted] (and other residents along Folly Hill) would be able to erect signs stating that the garden is excepted land although it is not considered necessary as it is unlikely that users of the trail would attempt to access land which is obviously for private use as a garden. Given the steep nature of the cliff, trail users are unlikely to attempt to cut across the garden to gain access to the beach.
24. The cliffs seaward of the excepted land are steep and unstable and it is considered unlikely that these would be accessed by those walking along the beach at foreshore during low tide. Part 1 of the 2000 Act does not make provision for NE to exclude by direction land it considers to be unsafe where that danger is posed by natural features such as cliffs. A key principle of the coastal access legislation is that trail users should take primary responsibility for their own safety when visiting the coast.

The Representation

25. NE welcomes the positive engagement of Ramblers Association Devon during the development of the proposals. The point made about a route between Burgh Island and Cockleridge Ham along the foreshore and beach being available at low tide is acknowledged. This route had not been considered as an option for the trail as it is not available at all states of the tide. However, the foreshore and beach would fall within the coastal margin and as a consequence would be subject to coastal access rights and available for people to use if they considered such a route appropriate.

Conclusions

26. The Secretary of State may wish to note that in discharging the coastal access duty regard must be given to a number of factors. The route proposed by NE follows the line of the South West Coast Path, which is used extensively by the public, is reasonably close to the sea and, although it runs on the landward side of a hedgerow field boundary, offers views of the sea at breaks in the hedge. Furthermore, it is a route which would be available at all states of the tide. The proposed route therefore satisfies the Scheme criteria set out in sections 4.4, 4.5 and 4.6.
27. NE has given consideration to the alternative route suggested in the representation made by Ramblers Association Devon. However, the alternative low tide route proposed would not satisfy the criteria in section 4.6 of the Scheme as it would not be available other than at low tide and a limited period of time either side of low tide.
28. The objector does not take issue with the proposed route of the trail, only with the potential impact on her property of the land seaward of the trail lying within the coastal margin. The objector is concerned with the possibility that trail users may seek to access the beach and foreshore via her garden, and more particularly, that those who choose to use the route along the foreshore

suggested by Ramblers Association Devon may seek to access the trail landward of Folly Hill via her garden if they find themselves cut off by an incoming tide.

29. The objector's garden extends down to the beach which can be accessed by a switchback path and steps. The path is gated at a point landward of the beach and the erection of appropriately worded signage at the gate or at the bottom of the path stating that there is no access to Folly Hill, or to the trail may deter or dissuade those walking along the foreshore from attempting to use the garden path for such access.
30. As regards the objector's concerns that users of the beach may become stranded by an incoming tide, the Access Authority may give consideration to the erection of appropriate information boards or signs in the vicinity of Sharpland Point and Cockleridge Ham informing users of the nature of the tides in this vicinity.
31. As regards the proposed route of the trail, sections CKW-5-S042 to CKW-5-S046FP are currently well-used by the public as part of the South West Coast Path. The incorporation of this route within the trail may result in an increase in the numbers of users passing along the path as current levels of use may be augmented by those following the trail. However, the use of informal management techniques such as signage and waymarking along this section should limit or mitigate the incidence of trail users mistakenly seeking to access the objector's property.

Habitats Regulations Assessment (HRA)

32. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network.
33. The HRA dated 17 October 2019 provides information to inform the Competent Authority's AA. The assessment was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRA considers the potential impacts of the coastal access proposals on the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC. The HRA has identified the relevant sites affected by the proposals.
34. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features,

and/or contains non-conservation elements, further assessment under the HRA provisions was required. The overall screening decision found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European sites 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.

35. The scope of the appropriate assessment is set out in Section D1 and Table 4 of the HRA and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in section D2; the Secretary of State should note that in relation to the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC and South Hams SAC, this relates to the entirety of the CKW section of the trail; the section of CKW to which this report relates does not impact directly on any of these designated sites.
36. The assessment of AEoI for the project 'alone' takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives.
37. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEoI 'in-combination' with other plans or projects.
38. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from small-scale habitat loss at Lannacombe Bay for path improvement works had the potential to act 'in-combination' with those from other proposed plans or projects.
39. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on the Plymouth Sound and Estuaries SAC, Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC either 'alone' or 'in-combination' with other plans and projects.
40. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear are fully compatible with the relevant European sites' conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of

the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

Nature Conservation Assessment (NCA)

41. The NCA, dated 15 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), and undesignated but locally important sites and features, which are not already addressed in the HRA. Relevant to this report is the Devon Avon Estuary MCZ as the intertidal parts of the MCZ fall within the coastal margin. It is not considered that access levels will increase significantly on the foreshore or coastal margin as a result of the access proposals. NE concluded in relation to the Devon Avon Estuary MCZ that the access proposal (including any mitigation measures specified) is the one that is least likely to hinder the achievement of the conservation objectives for the MCZ.
42. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

Whether the proposals strike a fair balance

43. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations and satisfies the Scheme criteria. Whilst the objector's property falls within the default coastal margin, that property is excepted land and is not subject to coastal access rights. Suitable and appropriate signage and other informal management techniques are likely to address the potential adverse effect of trail users seeking to access the beach (or vice versa) via the objector's property. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

44. 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 within paragraphs 3 (3) (b) and (e) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON



Report to the Secretary of State for Environment, Food and Rural Affairs

by Alan Beckett BA MSc MIPROW

A person appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 10 May 2022

MARINE AND COASTAL ACCESS ACT 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Cremyll to Kingswear

Report CKW-9 Torcross to Kingswear

CKW-9-S043RD

File Ref: MCA/CKW/08
Land at Redlap, Dartmouth

- On 15 January 2020, Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Cremyll and Kingswear 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 ('the 2009 Act').
- An objection to Report CKW 9, Torcross to Kingswear, was made by [redacted] on 24 February 2020. The land in the report to which the objection relates is route sections CKW-9-S043RD shown on map 9f.
- The objection is made under paragraph 3 (3) (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail 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 15 January 2020, Natural England ('NE') submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear. The period for making formal objections to the reports closed on 11 March 2020.
2. There are 5 admissible objections to report CKW 9. Four of these objections relate to other sections of the proposed trail and are considered in separate reports. There are various representations which refer to sections of the trail proposed in report CKW 9, but none directly relate to that part of the proposed route considered in this report.
3. I have been appointed to report to the Secretary of State on an objection made to Report CKW 9. This report includes the gist of submissions made by the objectors, the gist of the responses made by NE and my conclusions and recommendation.
4. I carried out a site inspection of the land subject to the objections on 3 November 2021 accompanied by [redacted] and representatives of NE.

Main Issues

5. The coastal access duty arises under section 296 of the 2009 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

Site visit made on 2 November 2021

File Ref: MCA/CKW/04

- (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English Coast Path (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 trail or otherwise. This is referred to as the coastal margin.
 7. Section 297 of the 2009 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.
 8. NE and the Secretary of State 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.
 9. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. The Scheme forms the basis of the proposals of NE within report CKW 9.
 10. My role is to consider whether or not a fair balance has been struck. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

11. The trail, subject to the CKW 9 report, runs from Torcross (grid reference 8233 4200) to Kingswear (grid reference 8785 5108) as shown on maps 9a to 9h (points CKW-9-S001 to CKW-9-S060RD). The trail primarily follows the existing South West Coast Path ('SWCP') as currently walked and managed, follows the coastline closely and maintains good views of the sea apart from where it runs inland through Strete, where it is landward of houses and fields at Matthew's Point and between Redlap and Warren Point where it is landward of houses, gardens, and arable fields.

The Objection

12. The proposal to route the trail along the current route of the SWCP would result in all land on the seaward side of Redlap Lane becoming coastal margin. This land comprises the majority of Redlap Farm and is used for lambing of the sheep flock in spring and for grazing by pregnant ewes or ewes with lambs at foot. Some of the land is also used for spring cereals. To the south of this land is parkland excluded from the coastal margin; those exercising coastal access rights will be concentrated on Redlap Farm and will cause welfare issues for livestock.
13. There are few buildings at Redlap Farm and the sheep flock is kept in the fields year-round. There have been incidents of the public and dogs entering the fields south of Redlap Lane (over which there are currently no rights of access) which

- has resulted in the loss of sheep through worrying. The proposal would result in all but 15 acres of the farm being drawn into the coastal margin.
14. The proposal would result in the public having the right to roam over the majority of the farm including those fields which directly overlook the farmhouse and yard, resulting in loss of privacy and security. Although land in arable cultivation is not included in the coastal margin it is considered that the public will not differentiate between access and non-access land. The land south of Redlap Lane should not be included as coastal margin particularly as the trail turns towards the coast some 400m to the east near Little Dartmouth Farm.
 15. In light of the potential welfare issues for the sheep flock; the potential for intrusion of privacy; and the absence of any direct access to the coast from the trail, a direction should be made to exclude public access year-round from the fields to the south of Redlap Lane.

The response by NE

16. It has not been possible to establish a route adjacent to the coastline to the seaward side of the objector's land due to areas of excepted land which extend as far as the cliff at Redlap House. Following meetings and discussions with the objector and other landowners, a decision was taken to route the trail along Redlap Lane to follow the current course of the SWCP. It is acknowledged that part of the farm would become part of the coastal margin; however, other parts would be excepted land as buildings or curtilage, or land that has been ploughed within the last 12 months.
17. The concerns expressed by the objector regarding his flock of sheep are acknowledged. A great deal of land grazed by sheep is subject to public access and sheep and public access can normally coexist quite happily, with sheep usually being untroubled by considerate public use.
18. However, it is also recognised that problems are more likely to occur when people bring dogs with them. The concerns raised regarding disturbance to pregnant ewes or the worrying of ewes with lambs at foot by dogs are also acknowledged. Two national requirements help address these concerns. First, it is an offence under the Dogs (Protection of Livestock) Act 1953 ('the 1953 Act') to allow dogs to chase or attack livestock; and secondly, on land with coastal access rights, people are required to keep their dogs under effective control. This includes a requirement to keep dogs on short leads in the vicinity of livestock.
19. The trail will pass landward of Redlap Farm along the public carriageway of Redlap Lane. It is anticipated that the vast majority of trail users will want to stay on the trail at this location as the agricultural land seaward of Redlap Lane lies behind tall hedgerows and as there is no access to the coast due to excepted land at Redlap House.
20. Section 8.4 of the Scheme suggests that issues such as those raised in the objection could be dealt with by sensitive alignment of the trail and informal management solutions. The national requirements in relation to dog control will limit the need for directions in relation to the issues raised in the objection. Furthermore, the Scheme states that directions are unlikely to be necessary on sites larger than 15 Ha unless visitor use is unusually high and that if the trail passes through smaller enclosures used for the gathering or handling of pregnant ewes or lambs at foot, directions should be considered as an additional measure.

21. Because the use of the trail at Redlap Lane is expected to be relatively light; because the trail does not pass through the fields; and because dogs should, in any case, be on a short lead in the vicinity of livestock, it was concluded that a direction to exclude access over the coastal margin was not necessary at this time. This would not preclude the objector from erecting signs requesting that pregnant ewes or those with lambs at foot should not be disturbed.
22. The trail will follow Redlap Lane and thus avoid the areas of concern. While the fields to the south of Redlap Lane will fall into the coastal margin by default, it is not considered that many trail users will seek to access this land. Parts of the farm will fall into one or other categories of excepted land and will be excluded from the access provisions. The objector would remain able to erect notices to the effect that there was no route through to the coast and that any access ways or tracks led solely to farm buildings.

Conclusions

23. The Secretary of State may wish to note that in discharging the coastal access duty regard must be given to those factors set out in paragraph 7 above. The Secretary of State will note that the proposed route running along Redlap Lane would not adhere to the periphery of the coast and would run some distance inland of the coast. However, it has not been possible to align the trail closer to the sea due to excepted land seaward of the objector's property extending to the cliffs. The relevant landowner is unwilling to dedicate an access route through that excepted land.
24. The undulating nature of Redlap Lane along section CKW-9-S043RD is such that views of the sea are intermittent and are somewhat obscured by the hedges that bound Redlap Lane. Nonetheless, the proposed route would provide views of the sea from the more elevated parts of the road. The trail would follow the current line of the SWCP along an existing public road; it is therefore unlikely that use of the trail would be interrupted. No evidence has been submitted to suggest that Redlap Lane would be unsafe for public use.
25. Although the proposed route would not be on the periphery of the sea, it appears to satisfy the other criteria for the trail and in the absence of an alternative route, appears to be the best fit of the relevant criteria.
26. Section 8.4 of the Scheme sets out the approach to be taken to the coastal land use issues arising in relation to sheep. As noted by NE, several national provisions are in place to help significantly reduce the potential for disturbance to sheep arising from trail users. Section 8.4.7 notes that in relation to pregnant ewes and lambs at foot, the potential for disturbance is likely to depend on the patterns and levels of public access, in particular the route of the trail. Section 8.4.7 also notes that intervention is more likely to be necessary in small enclosures than in large or unenclosed areas where contact between dogs and sheep is less likely.
27. Section 8.4.11 notes that the trail could be aligned so that it avoids an enclosure in which sheep are usually kept, even if were the most convenient route. Such an option would be considered if the field were so small that it would be impossible for sheep and trail users to avoid each other.
28. In this case, the trail is not being aligned within the objector's fields but along Redlap Lane which is separated from the fields by hedges and fences. The

concerns raised by the objector arise from the fields seaward of the trail falling into the coastal margin by default. The national restrictions arising from the 1953 Act will limit the need for directions to be made in relation to those fields which fall into the coastal margin.

29. Furthermore, as the trail is not aligned within the objector's fields, informal management techniques such as those suggested by NE during the lambing season would serve to remind trail users of their responsibility to keep dogs on short leads in the vicinity of livestock and of the risk to lambs of separation or rejection by the ewe, should any trail followers consider exercising a right of access into the adjacent coastal margin.
30. NE are of the view that the numbers likely to be using the trail will be relatively light, although no precise figures have been put forward. Whilst the designation of the trail may lead to an increase in user numbers, such an increase is likely to be small as the proposed route already forms part of the SWCP. Those who seek to use the trail are likely to remain on Redlap Lane as part of their journey to or from Little Dartmouth. Given the existing national restrictions regarding dogs in the vicinity of livestock, a direction to exclude access from the default coastal margin is therefore unlikely to be necessary.
31. Section 8.4.20 of the Scheme notes that in enclosures smaller than 15 hectares which are used for periodic gathering and handling of sheep or by pregnant ewes or young lambs at foot, consideration can be given to whether to use directions to exclude access as an additional mitigation measure. The three fields of concern to the objector are collectively less than 15 hectares. Should the establishment of the trail on the public road adjacent to these fields demonstrably lead to the problems envisaged by the objector, the question of whether a direction would be appropriate should be revisited.

Habitats Regulations Assessment (HRA)

32. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the UK National Site Network.
33. The HRA dated 17 October 2019 provides information to inform the Competent Authority's AA. The assessment was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRA considers the potential impacts of the coastal access proposals on the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC. The HRA has identified the relevant sites affected by the proposals.

34. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, and/or contains non-conservation elements, further assessment under the HRA provisions was required. The overall screening decision found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European sites 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
35. The scope of the appropriate assessment is set out in Section D1 and Table 4 of the HRA and identifies the sites and Qualifying Features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in section D2; the Secretary of State should note that in relation to the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC, this relates to the entirety of the CKW section of the trail; the section of CKW to which this report relates does not impact directly on any of these designated sites.
36. The assessment of AEoI for the project 'alone' takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives.
37. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEoI 'in-combination' with other plans or projects.
38. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from small-scale habitat loss at Lannacombe Bay for path improvement works which had the potential to act 'in-combination' with those from other proposed plans or projects.
39. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on the Plymouth Sound and Estuaries SAC, Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC either 'alone' or 'in-combination' with other plans and projects.
40. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear are fully compatible with the relevant European sites' conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of

the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

Nature Conservation Assessment (NCA)

41. The NCA, dated 15 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), and undesignated but locally important sites and features, which are not already addressed in the HRA. There are no designated or undesignated but locally important sites and features in the vicinity of the section of the trail considered in this report. NE were satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of their functions.
42. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

Whether the proposals strike a fair balance

43. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations and satisfies the Scheme criteria. The concerns raised by the objectors regarding the potential for disturbance to sheep by pedestrians and their dogs can be addressed by the statutory restrictions in relation to dogs in the vicinity of livestock. Informal management techniques may also help to educate trail users to the risks posed to sheep by dogs particularly when pregnant or with lambs at foot.
44. Given that the trail is to be aligned along a public road, the existing restrictions on dogs are likely to mitigate any potential impact the establishment of the trail may have. Suitable and appropriate signage and other informal management techniques are likely to address the potential adverse effect of trail users seeking to access the coastal margin. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

45. 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 within paragraphs 3 (3) (e) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON



The Planning Inspectorate

Report to the Secretary of State for Environment, Food and Rural Affairs

by Alan Beckett BA MSc MIPROW

A person appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 26 April 2022

MARINE AND COASTAL ACCESS ACT 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Cremyll to Kingswear

Report CKW-9 Torcross to Kingswear

CKW-9-S015FP to CKW-5-S019FP

Objection Reference: MCA/CKW/04

Land at Strete

- On 15 January 2020, Natural England ('NE') submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear. The period for making formal objections to the reports closed on 11 March 2020.
- There were five admissible objections to report CKW 9. The objection made by [redacted] is dated 21 January 2020 and is made under paragraphs 3 (3) (e) of Schedule 1A to the national Parks and Access to the Countryside Act 1949 on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection. The land in Report CKW 9 to which the objection relates is route section CKW-9-S015FP to CKW-9-S019FP. [redacted]' property is landward and seaward of these sections. The four other objections to report CKW 9 are considered in separate reports.
- In addition to the objection, five representations were made in relation to the CKW 9 report. None of these representations refer specifically to those sections subject to the objection.
- I carried out an inspection of the land subject to the objection accompanied by [redacted]' representative and representatives of NE.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report CKW 9 in relation to sections CKW-9-S015FP to CKW-9-S019FP do not fail to strike a fair balance.

Procedural and Preliminary Matters

1. I have been appointed to report to the Secretary of State on an objection made to Report CKW 9. This report includes the gist of submissions made by the objector and the gist of the responses made by NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs within this report.

Main Issues

2. The coastal access duty arises under section 296 of the Marine and Coastal Access 2009 Act ('the 2009 Act') and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
3. The first objective is that there is a route ('the trail') 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.

Site visit made on 3 November 2021

File Ref: MCA/CKW/05, 06 & 07

4. The second objective is that, in association with 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 trail or otherwise. This is referred to as the coastal margin.
5. Section 297 of the 2009 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.
6. NE and the Secretary of State 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.
7. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. The Scheme forms the basis of the proposals of NE within the Report.
8. My role is to consider whether the proposals set out in NE's Report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

9. The trail, subject to the CKW 9 report, runs from Torcross (grid reference 8233 4200) to Kingswear (grid reference 8785 5108) as shown on maps 9a to 9h (points CKW-9-S001 to CKW-9-S060RD). The trail follows the existing South West Coast Path ('SWCP') as currently walked and managed and follows the coastline closely and maintains good views of the sea, apart from where it runs inland through Strete where it is landward of houses and fields; at Matthew's Point where the trail is landward of houses and fields; at Stoke Fleming where the route passes through the village; and between Redlap and Warren Point where it is landward of houses, gardens, and arable fields.
10. The trail will differ from the existing SWCP between Stoke Fleming and Redlap Lane as it follows a more seaward route via the public footpath and fields along Shady Lane.

The Objection

11. As part of the re-alignment of the South West Coast Path in 2013 by way of a public path agreement, it was agreed that the public footpath would be routed along the cliff top which separated the house and part of the garden from the remainder of the land and cliffs which form part of the property, and from the path from the house leading down the cliffs to the beach.

12. It was agreed with Natural England, Devon County Council and South Hams District Council that a pedestrian tunnel could be created underneath the re-aligned SWCP to maintain a means of access from the house to the beach.
13. Report CKW 9 fails to provide an exclusion or restriction applicable to the pedestrian tunnel. The objection is made solely in respect of the pedestrian tunnel which should be excluded from the coastal margin.
14. Excluding the pedestrian tunnel from the coastal margin would have little or no impact upon public enjoyment of the coastal margin comprising the cliffs below the house. Exclusion would however prevent the public from seeking access through the tunnel to the house and garden landward of the trail; it would also prevent people from using the tunnel for other purposes (such as camping). The beach below the cliffs is known for unofficial overnight camping and raves where large numbers of people congregate.
15. The exclusion of approximately 12m² of the tunnel seaward of the trail would represent a fair balance between the public's rights of access and the security and privacy of the property landward of the trail.

The Response by Natural England

The Objection

16. The coastal margin is an automatic consequence of the position of the trail on the current alignment of the SWCP. Under the coastal access legislation all land seaward of the trail as far as mean low water automatically becomes coastal margin irrespective of land use. Once the coastal access rights come into force the objector's garden seaward of the trail will fall within the coastal margin, however that land will be excepted from coastal access rights under the provisions of Schedule 1 to the Countryside and Rights of Way Act 2000 ('the 2000' Act).
17. It would not be possible for NE to implement a direction to exclude access over excepted land (such as any part of the garden seaward of the trail) because such a direction would have no legal effect due to there not being any public access rights to exclude from the land.
18. NE is of the view that the tunnel is a built structure and therefore is excepted land under the provisions of Schedule 1 of the 2000 Act. This means that although the tunnel falls within the coastal margin seaward of the trail, no public rights of access apply to it; the objector can erect notices to that effect, should he so wish. The legislation makes no provision for excepted land to be removed from the default coastal margin and any direction to exclude access to the tunnel would have no effect as there will be no access rights over that structure to exclude.
19. In practice, the approval of the proposed route as part of the trail should have no impact upon the way the objector currently manages the tunnel. The door into the tunnel on its seaward side can continue to be locked so that the tunnel (and the access to the house and garden) remains inaccessible to the public and the tunnel can remain largely hidden from view.

Conclusions

20. The Secretary of State may wish to note that in discharging the coastal access duty regard must be given to a number of factors [8]. The route proposed by NE follows the line of the footpath created by agreement in 2013 to serve as the South West Coast Path. The path is used extensively by the public, is reasonably close to the sea and offers views of the sea. Furthermore, it is a route which would be available at all states of the tide. The proposed route therefore satisfies the Scheme criteria set out in sections 4.4, 4.5 and 4.6.
21. I saw from my site visit that the path to the objector's property up the cliff from the beach is not well defined and is generally well hidden from view. There is a gate part way along the path between the beach and the seaward portal of the tunnel. Although the gate was not locked at the time of my visit, it had the necessary hardware on it to enable it to be locked from the landward side. The tunnel at issue is generally well hidden from view with access through the seaward portal being via a lockable door. The tunnel provides a means of access from the beach to the house and vice versa.
22. The tunnel and the cliffs seaward of it will fall within the coastal margin by default as a result of the trail being aligned upon the public footpath utilised by the SWCP. However, as noted by NE, the tunnel is a 'built structure' and as such is excepted land under Schedule 1 of the 2000 Act and the access rights associated with the coastal margin are not exercisable within the tunnel. Similarly, access rights associated with the coastal margin would not be exercisable over any part of the garden seaward of the trail.
23. The objector does not take issue with the proposed route of the trail, only with the potential impact on his property of the land seaward of it lying within the coastal margin. As the tunnel and any garden land seaward of the trail will be excepted land and therefore not subject to coastal access rights, the objector will be able to keep the seaward door of the tunnel and the gate on the path to the beach locked when the tunnel and path is not in use.
24. Should he so wish, the objector will also be free to erect suitably worded notices at the gate and the tunnel to indicate that coastal access rights do not apply. Appropriately worded signage stating that there is no access to the trail may deter or dissuade those who discover the cliff path to the tunnel from attempting to use the path for access to the trail.
25. As coastal access rights would not be applicable to the tunnel due to its exception as a built structure and as any part of the garden seaward of the trail would also be excepted land, I agree with NE that it would not be possible for a direction to be given to exclude access to this land as there would be no coastal access over such land to exclude.
26. As regards the proposed route of the trail, sections CKW-9-S015FP to CKW-9-S019FP are currently well-used by the public as part of the SWCP. The incorporation of this route within the trail may result in an increase in the numbers of users passing along the path as current levels of use may be augmented by those following the trail. However, the use of informal management techniques such as signage and waymarking along this section

should limit or mitigate the incidence of trail users mistakenly seeking to access the objector's property.

Habitats Regulations Assessment (HRA)

27. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network.
28. The HRA dated 17 October 2019 provides information to inform the Competent Authority's AA. The assessment was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRA considers the potential impacts of the coastal access proposals on the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC. The HRA has identified the relevant sites affected by the proposals.
29. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, and/or contains non-conservation elements, further assessment under the HRA provisions was required. The overall screening decision found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European sites 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
30. The scope of the appropriate assessment is set out in Section D1 and Table 4 of the HRA and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in section D2; the Secretary of State should note that in relation to the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC, this relates to the entirety of the CKW section of the trail; the section of CKW to which this report relates does not impact directly on any of these designated sites.
31. The assessment of AEoI for the project 'alone' takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives.

32. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEoI 'in-combination' with other plans or projects.
33. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from small-scale habitat loss at Lannacombe Bay for path improvement works had the potential to act 'in-combination' with those from other proposed plans or projects.
34. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on the Plymouth Sound and Estuaries SAC, Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC either 'alone' or 'in combination' with other plans and projects.
35. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear are fully compatible with the relevant European sites' conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

Nature Conservation Assessment (NCA)

36. The NCA, dated 15 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), and undesignated but locally important sites and features, which are not already addressed in the HRA. Relevant to this report is the Slapton Ley SSSI where parts of the SSSI would lie within the coastal margin. NE does not expect access levels on the trail or the coastal margin to increase significantly as a result of the proposals. NE were satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of their functions.
37. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

Whether the proposals strike a fair balance

38. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations and satisfies the Scheme criteria. Whilst the tunnel

and its access path fall within the default coastal margin, that property is excepted land and is not subject to coastal access rights. Suitable and appropriate signage and other informal management techniques are likely to address the potential adverse effect of trail users seeking to access the beach (or vice versa) via the objector's property. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

39. 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 within paragraphs 3 (3) (e) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON



The Planning Inspectorate

Report to the Secretary of State for Environment, Food and Rural Affairs

by Alan Beckett BA MSc MIPROW

A person appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 26 April 2022

MARINE AND COASTAL ACCESS ACT 2009

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

Regarding Coastal Access Proposals by Natural England

Regarding Cremyll to Kingswear

Report CKW-9 Torcross to Kingswear

CKW-9-S040RD to CKW-5-S042

Objection Reference: MCA/CKW/05
Land at Shady Lane, Stoke Fleming

- On 15 January 2020, Natural England ('NE') submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear 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 CW9, Torcross to Kingswear, was made by [redacted] on 3 March 2020. The land in the report to which the objection relates is route sections CKW-9-S040RD, CKW-9-S041FP and CKW-9-S042 shown on map 9e.
- The objection is made under paragraph 3 (3) (a) of Schedule 1A to the 1949 Act on the grounds that the proposals fail 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 Reference: MCA/CKW/06
Land at Shady Lane, Stoke Fleming

- On 15 January 2020, Natural England ('NE') submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear 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 ('the 2009 Act').
- An objection to Report CW9, Torcross to Kingswear, was made by [redacted] on 3 March 2020. The land in the report to which the objection relates is route sections CKW-9-S040RD, CKW-9-S041FP and CKW-9-S042 shown on map 9e.
- The objection is made under paragraph 3 (3) (a) of Schedule 1A to the 1949 Act on the grounds that the proposals fail 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 Reference: MCA/CKW/07
Land at Shady Lane, Stoke Fleming

- On 15 January 2020, Natural England ('NE') submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear 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 CW9, Torcross to Kingswear, was made by [redacted] and [redacted] on 11 March 2020. The land in the report to which the objection relates is route sections CKW-9-S041FP shown on map 9e.
- The objection is made under paragraph 3 (3) (a) of Schedule 1A to the 1949 Act on the grounds that the proposals fail 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 15 January 2020, Natural England ('NE') submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Cremyll and Kingswear. The period for making formal objections to the reports closed on 11 March 2020.
2. There are 5 admissible objections to report CKW 9. As the three objections outlined above relate to the same sections of the proposed trail, it is appropriate that they are considered within a single report. The other two objections made to report CKW 9 are considered separately. There are various representations which refer to sections of the trail proposed in report CKW 9. Of these representations, 13 were received from individuals associated with the residential properties located along Shady Lane, none of which supported the proposal to route the trail along it. The representations made by the Ramblers Association Devon, the Devon Countryside Access Forum, and the South West Coast Path Association to report CKW 9 make specific reference to the sections which are the subject of the objections.
3. I have been appointed to report to the Secretary of State on an objection made to Report CKW 9. This report includes the gist of submissions made by the objectors, the gist of the responses made by NE and my conclusions and recommendation.
4. I carried out a site inspection of the land subject to the objections on 3 November 2021 accompanied by [redacted], [redacted], [redacted], and representatives of NE.
- 5.

Main Issues

6. The coastal access duty arises under section 296 of the 2009 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.
7. The second objective is that, in association with the English Coast Path (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 trail or otherwise. This is referred to as the coastal margin.
8. Section 297 of the 2009 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.
9. NE and the Secretary of State 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.
10. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. The Scheme forms the basis of the proposals of NE within report CKW 9.
11. My role is to consider whether or not a fair balance has been struck. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

12. The trail, subject to the CKW 9 report, runs from Torcross (grid reference 8233 4200) to Kingswear (grid reference 8785 5108) as shown on maps 9a to 9h (points CKW-9-S001 to CKW-9-S060RD). The trail primarily follows the existing South West Coast Path ('SWCP') as currently walked and managed, follows the coastline closely and maintains good views of the sea apart from where it runs inland through Strete, where it is landward of houses and fields at Matthew's Point and between Redlap and Warren Point where it is landward of houses, gardens, and arable fields.
13. The trail is on a different alignment to the SWCP at Stoke Fleming where it will follow a more seaward route between Stoke Fleming and Redlap via the public footpath and fields along Shady Lane.

Objection 05

14. Crossing the A379 within Stoke Fleming to access Shady Lane is dangerous as there is limited visibility along the road. There are 36 dwellings along Shady Lane with planning permission granted for two further dwellings; this narrow road is used by a large number of vehicles with a number of blind bends along its length. Vehicular use and pedestrian use of the lane is at its highest in the summer months when the occupancy of the houses is at its highest and walkers most numerous.
15. The access to the A379 at the western end of Shady Lane is via a blind bend in the road followed by a steep upward gradient which requires vehicles to engage first gear and accelerate to avoid stalling. The high walls either side of the road at this point limit the refuge for pedestrians when a vehicle is approaching.
16. The proposal includes the provision of steps opposite the property's entrance gates. The entrance is in constant use and presents a tight angle for vehicles accessing the property; walkers and their dogs gathering at the foot of the steps will be endangered by vehicles negotiating the turn into, or out of the property.
17. Having walkers and dogs blocking the entrance to the property will be intrusive and inconvenient for drivers, and unpleasant for users pushed into the bank; the steps are proposed to be located where the rubbish is placed for weekly collection.
18. The proposed route would take walkers along the field above Shady Lane and afford a view directly into the property; the peace and privacy of residents will be destroyed. The property is at the very end of Shady Lane, and it will be possible for trail users to determine whether the property is occupied; security will be undermined.
19. The property is excepted land within the seaward coastal margin, but trail users may be tempted to trespass within the garden searching for a route to the beach. The proposals offer no mitigation to homeowners for preserving privacy and keeping out intruders. There is no mention in the proposals for works to protect the stability of the high banks above Shady Lane which may be vulnerable to collapse if used by walkers.
20. The property is a holiday let, mainly let to artists and writers, and affords privacy and seclusion for such work which will be destroyed. The business will be damaged by the inclusion of the trail along Shady Lane.
21. Shady Lane offers little by way of sea views. Although routing the trail through the fields north of Shady Lane will offer glimpses of the sea through the trees, the property boundary will have to be fenced which would further limit the view of the sea.
22. The trail should be routed on the seaward side of the fields besides Redlap Lane and fenced to protect growing crops. There are better sea views from Redlap Lane which only serves 8 dwellings and not the 38 found on Shady Lane. If this is not possible, then the proposed steps should be moved further east along Shady Lane to Rock Vale; this would alleviate potential congestion outside the double gates of the property but would not improve sea views from the trail as such views would be limited by the erection of a close board fence.

Objection 06

23. Shady Lane has a steep and dangerous corner within 50m of the junction with the main road. This section of the lane is narrow, bounded by high walls. In order to negotiate this steep section, drivers have to engage first gear and accelerate; a vehicle encountering a pedestrian whilst making the ascent will put the pedestrian in danger. NE will be held responsible for putting walkers into danger by deliberately encouraging them to use a dangerous section of road.

Objection 07

24. Shady Lane is a no through lane providing access to 25 properties and although also a public footpath used by a few locals it is a dead end at Rock Vale. There are a number of points along the route where the width is no greater than 2.5 metres with no space for vehicles and walkers to pass each other. There are 5 blind bends on the lane and a blind crest towards the junction with the main road.
25. Shady Lane is entirely unsuited to becoming part of a national trail. It has no provision for an exclusive pedestrian footpath and will be unsafe for users and put undue responsibility on owners gaining access to their properties for the safety of parties of walkers and their dogs.
26. The trail should follow the existing route of the SWCP along Redlap Lane from Stoke Fleming to Little Dartmouth; this lane sees little traffic and offers better views of the coast and out to sea.

Representation 2 Ramblers Association Devon

27. The Ramblers welcome the routing of the trail along Shady Lane and then northward to Redlap Lane. However, a route seaward of Redlap House at the seaward extremity of its garden would have been preferable. Such a route could be provided without intrusion into the privacy of the house. With regret it is noted that the landowner was unwilling to voluntarily dedicate a suitable permanent route through the excepted parkland.

Representation 11 – South West Coast Path Association ('SWCPA')

28. The current SWCP route is some way inland and meanders through enclosed paths and lanes through Stoke Fleming with no sea views or coastal character. Whilst Redlap Lane is not particularly busy, it is used by vehicles as a local short cut. The proposed route along Shady Lane will still have limited sea views, has a partly coastal character and is a better and less busy route for path users to walk along. The proposal is strongly supported.

Representation 18 Devon Countryside Access Forum

29. The improvements made to achieve a more seaward route of the trail within Stoke Fleming are welcomed. The Forum hopes that NE will explore any opportunities which may arise for the dedication by the landowner of a more seaward route for sections CKW-9-S043RD to CKW-9-S046.

Other representations in respect of Shady Lane

30. The common concerns raised in relation to routing the trail along Shady Lane were that the land was busy with vehicles accessing the numerous dwellings, particularly in summer; the Lane is very narrow and steep at its western end and bounded by high walls which could be dangerous for walkers; there are a number of blind corners which pose a risk to walkers from vehicular traffic; access by emergency vehicles may be hindered by pedestrians; Shady Lane has no sea views.
31. An alternative route along Chapel Lane was suggested as it was felt to be a safer alternative to the steep slope found at the western end of Shady Lane. Alternatively, a route on the fields north of Shady Lane should be developed.
32. Concerns were also raised regarding the need to cross the A397 in the centre of the village due to limited visibility on the road. Other representations suggested that the existing SWCP route was adequate and required no additional infrastructure or expenditure. Others submitted that the views of the sea from Redlap Lane would be better, particularly if an in-field route could be created on the seaward side of the boundary hedge.
33. Additional concerns by owners and visitors were raised specific to the alignment of the trail near to Mill Meadow. These concerns related to privacy and security of visitors and residents; the proposed location of steps opposite the entrance gates to Mill Meadow; the potential for damage to the earth banks on the north side of Shady Lane if used by pedestrians and trespass through the garden by those seeking access to the coast.
34. Other concerns were expressed regarding the lack of provision of parking within Stoke Fleming for those wishing to use the trail and the potential for trail users to seek access to the beaches and coves on the coast which would compromise security of property.

The Response by Natural England

Objection 05 & 06

35. There are a number of general themes raised by the objectors; (a) road safety; (b) inconvenience; (c) human rights (peaceful enjoyment of property); (d) security; (e) impact upon business; (f) coastal experience; (g) protection of earth banks along Shady Lane.
36. *Road safety.* The proposed route would be a new alignment for the SWCP on a more seaward route between Church Road, Stoke Fleming and Redlap Lane west of Warren Point via FP 6 which runs over Shady Lane. In developing the proposals, a number of alternatives were considered including the existing SWCP route along Redlap Lane suggested by the objectors. However, the proposed route has a more coastal feel, with better coastal views and coastal sounds; the improved views are mainly from the new field path between Shady Lane and Redlap Lane.
37. The proposed route reduces the quantity of agricultural land which would be taken into the coastal margin by default if the trail followed the existing SWCP route. The inland route over Redlap Lane is some 600m from the coast in places

- and would remain available to those who did not want to follow a more seaward route as the SWCP currently follows public rights of way and other public highways. The proposed route takes walkers away from Redlap Lane which has few passing places for vehicles. The public footpath along Shady Lane would remain in place even if the trail followed a different alignment.
38. The proposed route through farmland north of Shady Lane provides good views of the coast, addresses the land use requirements of the owner of the land and has the support of the owner of the land.
39. The concerns regarding the steep section at the western end of Shady Lane are noted. Consideration was given to routing the trail along Chapel Lane and a short stretch of the A379 to avoid this steep section. The proposed route prevents users having to walk along a narrow and busy section of the A379 where there is no footway; the proposed route was discussed and agreed with the Highway and Access Authority, Devon County Council.
40. It is accepted that Shady Lane is narrow, but it is quiet with slow moving traffic travelling along it with some refuge points for pedestrians. Whilst it is expected that the volume of pedestrian traffic using the lane will grow as a result of the trail, it is not considered that this increase will have a significant impact upon resident's ability to use the lane as they do now; other parts of the trail running over similar lanes have not resulted in known accident or injury.
41. The crossing of the A379 has been designed to occur at a point equidistant between School Road and Shady Lane. Trail users will have access to a footway either side of the carriageway and visibility in either direction along the A379 is good in either direction at this point. Clear signage will encourage users to cross at this point.
42. *Inconvenience* – The location of the steps opposite the entrance to Mill Meadow was agreed with the Access Authority as that position would reduce the number of steps required to a minimum. Locating steps at the boundary of Rock Vale would require a much steeper flight of steps which may be less accessible. The location of the steps could be adjusted a few metres to the east to avoid the area used for rubbish bin storage.
43. Although numbers of walkers using Shady Lane is expected to rise, it is also expected that users will want to move along the trail at an appropriate speed and would not want to loiter at the foot of the flight of steps as suggested by the objectors.
44. *Human Rights Act*: peaceful enjoyment of property. It is not considered that there is a conflict between the Scheme and the provisions of the HRA98 or Convention rights. The Scheme requires any proposal to strike a fair balance between the competing interests. Residents along Shady Lane will already be accustomed to public use of the lane and the issues they raise will not be exacerbated by the trail when it is established.
45. As the objector's land seaward of the trail is excepted land it is unlikely that trail users will attempt to access the beach via the objectors' property. Mill Meadow is clearly fenced off as being private property and has the benefit of substantial gate at its entrance. Most walkers avoid land which is obviously forms a private house and garden and it is likely that users will avoid Mill Meadow for these

- reasons. The objector is at liberty to erect appropriately worded signage indicating the extent of their excepted land and that there is no access to the coast.
46. NE does not consider that the privacy at Mill Meadow will be affected by users of the trail. In common with many similar properties, the house is set back some distance from the land which provides access. Even from an elevated position with the fields to the north of Shady Lane much of the house is hidden from view. The objectors may wish to erect supplementary fencing, but NE does not consider that this would be necessary at this location.
47. *Security*. The objectors suggest that trail users will be able to see into the property and determine whether anyone is in residence. However, Shady Lane carries a public footpath past Mill Meadow so such opportunities already exist, and the objectors must be aware of such a possibility. NE does not consider that trail users will display the inappropriate behaviours identified by the objectors.
48. *Impact on business*. NE does not consider that the trail will have any adverse impact upon the ability to let the property as a holiday let. The issues of safety and security raised by the objectors are likely to be present already due to the public footpath running along Shady Lane. The trail is unlikely to affect the ability of the owners to let the property and the proximity of the trail may provide an additional attraction to guests.
49. *Coastal experience*. The points raised regarding the limited sea views along Shady Lane are noted as is the proposal to erect a close board fence which would further limit sea views from the lane. Despite these factors, trail users would benefit from an improved coastal experience from the proposed route compared with the current SWCP in terms of coastal sounds, feel and place. Trail users would also have the benefit of the intermittent views of the sea along Shady Lane.
50. *Protection of earth banks*. It is highly unlikely that trail users would damage the earth bank which stands on the north side of the sunken part of Shady Lane as the trail would be 2 – 3 metres in width with path users walking in-field and not on the edge of the bank itself.

Objection 07

51. The alternative route proposed by the objector was considered during the development of the proposal, but the trail was routed along Shady Lane as it provides a better walking experience and coastal feel than the current SWCP being closer to the coast and with better coastal views and sounds. The proposed route also reduced the potential impact upon farmland as using the existing SWCP would bring approximately 24Ha of farmland into the coastal margin. Those path users who wished to continue using the current SWCP taking a more inland route between Stoke Fleming and Little Dartmouth would be able to do so as it follows public rights of way and public roads.
52. It is recognised that the western end of Shady Lane has a steep narrow section bounded by high walls. However, an alternative route along Chapel Lane and the A379 requires users to negotiate the narrow and busy main road through the village where there is no footway. Shady Lane is also narrow but is lightly trafficked; it is a cul-de-sac access with a public footpath running over it.

Although pedestrian use of the lane is likely to increase as part of a national trail, this should not prevent residents from using the lane as they do currently.

53. The proposed route is comparable with part of the trail which leaves Kingswear using a narrow, private enclosed road along which there are multiple properties, and which carries a public footpath. It is a popular section of the SWCP, but Devon County Council is unaware of any incidents resulting from pedestrian use of such a route.

Representation 2 Ramblers Association Devon

54. The preference of the Ramblers for a route seaward of Redlap House is noted. However, it has not been possible to establish a route adjacent to the coastline due to areas of excepted land extending as far as the sea cliffs. The landowners do not wish to voluntarily dedicate a permanent route through this land.

Representation 11 – South West Coast Path Association

55. NE welcomes the positive engagement and the support of the of the South West Coast Path Association for the proposals at Stoke Fleming.

Representation 18 Devon Countryside Access Forum

56. If opportunities arise to move the trail between Redlap Lane and Little Dartmouth further seaward through dedication by the landowner, NE will explore such opportunities.

Other representations regarding Shady Lane

57. The route proposed for the trail would provide a more seaward walked line that that currently followed by the SWCP. A number of alternatives had been considered including using the existing route of the SWCP. However, the proposed route is closer to the sea, provides better coastal views and coastal sounds. The proposed route also reduced the impact upon agricultural land which would otherwise become coastal margin by default; the proposed route takes walkers away from Redlap Lane which is narrow and with limited passing places.
58. The proposal is for trail users to cross the A379 at a point midway between School Lane and Shady Lane where there is a footway on either side of the road and oncoming traffic is visible in either direction. Although Shady Lane is narrow it is a cul-de-sac with existing pedestrian access with some passing places; although pedestrian usage of the lane is likely to increase that increase in use should not impact upon the ability of residents to use Shady Lane in the way they do now. It is not expected that trail users will park along Shady Lane when using the trail. Current users of the SWCP are likely to park within Stoke Fleming or at Little Dartmouth.

Conclusions

59. The Secretary of State may wish to note that in discharging the coastal access duty regard must be given to a number of factors. The route proposed by NE follows the current line of a public road and public footpath. The path is used by the public, although the extent of that use appears to be somewhat limited as footpath 6 is a cul-de-sac at its eastern end. The proposed route is reasonably close to the sea, and closer than the existing route of the SWCP; there are

- views of the sea from the proposed route and although these are limited along Shady Lane, those sea views would become progressively more extensive as users travel along CKW-9-S042. Furthermore, it is a route which would be available at all states of the tide. The proposed route therefore satisfies the Scheme criteria set out in sections 4.4, 4.5 and 4.6.
60. It is proposed that the trail will cross New Road at a point mid-way between Church Road and Shady Lane. At this point there are good views of oncoming traffic approaching the suggested crossing point in either direction. In addition, although provided for vehicular access to adjacent properties, there are dropped kerbs in the footway at this point which facilitates the crossing of the road for a wide spectrum of users. I consider that the proposed crossing point would be a convenient place for trail users to cross New Road.
61. It has been suggested that the steep and narrow westernmost section of Shady Lane could be avoided if the trail were to continue along Church Lane and then turn south-east along Chapel Lane to its junction with Shady Lane. Whilst this would avoid the western end of Shady Lane, it would require trail users to walk alongside the narrow part of Church Road where vehicles cannot pass each other and where there is no footway. Whilst it was possible to negotiate this route as part of the site visit without mishap, the level of vehicular traffic on Church Road was greater than that experienced on the proposed route. I consider that the volume of vehicular traffic on Church Road would expose trail users to a greater risk than that posed by the vehicular use of Shady Lane.
62. I saw from my site inspection that the western end of Shady Lane is steep, narrow, and bounded by high walls. Whilst there are no refuge points available over this section, it is possible for most private cars to pass a pedestrian at this point. The section of Shady Lane at issue appears to be part of the ordinary highway network of Stoke Fleming, and vehicles using this section of road are bound by the same considerations to other road users that exist on the other public roads within the village; there will inevitably have to be a degree of 'give and take' between road users and this appears to be what currently occurs.
63. The existence of pinch points and blind corners along Shady Lane is acknowledged. Whilst the number of pedestrians making use of Shady Lane may currently be limited as it is a cul-de-sac at its eastern end, residents and their visitors will be aware that the public have a right of access on foot and will make appropriate adjustments to the speed at which they travel along the lane. Whilst there may be an increase in the number of pedestrians using Shady Lane as part of the trail, such use is unlikely to prevent residents from having access to and from their properties.
64. A flight of steps will be required to overcome the height difference between CKW-9-S041FP and CKW-9-S042. The objectors have concerns that the location currently proposed for the steps and the impact the steps would have upon their property. The proposed location for the steps is at a point where there is the least height difference between Shady Lane and the field to the north; movement of the steps a few metres to the east may not require additional steps in the flight and would not impact upon accessibility of the trail.
65. A minor eastward movement of the steps is likely to address the issues of trail users congregating opposite the entrance to Mill Meadow or congregating where

- domestic refuse is stored prior to collection. However, the suggested relocation of the steps further along Shady Lane to the Rock Vale boundary would require a steeper flight with more steps and is likely to be less accessible to some trail users. The final position of the steps is a matter for the NE, the Access Authority, and the landowner to determine, but to facilitate accessibility, the steps should be reasonably close to the location currently proposed.
66. It is acknowledged that aligning the trail along Shady Lane is likely to increase the number of pedestrians using footpath 6 and that the objectors have concerns regarding overlooking and privacy. However, as Shady Lane is subject to a public right of way on foot, residents will already be aware that members of the public will be passing the entrances to their properties. The houses along Shady Lane are set well back from the lane and are largely secluded from the view of passers-by. There may be an increase in the numbers passing along Shady Lane as current levels of use may be augmented by those following the trail, however, I do not consider that any adverse effect on privacy will be significant. The objectors would be at liberty to erect notices to the effect that the property is exempted land within the coastal margin and to erect a fence contiguous with Shady Lane if they felt it to be necessary.
67. The objectors consider that their ability to let their property for holidays and other short term lets will be compromised by the alignment of the trail along Shady Lane. I consider it unlikely that the trail will have such a negative impact as the property is currently let with a public right of way passing the entrance. It is highly likely that the issues identified by the objectors are already present at the property; the existence of footpath 6 does not appear to have impacted upon the ability of the objector to secure the short-term letting of the property.
68. It is suggested that the trail should follow the existing route of the SWCP along Redlap Lane. Whilst this route would be available at all states of the tide, it is further inland from the sea, with Redlap Lane being bounded seaward by mature hedges which limit views of the sea. Aligning the trail along Redlap Lane would also increase the extent of land which would become coastal margin by default. Whilst Redlap Lane and Shady Lane share similar characteristics in that they are both narrow with few passing places, Redlap Lane is a public carriageway subject to a 40mph speed limit. Whilst Shady Lane provides vehicular access to a greater number of properties, it is a cul-de-sac, and it is likely that there will be fewer vehicular movements along it at lower speeds than that experienced on Redlap Lane.

Habitats Regulations Assessment (HRA)

69. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of

- overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the UK National Site Network.
70. The HRA dated 17 October 2019 provides information to inform the Competent Authority's AA. The assessment was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRA considers the potential impacts of the coastal access proposals on the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC. The HRA has identified the relevant sites affected by the proposals.
71. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, and/or contains non-conservation elements, further assessment under the HRA provisions was required. The overall screening decision found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European sites 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
72. The scope of the appropriate assessment is set out in Section D1 and Table 4 of the HRA and identifies the sites and Qualifying Features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in section D2; the Secretary of State should note that in relation to the Plymouth Sound and Estuaries Special Area of Conservation (SAC), Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC, this relates to the entirety of the CKW section of the trail; the section of CKW to which this report relates does not impact directly on any of these designated sites.
73. The assessment of AEoI for the project 'alone' takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives.
74. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEoI 'in-combination' with other plans or projects.
75. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from small-scale habitat loss at Lannacombe Bay for path improvement works which had the potential to act 'in-combination' with those from other proposed plans or projects.
76. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an

AEoI on the Plymouth Sound and Estuaries SAC, Blackstone Point SAC; South Devon Shore Dock SAC; Start Point to Plymouth Sound and Eddystone SAC; Lyme Bay and Torbay SAC; and South Hams SAC either 'alone' or 'in-combination' with other plans and projects.

77. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear are fully compatible with the relevant European sites' conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

Nature Conservation Assessment (NCA)

78. The NCA, dated 15 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), and undesignated but locally important sites and features, which are not already addressed in the HRA. There are no designated or undesignated but locally important sites and features in the vicinity of the section of the trail considered in this report. NE were satisfied that the proposals to improve access to the English coast between Cremyll and Kingswear were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of their functions.
79. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

Whether the proposals strike a fair balance

80. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations and satisfies the Scheme criteria. The concerns raised by the objectors regarding the potential for conflict between pedestrians and vehicular users of Shady Lane are, by and large, already present without seeming to give rise to conflict between those users.
81. Similarly, residents of Shady Lane, and their guests will be aware that the potential for overlooking, and loss of privacy is already present at their properties due to the existence of footpath 6. Suitable and appropriate signage and other informal management techniques are likely to address any adverse effects which arise from the alignment of the trail along Shady Lane. Consequently, I do not consider that any impacts of the proposal will be significant.
82. I do not consider that the minor adverse effects that the trail would have upon the occupiers of the properties along Shady Lane outweigh the interests of the

public in having rights of access over coastal land. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

83. 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 within paragraphs 3 (3) (a) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON