

Coastal and Marine Access

Planning Policy Guidance Coastal Planning PPG20

States that:

"Public access to the coast should be a basic principle, unless it can be demonstrated that this is damaging to nature conservation or impractical. This applies both to the developed and undeveloped coast. Whenever appropriate both new developments and regeneration schemes should seek to include, through planning obligations under S.106 of the Town and Country Planning Act 1990, public access as a positive feature of the development."

- 1.1. The Carlyon Bay Beach area has a lengthy history of the slow process being undertaken to update the Definitive Map and Statements. In particular to confirm the rights of way that exists, to the shore. The process involves all the evidence being considered and if the right of way is confirmed it is completed by the issue of a Modification Order by Cornwall Council. In law a right of way can and does exist by evidence of use, but may not yet be mapped.
- 1.2. A letter dated 21 May 2007 from Defra on behalf of David Miliband states:-

"There is a legal principle "once a highway, always a highway", and therefore all public rights of way once they exist, remain in existence until lawfully closed or diverted. All local highway authorities have a duty to protect and assert the rights of the public as to the use and enjoyment of public rights of way and to prevent, so far as possible, the stopping up, or obstruction, of all their highways even where that way crosses 'private' land." (Defra reply from David Miliband pp Julie Tucker) (Appendix 1)

Why this is important?

- For safe retreat from the sea to the shore and inland
- To preserve an access route to the coast for recreation and leisure
- For marine occupations e.g. fishing, boat launching
- As a means of getting from a to b
- Education and conservation promotion
- Tourism
- Health and well being of the community
- To comply with **Planning Policy Guidance Coastal Planning PPG20**

What has been achieved, or found, so far:-

- A right of way from the public highway at Beach Road to the old swimming pool buildings next to the Coliseum, its conclusion identified as point 14. (Ref: WCA.478(3)/10584) (Appendix 2 Modification Order)
- A right of way from SWCP No 36 down to Fishing Point at Polgaver Beach. (Appendix 3 Modification Order)
- A right of way from Sea Road North across the Golf Course to link into SWCP No 36. (Appendix 4 Modification Order)

Pending a decision by Cornwall Council

1.3. There is an Application pending a decision for the remaining section of the right of way from point 14 to reinstate access to the shore. This application has been made necessary because access is now prevented by an obstruction caused by the construction of a sea wall of steel cladding & rock armour. This wall is unauthorised and the subject of a Planning Enforcement Order. Furthermore, the wall does not protect any buildings from the sea, as nothing has been built behind it.

The Application for the first section was made in January 2003 and was confirmed as a right of way by the County Council in 2009. After an appeal by the landowner it was called in for a public inquiry.

- 1.4. The Public Inquiry was subsequently cancelled due to the late withdrawal of objections by the Landowner. This triggered a site visit and Inspectors Report. The Inspector Heidi Cruickshank agreed with the Cornwall Council that the application was duly made (found) by them, to a point known as 14 on the map.
- 1.5. However, she stated in her report that the applicants, Mrs F Taylor and Mrs G Price, could apply separately for the remaining section. They applied promptly for that remaining section, in December 2009. It should be noted however, that even though that application was submitted in December 2009, acknowledgement of receipt of this application did not come before a letter from the Legal Services Section dated 30th September 2010. This acknowledgment seemingly prompted only by a request for the same from G E Price Co-Applicant.
- 1.6. This application (from point 14) qualified for priority status due to development of a coastal area (PPG20). However, part of its initial delay appears to be that it has endured a 6 month wait at Environment Service (ES). This Section of Cornwall Council is headed by Programmes Manager, Mr Mike Eastwood (ME). An Inquiry under the Freedom of Information Act as to the initial process with (ME/ES) produced no information held on file.
- 1.7. This application is in a queue behind 27 other cases. I have been informed that, as many of these 27 cases may be complex, then it is likely to be some years before this remaining access strip is considered. It is therefore more likely than not that the Planning Application will be considered before the remaining section of rights of way. This access strip is known as a 'ransom strip', in building terms.
- 1.8. This application does not consist of new evidence. Evidence including plans showing the route beyond point 14 has already been submitted for the right of way that has been found to point 14. (Please see appendix 4)

What happens to the access route if Planning permission is granted before the Beach Road 'ransom strip' portion of the right of way is mapped?

Will the developer obstruct the route from point 14?

Will the developer allow permissive access, with daily closure as in the past?

If developed will the developer incorporate the route in their build?

If route obstructed/built over will the County Council take Enforcement action once the route has been mapped?

Will a sea wall or building be removed once built? Even though the Council have the powers how often does this actually happen in reality?

Pending the Roll-out of the Marine & Coastal Access Bill (CROW Act 2000)

- 1.9. This Act (M & CAB) is being implemented on a regional basis by Natural England in partnership with Local Authorities and other interested parties.

So Far:

Local Access Forum (LAF) has been formed.

LAF view on Access to the Beach at Carlyon Bay is one of great concern. I quote: *'potentially detrimental to the ability of local people to enjoy free access for recreation and exercise.'* (Minute No.LAF87 Access Forum Source CC website)

The Act (M & CAB) was brought in to provide a Coastal Access Zone around the English Coast. This Zone includes beaches and adjacent coastal land that is undeveloped.

Why mapping the routes of public rights of way is important

- They are preserved and protected in law in perpetuity
- They provide access and amenity enjoyment
- If a route is permissive it means that this is not a mapped route and permission can be withdrawn at any time.

- 1.10. If rights of way are only linked to a planning condition, such as a Section 106 Agreement, it means that an application can be made by landowner or subsequent owners to have the condition lifted. If granted, the right no longer

exists. Also restrictions can be placed on the amount of times the right of way can be used.

Possible solutions to protecting coastal access in law in perpetuity

- 1.11. The applicant wrote a letter to CEG on 9th December 2009 promptly following the Inspectors Report. This letter requested the landowner, whose position has constantly been to promise public access in law and in perpetuity, to dedicate the remaining section as a public right of way. This was posted by recorded delivery but no response has ever been received to date.
- 1.12. If CEG now saw fit to dedicate this remaining section and remove the obstructing unauthorised construction this would save the public purse further costs and time. Substantial evidence has already been considered by the Inspector for the section already found and this same evidence also applies to the remaining section. The public did not walk to point 14 and stop. However, if CEG continue to obstruct and or control what is termed in the development business a 'ransom strip' then the process will take far longer and have greater costs for all involved.
- 1.13. CEG make claims in their 'Press Statement' 1st February 2010 that: "*We have always made it clear that we want the public to have access to the beach and we remain committed to that promise*".
- 1.14. In my opinion this statement is not at all clear. It is in contradiction to the repeated objections made by CEG to any public rights of way. It has never been made clear exactly what this statement by CEG of 'commitment' and 'promise' means in law.
- 1.15. Therefore, it can only be read as a 'promise' which is permissive. This promise has never been clarified. I would re-iterate that any permission, by the current owners of the site, is not necessarily transferable to new owners.
- 1.16. However, what can be witnessed on the site is gating and 24/7 guarding of public rights of way. This forms a psychological obstruction, because of their proximity to two public rights of way. One of which is the important National Trail, the South West Coast Path. No.36. The other, Beach Road, provides access to the

coast. This type of psychological obstruction has a detrimental impact on the amenity for the user as of a right.

- 1.17. The psychological barriers such as the gates, fences and guards could be removed from both the SWCP 36 and Beach Road Foot Path.
- 1.18. Mike Eastwood (ME) of Cornwall Council could use his power to expedite this Application as an immediate priority under PPG20.
- 1.19. It could be 'leapfrogged' over the 27 cases which are in front of it, as per e-mail from Legal Services. (Appendix 5 E-mail reply from (ME) 15.03.2011) This response now recognises the letter from Defra (see Appendix 1)
- 1.20. *"I consider that given that this matter was raised at the Inquiry into the 2008 Order and that the similar evidence is being used in support of this application together with the possibility that the determination of the application for a public footpath will have an impact on any approved future development of the site, sufficient exceptional circumstances exist that the application should receive priority over other applications that have been prioritised according to the set criteria in the policy."* (ME 15.03.2011)
- 1.21. Some two and a half years later we have inched slightly up the priority list, but not yet nearer to the shore. Notwithstanding priority was applied for at the submission stage of the remaining section. To me it begs the question of why the applications have endured such punishing delays.
- 1.22. Cornwall Council could ensure that the correct line of the SWCP No 36 across the Top Car Park area is adhered to and correctly sign posted. The route currently sign posted and fenced is incorrect and therefore permissive. Cornwall Council has been advised of this fact repeatedly in writing over a period of 7 years by Councillors and lay persons. The route remains incorrect. (Appendix 6 -1929 Map of line of SWCP No.36)

Protecting what has been established

- 1.23. Inspection of the Planning Application (PA) reveals that the (PA) will adversely affect the hard won mapped rights of way.

Riddall and Trevelyan in their book '*Rights of Way; A guide to law and practise*' set out very well the issues in relation to planning and rights of way:

"Anyone learning of proposals to develop land crossed by a public right of way should therefore inspect the planning application, consider what effect the development will have on the right of way and make appropriate representations to the planning authority.

The granting of outline or detailed permission or approval of reserved matters does not constitute permission to close or divert a public right of way affected by the development. The authority for such closure or diversion of a public right of way is granted by an order under the Town and Country Planning Act 1990."

- 1.24. This is particularly relevant in this current planning application. Under the submitted Design and Access Statement, paragraph 7.00 entitled Access in Fig 7.3 the route bears very little resemblance to the mapped order.
- 1.25. There is no dimension on the plan for its width. The mapped right of way is 8 metres wide from point 5 (the turn point) to point 14. However, the route shown on the developers plan passes between vegetation and over steps at or near turn point 5 and again over steps near the annotation on page 73 of Offices Security and Maintenance. Its width or route appears to be affected by the outlined podium.
- 1.26. A reduction in the width of this route equates to a loss of amenity to what has been lawfully mapped. The addition of two flights of steps where there previously are none is a very serious step backward in the regard for access for persons with a disability. In fact most people with the lawful accompaniments of a wheelchair, pushchair etc would be hampered and disadvantaged. This is contrary to the Definitive map and statement.
- 1.27. Therefore, I appeal to the Council that whatever they are minded to do with this PA that they assure the amenity level, i.e. no steps and the width is adhered to. I object to changes in the PA of the definitive route known as Beach Road.

“In law in perpetuity”

The draft 106 Agreement

- 1.28. The terms of public access proposed by the developer have been set out in a draft 106 agreement. They appear at paragraphs 13 – 13.3.

13.1 This clause is without prejudice to any existing public rights of way affecting the site’

- 1.29. At present the public access is only available to point 14. Until that extension is approved then access to the beach will be only at the developer’s permission. It is imperative; therefore, that this extension should either be granted by the Council as a matter of urgency or the developer dedicates this remaining part.

- 1.30. This is made even more important when one examines the conditions under which the site may be closed, within the 106 agreement.

- 1.31. Paragraph 13.3 (a) (i)-(vi) allows for closure at the discretion of the Developer/Owner for 8 events not exceeding 4 consecutive days a total of 32 days in any calendar year.

Except *“Unless otherwise agreed with the Council.”*

- 1.32. This gives the developer any opportunity to close the site at any time for any duration on their permission.

- 1.33. To add the rider:

“that unrestricted pedestrian access shall be permitted to at least one of the three beaches (Crinnis, Shorthorn or Polgaver)”

Simply adds insult to injury. To access Polgaver beach would require members of the public to walk the entire length of the coastal footpath and negotiate the path and rocks down to the sea shore. This is not ‘public access’ in any sense, within the meaning and spirit one would think it was being promoted.

- 1.34. Paragraph 14. Public Realm reinforces the permissive nature of access with regard to providing steps at Polgaver:

“their use shall remain subject to permission/licence of the Owner.”

- 1.35. Therefore, this cannot be claimed to be public access as an alternative to 'as of a right public access' and again contradicts 13.1 because it is with prejudice.
- 1.36. If we take the example that no access was allowed to Crinnis, then it begs the question of how this could be achieved whilst the public right of way down Beach Road exists.
- 1.37. Therefore, I contend that these clauses contradict the statement at 13.1 'without prejudice' because 13.3 (a) (vi) cannot be read as anything else but prejudice.

Conclusions

- 2.1. The rights of way are vital in their own right as public access to the coast. This is enshrined as Planning Policy in PPG20. Therefore, this should be resolved as part of the Planning Application Process. I have seen no clear indication of this happening to date.
- 2.2. The rights of way should be enshrined in law, in order to link into the Coastal Zone for access to and from the beaches, and shore.
- 2.3. The rights should be exactly as the lengthy legal process mapped them. People should not be disadvantaged by altering the terrain by putting in obstacles such as steps and narrowing the route.
- 2.4. CEG's should quantify their 'commitment' and 'promises' by the dedication of the 'ransom strip' from point 14 to the coast.
- 2.5. Cornwall Council should be pro-active in resolving the access before considering any Planning Applications that affect them.
- 2.6. Draft Section 106 13 should be re drafted completely to protect the existing hard won rights of way.

