



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 15 August 2022

MARINE AND COASTAL ACCESS ACT 2009

Objection by [redacted] on behalf of the [redacted] and the [redacted]; objection
by [redacted] on behalf of the [redacted]

Regarding Coastal access Proposals by natural England

Regarding Cremyll to Kingswear

Report CKW-1 Cremyll to Mount Batten Point

CKW-1-S023 to CKW-1-S025

Site visit made on 2 November 2021

File Ref: MCA/CKW/O1 & O2

File Ref: MCA/CKW/O1

Land at Millbay Marina, West Hoe, Plymouth

- 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 CW1, Cremyll to Mount Batten Point, was made on 5 March 2020 by [redacted] on behalf of the [redacted] and the [redacted]. The land in the report to which the objection relates is route sections CKW-1-S023 to CKW-1-S025 as shown on map 1b.
- The objection is made under paragraph 3 (3) (a) and (c) 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/O2

Land at Millbay Marina, West Hoe, Plymouth

- 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 1949 Act pursuant to its duty under the 2009 Act.
- An objection to Report CW1, Cremyll to Mount Batten Point, was made on 9 March 2020 by [redacted] on behalf of the [redacted] ('[redacted]'). The land in the report to which the objection relates is route sections CKW-1-S022 to CKW-1-S025 as shown on map 1b.
- 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 2 admissible objections to report CKW 1. As the objections outlined above relate to the same sections of the proposed trail, it is appropriate that they are considered within a single report. In addition, there were a number of representations which made direct reference to the sections of the trail considered in this report.
3. I have been appointed to report to the Secretary of State on an objection made to Report CKW 1. 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 2 November 2021 accompanied by representatives of [redacted]; [redacted]; [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
 - (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 1.
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 1 report, runs from Cremyll (grid reference SX 4539 5344) to Mount Batten Point (grid reference SX 4832 5391) as shown on maps 1a and 1b (points CKW-1-S001 to CKW-1-S031FW). The trail primarily follows the existing South West Coast Path ('SWCP') as currently walked and managed, follows the coastline closely in parts along the Plymouth Waterfront Walkway and maintains good views of the sea apart from the sections at Stonehouse between Firestone Bay and Millbay Docks.
12. The trail is on a different alignment to the SWCP at Cremyll Street, East Quay and at Trinity Pier and [redacted]. In this last location, the trail will follow a new section of path between Trinity Pier, Custom House Lane, and the Rusty Anchor.
13. NE acknowledge that there are several residential developments in progress along the east side of Millbay Docks between East Quay, Millbay Marina Village, and the Rusty Anchor. It is proposed that the Ordinary Route of the trail would come into being once these developments have been completed. Where development is yet to be completed (CKW-1-S022 and CKW-1-S025), the proposals have been made following discussions with the developers and Plymouth City Council. It has been agreed that once the walkway through the development has been completed, then the walkway will serve as the Ordinary Route for the trail. Should the line of the proposed walkway significantly change, the route of the trail can be adapted through submission of a variation report.

Objection 01

14. The proposal by NE has failed to take into account the general provisions of the coastal access duty and a modified version of the proposed alternative route should be chosen. The use of the proposed Ordinary Route would interfere with the ability of the [redacted] to launch promptly to emergency calls, pose a real danger to all users of Custom House Lane and would be contrary to Policies SPT2, DEV1, 2, 10 and 20 of the Local Plan and paragraphs 92 and 130 of the National Planning Policy Framework ('NPPF').
15. NE can place no reliance upon the section 106 agreement associated with the proposed development of the Millbay Marina site (14/01103/FUL) which required the SWCP to be re-routed along Custom House Lane. Nor can reliance be placed upon the 1998 Deed of Easement which purports to provide a right to the developers of Quadrant Quay to break through the northern boundary wall to provide vehicular and pedestrian access from Quadrant Quay to Great Western Road.
16. It is contended that these instruments are in conflict with the terms of the Head Lease of [redacted] of June 1993 which requires the parties not *'to doany act or thing which shall or may grow to be a nuisance'*; those signatories to the 1998 Deed of Easement and the s106 agreement should have been aware of the terms of the 1993 Head Lease; the s106 agreement is unworkable and unachievable as a matter of law.
17. No evidence has been provided to suggest that either NE or the Access Authority have carried out a highway safety study to inform their decision to align the

- Ordinary Route along Custom House Lane. In addition, neither NE nor the Access Authority have any idea of how many walkers are likely to walk the proposed route through the Village.
18. The present route of the SWCP is along Great Western Road which is approximately 8 metres in width and has sealed surface footways on either side of the carriageway which are raised up on high kerbs. Great Western Road is a one-way street where speed is limited to 20mph; there are no points along the road where vehicular traffic will cross the footway being used by those following the SWCP. Great Western Road also lies approximately 4 metres above Custom House Lane and offers clear views over Plymouth Sound with all street furniture being set back against the wall.
 19. In contrast, Custom House Lane is approximately 5 metres in width and over much of its length provides no separation between vehicles and pedestrians which are required to use a shared surface of pavers, cobbles, and uneven ground of which only around 15% has kerb protection. There is no speed limit on Custom House Lane as a private road and traffic is bi-directional. Authorised vehicles using Custom House Lane seeking to park on the as yet undeveloped part of the site are also likely to cross the proposed trail at right angles in either forward or reverse gear.
 20. Custom House Lane runs west from its junction with Great Western Road and then turns ninety degrees to the south. A pedestrian arch over the footway, raised brickwork and planters all contribute to a blind bend for vehicles approaching from Great Western Road. Vehicles travelling on Custom House Lane do not have a clear line of sight of other road users on the north-south section of the road, nor would they be able to see pedestrians following the proposed route of the trail.
 21. [redacted] has planning permissions for a total of 172 dwellings whereas Custom House Lane was only designed to accommodate 89 dwellings. There is also an 85-berth marina on site along with the [redacted] station. When fully developed, daily traffic movements through the site are likely to be around 560 per day over a 10-hour period, all of which may give rise to conflict with pedestrians using the proposed trail.
 22. In 1987 planning permission was given for the development of Millbay Docks and the construction of 46 houses and 40 flats, of which only 12 houses and 18 flats have been built. This permission (87/02178/FUL) remains extant; the approved plan for that development shows that the land at the Rusty Anchor end of Custom House Lane would comprise houses with gardens and could not accommodate the trail.
 23. Planning permission 14/01103/FUL which also remains extant provides for a ramped walkway from the Rusty Anchor along the waterfront to Custom House Lane. However, drawing 2142B/160 shows that the sea defence wall would obscure views of Plymouth Sound for much of the line of the trail if the trail followed the ramped walkway. If built out, the route would not provide a better walking experience and views of the sea, as those views would be largely unavailable.

24. Furthermore, commercial vehicles visiting or providing services to The Bridge, the [redacted] and the Marina regularly park on the land over which the trail would run. This would force trail users into the centre of Custom House Lane. The current line of the SWCP has none of these disadvantages. Aligning the route along the northern walkway of Custom House Lane and the footway on Great Western Road would mean that pedestrians and drivers would have a clear view of each other.
25. The alternative route being proposed offers uninterrupted access, has lesser risk to pedestrians, has superior sea views and would not impact upon the amenity and security of the residents of [redacted]. The proposed alternative along Great Western Road satisfies the criteria set out in the Scheme.
26. The SWCP Management Team have not been able to provide statistics as to the number of people who use the Plymouth Hoe – Millbay section of the trail but advised that 3,181,962 people used the coast path in Devon in 2015. Even if a fraction of those users were to use Custom House Lane, the likely level of pedestrian traffic that would arise would be significant; the road as currently laid out is physically unsuited to safely accommodate such numbers.
27. Paragraph 17 of the NPPF requires all developments which would generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment; although the movements that would be generated are pedestrian, the same safety issues arise. No such Statement or Assessment has been undertaken in respect of Custom House Lane.
28. Shared space schemes are generally unwelcoming for those with limited vision or mobility; the proposal would not provide pedestrians with a traffic-free environment in contrast to the current route along Great Western Road. Furthermore, at the southern end of Custom House Lane is a steep flight of 21 steps; the route along Great Western Road is step-free. The current route of the SWCP along Great Western Road, together with the proposed alternative route along the east-west section of Custom House Lane and the link into the adjacent Quadrant Quay development would continue that step-free route. Although this route may be set further back from the sea than the proposed route, it would be consistent with paragraph 4.5.2 of the Scheme and as it would utilise an existing walked route would be consistent with paragraph 4.7.1 of the Scheme.
29. The proposed route does not provide views of the sea as the harbour and marina are screened by the terrace of houses on the western side of Custom House Lane; views of the sea are available from the current line of the SWCP. The proposal therefore fails to satisfy the requirement of the Scheme.
30. [redacted] is a quiet residential settlement mainly occupied by retired residents and has no through traffic. Aligning the trail through this residential area would result in enormous disruption to the existing peaceful residential space. The Quadrant Quay development suffers from a serious problem with crime, drugs and vagrancy associated with the provision of public access alongside the harbour; similar misery should not be visited upon [redacted] when the current SWCP offers an acceptable alternative solution.
31. The Local Plan sets out a suite of policies to ensure that development provides for a high level of residential amenity. The proposal would result in the exact

- opposite; the existing residential amenity would be blighted and intruded upon in a manner which would not be permitted for a new development. A substantial increase in the level of traffic through the Village, with associated noise and other disturbance would not improve on the existing high-quality design and good standard of amenity currently enjoyed by residents within the development.
32. Concern is also expressed as to the potential for vandalism and damage to the [redacted] 's boats and equipment which are stationed at [redacted]. The absence of public access has meant that the boats have not suffered from the vandalism which was prevalent when the boats were stationed at The Barbican.
33. The proposal would increase the fear of crime and trespass contrary to paragraph 58 of the NPPF and policies DEV10 and DEV20 of the Local Plan. A way to address the requirement to design out crime and fear of crime would be to route the trail along Great Western Road.
34. Counsel's Opinion has been sought with regard to whether the Village falls into the coastal margin. The Opinion is that the Village does not satisfy section 3A of the 2000 Act as there is no 'foreshore' present, the land having been developed over time to serve as docks. The 'foreshore' may lie under the vertical side of the dock, or the dock may have extended seaward of the original foreshore. It is considered that the absence of a foreshore is fatal to the question of whether the Village can be considered coastal land.
35. Furthermore, it is contended that the land within the village is excepted land as it falls within one or more of the exceptions listed in Schedule 1 to the 2000 Act; it is within the curtilage of the buildings on the site; is land used as a park or garden; is land in the process of being developed; or is land within 20 metres of a dwelling.

Objection 02

36. The routing of the trail along Custom House Lane raises a number of safety concerns all of which would be avoided if the trail continued along Great Western Road. Enabling fast and efficient access to the lifeboat station is critical to the [redacted] 's operations; the Plymouth station has been the busiest [redacted] station for three consecutive years. Custom House Lane operates as a shared surface road with no safe refuge for pedestrians when the lifeboat crew need to access the station in an emergency. The proposed route of the trail would lead to a delay in launch times as well as an unacceptable level of public intrusion when survivors and the bodies of those less fortunate are brought ashore.
37. Vehicles entering [redacted] have to negotiate a blind bend with no warning given to pedestrians that they will be approaching the lifeboat station at speed. The presence of pedestrians will slow launch times and would significantly increase the risk of collision.
38. Great Western Road is a one-way street with pedestrians segregated from the roadway by raised kerbs and a dedicated footway. Routing the trail along a two-way road which has a blind bend, and no pedestrian segregation cannot be in the public interest and will be problematic for those with vision or mobility impairments. It is not clear how the Public Sector Equality Duty will be met in respect of these proposals.

39. Paragraph 4.3.8 of the Scheme states that where there is a choice of routes, the route to be favoured is that which is accessible to widest range of people or most easily adapted for that purpose. There is a choice of routes at this location: the route along Great Western Road would avoid the route being problematic for some users.
40. The proposed route along Custom House Lane does not follow the periphery of the coast and provides only glimpses of the sea due to the presence of buildings on the western side of the road. Significantly better views of the sea are available from Great Western Road, as well as providing a safer route for pedestrians without compromising launch times for lifeboats. The current line of the SWCP offers the best balance between the interests of the public and landowners.
41. Paragraph 5.2.1 of the Scheme makes clear that coastal access rights should not interfere in any significant way with the operational needs of coastal businesses or organisations. The proposal would have such significant impacts; the presence of pedestrians will delay the arrival of lifeboat crews and intrude upon the return of survivors to the shore. Paragraph 8.25.11 of the Scheme states that NE will consult with the operator on the alignment of the trail in the vicinity of any lifeboat station to prevent such incidents. Given this commitment, it is unclear why the proposed route does not follow the SWCP along Great Western Road.
42. It had been assumed that Custom House Road would be exempted land under Schedule 1 of CROW as it comprises land covered by buildings or in the curtilage of buildings or land used as a park or garden. It would appear perverse if the land could be exempted from coastal access rights and yet be proposed as the route of the trail.
43. Although NE contend that views of the sea from Great Western Road would be limited by the completion of the development, it is considered that the views available will be largely unaffected.
44. Policy PLY29 requires public access to the quayside walkways around the harbour including access to the SWCP; it does not require a diversion of the SWCP. Furthermore, the Local Plan map does not include land either side of Custom House Lane within the PLY29 allocation. A route along Great Western Road would fully accord with the policy requirement.
45. Paragraph 4.7.1 of the Scheme states that where there is an existing national trail along the coast, NE normally propose it as the line of the trail so long as it is safe and practicable for the public to use, can be used at all times and the alignment makes sense in terms of the statutory criteria. It is the [redacted]'s view that the existing route of the SWCP satisfies the criteria set out in the Scheme and should be the alignment used for the trail. The existing route of the SWCP is entirely practicable and strikes a fair balance between competing interests.

Representations

46. The Plymouth Local Access Forum ('LAF') and the local representative of the South West Coast Path Association (R6) ('SWCPA') submitted that the proposed route was '*the optimal and intuitive path for the coast path*'. Strong support was given to the proposal as the preferred route in this area. It was considered that the proposed route would be easy to walk, particularly for those with mobility

- impairments. The route CKW-1-AO01 – 03 to be used until development of [redacted] is completed includes 30 steps and is unsuitable for those with mobility issues.
47. The Ramblers Association (R7) welcomed the proposed route which would provide a more coastal path and the seaward views of Millbay Docks.
48. Plymouth City Council (R12) ('PCC') welcomed the proposed route as it aligned with a number of interconnected strategic priorities for the city and would re-route the SWCP along the newly constructed waterfront and on to the Rusty Anchor. Previous planning permissions for [redacted] site have incorporated a walkway on the proposed alignment including the extant permission 14/01103/FUL. Improved waterfront access is an aspiration of the Joint Local Plan under policy SO3 (8) and policy PLY29 (2).
49. Representations were also received from Improves Lives Plymouth (a Walking for Health group) (R1, R3 & R4). The group frequently uses the waterside route for people with a wide range of physical and mental health needs and expressed support for the proposals as the footway along Great Western Road was narrow and walking along it can feel a little dangerous. The proposed route was considered to be much safer and more accessible for everyone.
50. Representations for the Old Portsmouth Society (R5), and individual members of the LAF (R2) and the SWCPA (R9) were also supportive of the proposals. Representation R9 submitted that Great Western Road was not an ideal walking environment and didn't offer sea views to any extent.

The Response from NE

The objections

51. The objections received contain similar or identical points and the response is made in relation to those common themes. Where there are other, non-common points, those points are also addressed.

Local planning and transport policies

52. NE believes that the proposal supports policy PLY29 Millbay Waterfront of the adopted Plymouth and South West Devon Joint Local Plan. Policy PLY29 which calls for public leisure access to and along Millbay quayside and identifies the coast path as forming an essential feature in the delivery of this policy.
53. PCC as the Planning Authority gave assurances that the proposal supported current local planning policies and did not contradict other existing local plans or planning conditions; this view is reflected in PCC's representation. PCC asked NE to note: (i) previous planning permissions have incorporated a pedestrian walkway on the proposed alignment, including extant permission 14/01103/FUL under a s106 agreement; (ii) improved waterfront access is an aspiration of the Local Plan under policy SO3(8) which shows a waterfront walkway on the proposed alignment; (iii) policy PLY29(2) requires development to provide '*high quality public realm with public access to and along the quayside walkways and around the harbour*'.
54. The approved drawing for the development at the Rusty Anchor is drawing 2142B/160B which shows amendments to the sea wall layout to provide better

views of the sea. It is considered that this route would provide a better coastal experience for walkers compared with Great Western Road.

Disruption to lifeboat operations and introducing delays in the prompt launching of lifeboats.

55. NE notes the concerns raised by both objectors in relation to vehicles being driven at speed toward the lifeboat station to be delayed or slowed by the presence of walkers exercising access rights and for the launch of lifeboats being delayed.
56. It is not considered that these concerns will be realised. The majority of walkers will move swiftly out of the way of an oncoming vehicle which would be visible and audible along the length of the road. There are also separate pedestrian areas along Custom House Road (albeit only designated by a different coloured surface). In addition, soft management techniques such as informative signs will alert walkers to use of the road by the [redacted]. In addition, there is a limit to the speed at which a vehicle could safely travel on this section of road; it is only 100m from the bend to the lifeboat station and [redacted] volunteers will already have to take into account use of the roadway by others on foot (residents and their visitors) when approaching the lifeboat station. As the possibility of drivers encountering pedestrians is already present, all drivers will be required to exercise due care and attention.
57. In addition, sight lines are good for both drivers and walkers over this straight length of road. All vehicles entering Custom House Lane will have to slow to make the sharp right angle turn into the development; at this turn there is a footway passing under an arch which is currently used by those on foot. Given the current characteristics of the road, the exercise of coastal access rights will not introduce new or heightened safety hazards that are not already present.
58. Lifeboat operations around the coast of England often take place from publicly accessible areas. At some stations (St Ives and Exmouth) the trail passes right by the stations. Many other have public access between the station and the slipway (Weymouth, Southend, Falmouth) all of which are in busy tourist locations. Elsewhere the presence of a [redacted] station has not been seen as a reason not to route the trail close to it.
59. The exercise of coastal access rights does not entitle any person to interfere with the activities of the emergency services. Paragraph 1 r of Schedule 2 to the CROW Act prohibits those exercising access rights from undertaking any activity which '*disturbs, annoys or obstructs persons engaged in a lawful activity on the land*'. Legitimate users of the trail are likely to either walk on or retrace their steps if they encountered the [redacted] bringing rescued persons ashore; it is expected that trail users would act in a responsible and respectful manner, in the same way that residents of Custom House Lane do.

Highway safety audit; numbers of expected users

60. It is acknowledged that a highway safety audit has not yet been carried out. However, in correspondence with PCC dated 10 October 2019, PCC stated that they had no safety concerns having consulted with Highways Engineers, the Road Safety Team, and the Police. PCC noted the tight right angle turn into the main part of Custom House Road and the traffic calming measures along the road. PCC

were of the view that it would not be possible to attain any degree of excess speed within the site.

61. The design of the development at [redacted] and the materials used indicates to all users that Custom House Lane is a 'shared space' environment, where traffic speeds are likely to be low and an expectation that there will be pedestrians within that space. It is not expected that the trail will generate significant amounts of pedestrian traffic, so the potential for conflict between trail users, residents' vehicles or [redacted] vehicles is low.
62. It is acknowledged that there is likely to be an increase in the number of walkers using Custom House Lane however, the characteristics of the road are such that it could safely accommodate a National Trail regardless of the numbers using it. Consequently, it was not considered necessary to commission a study to calculate the potential number of users of the trail in this location.

Danger to walkers from vehicles reversing out of parking spaces.

63. There is a limit to the speed which vehicles could safely travel along Custom House Lane due to its physical characteristics and the need for drivers to consider the possible presence of residents and their visitors who may be travelling on foot. As regards reversing out from parking spaces, this is an activity which is likely to be undertaken at low speeds; anyone currently engaging in such a manoeuvre will be doing so whilst exercising due care and attention for the presence of pedestrians. In addition, those on foot in an environment such as Custom House Lane will be aware of the potential for vehicles reversing from parking spaces as would be the case on any road with pedestrian access.

Danger to walkers with protected characteristics

64. The proposals are supported by a number of representations from walking and user groups and by the LAF; the LAF considers the route will be easy to walk, particularly for those with mobility issues. The leader of the Active for All group considers that the proposal would '*mean a much safer and more accessible path for everyone*'. The leader of Improve Lives Plymouth considers that the proposed route will '*considerably enhance their walks (off a busy road) and will benefit walkers and visitors to Plymouth*'.
65. The route is not considered to be any more problematic for users with protected characteristics than other parts of the trail; negative feedback has not been received from any of the user groups who have been consulted.

Views of the sea

66. At present, there are views of the sea from the SWCP. The planned development of the land between Custom House Road and Great Western Road will result in a significant part of these views being lost as they will be blocked by new buildings. Whilst the original design of the buildings seen in 14/01103/FUL may be subject to change, the developer has indicated that whatever form the development takes, it will obscure views of the coast as the site is only 2.2 metres below pavement level.
67. Once development has taken place seaward of Great Western Road, the proposed route will provide better sea views than from the existing SWCP as well as

providing a better walking experience away from a heavily trafficked road. The SWCPA supports the proposal.

Impact on privacy of residents

68. Most walkers tend to avoid land which is obviously not for public use such as houses and gardens; this is expected to be the case at [redacted]. Given the residential nature of the site, users are likely to follow the trail to pass through the site as quickly as possible. From experience, the overwhelming majority of trail users behave in an appropriate and responsible way.
69. [redacted] is currently ungated with no physical barriers to prevent public access; residents will be accustomed to some level of public access within the site. The terraced properties seaward of Custom House Lane are set back from the road with the trail running on the landward side of the road; it would not be easy for trail users to look into residents' windows.

Litter and other anti-social behaviours

70. The introduction of coastal access rights does not grant a right for trail users to engage in the activities suggested by the objectors. The CROW Act contains a list of restrictions to limit what people may do on land subject to access rights; riding a horse or bicycle, camping, playing organised games, leaving litter or the commission of criminal offences are all prohibited. Trail users must always keep their dogs under effective control.
71. There are no physical barriers to prevent or deter access to the site by those intent on carrying out the anti-social activities noted by the objectors. As with many residential areas, it is already an offence to drop litter and PCC are responsible for taking enforcement action over such incidents. Responsible dog ownership is encouraged through a Public Space Protection Order.
72. It is not clear as to why residents would be particularly disadvantaged by the trail if they were elderly. The site is not a dedicated retirement village, and the age profile of residents may change over time and as a result of the new housing development planned for the site.

Risk to walkers from storm conditions bringing debris onto the trail

73. Most walkers are unlikely to use the trail in extreme weather conditions; those that do are responsible for their own safety. Many coastal locations offer far greater risk of this kind than at Millbay which is essentially an urban environment.

Coastal land

74. The description of Coastal Margin is found in article 3(2) of the Access to the Countryside (Coastal Margin) Order 2010 ('the Coastal Margin Order') which says that the approved path and the land seaward of it are coastal margin provided that, taken as a whole, the area in question is coastal land. There is nothing in the definition to remove from the scope of 'coastal land' any area between the trail and the seaward edge of the foreshore that does not fall into one of the excepted categories of land. Certain land use types are excluded from the scope of coastal access rights such as land covered by buildings, houses and gardens and individual curtilages.

75. It is not accepted that the construction of a dock at [redacted] site means there is no longer a foreshore at this location and the land is therefore not coastal land. Any lateral foreshore that would have existed previously has now given way to a vertical foreshore where the tide rises and falls against the face of the dock. The excepted land list at Schedule 1 provides that '*building*' '*does not include in the case of land which is coastal margin, any slipway, hard or quay*'. That provision would make no sense if the 2009 Act and the Coastal Margin Order were not intended to place structures such as quays and docks within the coastal margin where they lie seaward of the trail.
76. Each of the buildings along Custom House Lane has its own clear and limited area of curtilage; Custom House Lane lies between these clearly defined areas and does not form part of them. There is no justification for taking a wider view of curtilage at this location; curtilage is defined by the New Oxford Dictionary of English as "an area of land attached to a house and forming one enclosure with it". Custom House Lane is not attached to any particular dwelling which fronts onto it.
77. No part of Custom House Lane constitutes land used as a park or garden, and the proposed route does not run through any of the gardens associated with the dwellings on the site. No part of Custom House Lane is currently in the course of being developed such that it would fall within the ambit of paragraph 9 to Schedule 1 of the 2000 Act. Custom House Lane would not be excepted land as a result of the 20-metre rule as that rule does not apply to land falling within the coastal margin.
78. Custom House Lane does not fall into any of the excepted categories. Coastal access rights would apply to the proposed route if approved by the Secretary of State. This would remain the case even if the trail was to follow the existing SWCP alignment along Great Western Road as all non-excepted land seaward of the trail would fall into the coastal margin.

Representations

79. NE welcomed the positive engagement from all those who made representations and welcomed the support for the proposals regarding the alignment of the path.

Conclusions

Coastal Land

80. Paragraph 3 (2) (c) of the Coastal Margin Order describes coastal land as '*land which is seaward of the line of an approved section of the English coastal route and the seaward extremity of the foreshore*'. Along the sections of the trail subject to the objections, there is no foreshore in the sense of land which shelves into the sea and which is covered by a rising tide. At this location that foreshore has been built over at some stage in the past to provide docks, which in turn have been re-developed to provide waterfront residential accommodation.
81. Consequently, the rise and fall of the tide at this location is not lateral but vertical, but this does not mean that there is no foreshore at this location; the engineered side of the dock serves as the foreshore. Whilst the land seaward of the proposed trail at this location has been altered with the passage of time, that land remains coastal land.

Excepted land

82. Some land types are 'excepted' from the coastal access provisions and Schedule 1 to the 2000 Act sets out the categories of excepted land, which have been amended to reflect the provisions brought in under the Coastal Margin Order. Amongst these are land covered by buildings or the curtilage of such land; land used as a park or garden; and land which is currently in the course of development and would result in excepted land types.
83. The term building includes most types of structure, but does not include any fence, wall, means of access, or, where land is coastal margin, any slipway, hard or quay. The term curtilage is not defined, but generally means an area forming part and parcel with the house or building to which it is attached; typically, an enclosure around a dwelling containing a garden, garage, and side passage. The two blocks of terrace housing seaward of Custom House Lane are in keeping with this description (that is, houses and their adjoining gardens) and would be land excepted from coastal access rights. Similarly, the apartments within The Bridge (if that building fell within the coastal margin) would be excepted land.
84. Custom House Lane and that part of the footway on the eastern side of the Lane over which the trail would run, is clearly separated from the adjacent dwellings and their curtilages. Accordingly, I consider it unlikely that the whole of [redacted] could be classified as land covered by buildings or within the curtilage of buildings.
85. Similarly, Custom House Lane does not form part of the gardens (individual or communal) within the site; it is a vehicular roadway with a pedestrian walkway on the eastern side identifiable by it having a different coloured surface to that used on the roadway. Whilst there are parts of the site which are yet to be developed, there was no development work in progress at the time of my site visit. Custom House is not therefore excepted land.

Planning Policy

86. Policy PLY29 (2) – Millbay Waterfront of the Plymouth and South West Devon Joint Local Plan seeks to provide for "*High quality public realm with public access to and along the quayside walkways around the harbour, including connections to the South West Coast Path...*". Policy SO3 (8) seeks to deliver "*improved public access to and along the waterfront...*". Policy DEV3.2 (Water and Waterside Access) sets out that waterfront development proposals which shut off access from the water would not meet the requirements of the plan as they would not improve access. Although [redacted] site is not specifically mentioned, NE's proposal does not conflict with policies set out in the adopted plan.
87. Although the original permission for the development of the land near to the Rusty Anchor would have seen houses and gardens on the line of the CKW-1-S025, this land remains undeveloped. Whilst it is acknowledged that the initial scheme commenced in the 1980s could still be built out, no further development of the site appears to have taken place in the intervening years. Planning permission 14/01103/FUL (if executed) would result in the construction of a number of apartments with the provision of a stepped walkway along the quayside at this location.

88. The objectors draw attention to paragraphs 92 and 130 of the NPPF. The Secretary of State will be aware that paragraph 100 of the NPPF requires that planning policies and decisions should protect and enhance public rights of way and access including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails. The proposal is not at odds with paragraph 100 of the NPPF.

Public safety

89. Although part of the site remains undeveloped, users approaching Custom House Lane from the Quadrant Quay development, or those crossing to quadrant Quay from the pedestrian arch on the corner of the lane, would have clear sightlines of vehicles approaching along the lane from the east or south when considering whether to cross the road. There are also clear sight lines along Custom House Lane such that users would be aware of vehicles passing along the lane or driving into or reversing out from those undeveloped areas which are used for the parking of vehicles. Under the scheme, trail users are considered to be primarily responsible for their own safety; the good sight lines on the proposed route will limit the risk of conflicts between walkers and vehicles.
90. The physical characteristics of Custom House Lane suggests that vehicles do not travel along it at excess speeds that put pedestrians (whether residents or visitors) in danger. The access into [redacted] from Great Western Road is constrained to a single lane due to a 'private no parking' sign which occupies most of the southern side; beyond that is a right angle turn at which vehicles leaving the site may be encountered. The lane then serves as access to a residential estate and its marina where pedestrians are to be expected.
91. All vehicle drivers (including those accessing the [redacted] station) can therefore be expected to be exercising due care and attention in such circumstances. The presence of pedestrians following the trail is unlikely to introduce a hazard to the environment that vehicle drivers will have not previously encountered and should not result in [redacted] volunteers experiencing delays in reaching the lifeboat station. NE proposes low key management techniques to inform the public of the [redacted] use of the lane.

Impact on privacy of residents

92. In terms of privacy, the proposed trail would pass in close proximity to the apartments within The Bridge but would be on the opposite side of the lane from the terrace housing seaward of Custom House Lane. The apartments on the landward side of the lane are screened from the walkway by walls and landscape planting. Whereas land within 20 metres of a dwelling would normally be excluded from access rights, this does not apply to land which is coastal margin. Whilst the proposed trail could have an adverse effect on some residents, intrusion from pedestrians is already mitigated by the existing landscape design.
93. Concern is expressed over the potential for anti-social activity to occur within the site if the trail was routed through it; the objectors note that such activities are occurring within the neighbouring Quadrant Quay development. The establishment of the trail would not provide the public with a right to engage in the activities described by the objectors and those using the trail are expected to pass through quickly and behave in an appropriate manner. Although the steps

from Great Western Road to the site are currently blocked off, there are no restrictions on entry to the Village from Custom House Lane; there is likely to be a degree of informal public access to the site already.

Alternative Route

94. In discharging the coastal access duty there must be regard to the convenience of the trail and the desirability of that route adhering to the periphery of the coast and providing views of the sea. The Scheme provides that the trail will follow existing walked routes wherever possible, and these may utilise existing public rights of way and promoted routes.
95. The objectors propose that the trail should cross from Quadrant Quay and then run east to Great Western Road and follow the current line of the SWCP to the Rusty Anchor. However, routing the trail along Great Western Road would be further from the sea than the proposed route. Whilst there would be views towards Plymouth Sound from the more elevated position of Great Western Road, those general views of the sea are obscured by The Bridge and the southernmost terrace seaward of Custom House Lane and by the [redacted] station; other than the elevation, the views of the sea are no greater than those available from the proposed route.
96. A further consideration is that whilst the Great Western Road route would avoid [redacted], it would have the effect of drawing into the coastal margin all the land seaward of the trail which is not excepted land. In my view, this would include the walkway alongside Custom House Lane, the steps down to the site from Great Western Road and any provision made for waterfront access at the Rusty Anchor site. Routing the trail along Great Western Road would not therefore achieve the result sought by the objectors and is likely to increase the number of access points to the Village from two to four. Having regard to these factors, I consider the alternative alignment along Great Western Road would not fulfil the coastal access duty.
97. The proposed route would adhere to the periphery of the sea. Although views of the sea from CKW-1-S024 are limited due to the two terraces of houses, a view towards the sea is available between those blocks and is available from CKW-1-S025 which would remain available as a result of the amended design for the apartment block at the Rusty Anchor site.
98. The proposed route will be level and accessible to most users with the provision of ramped access at CKW-1-S025 being provided as part of the approved design of the Rusty Anchor development. As such, the proposed route would be convenient for use by the public and would not disadvantage those with protected characteristics to any greater extent than that experienced by the general population.

Habitats Regulations Assessment (HRA)

99. 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 National Site Network.

100. 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.
101. 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.
102. 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 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 is located immediately to the north of the Plymouth Sound and Estuaries SAC.
103. 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.
104. 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.
105. 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.

106. 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.
107. 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)

108. The NCA, dated 15 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest, Marine Conservation Zones, 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.
109. 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 proposal strikes a fair balance

110. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights. The proposed route will create a right of access over land within [redacted] and would result in some limited impacts on the privacy of the residents. However, there is nothing to suggest the trail would have a significant adverse impact with regard to the concerns raised by the objectors. The alternative route suggested does not in my view meet the objectives of the coastal access duty for the reasons given. Any adverse effects do not in my view 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

111. Having regard to these and all other matters raised, I conclude 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) and (c) of the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

Appointed Person