

# **Percy R Brend & Sons (Holdings) Limited**

## **Diversion of Footpath 426/1/1: Reasons for the Proposal**

### **Background**

Prior to submitting this application, the applicant and their solicitors engaged extensively with Council officers. It was agreed that an application under section 119 of the 1980 Act represents the most appropriate mechanism to address the issues outlined below.

Concerns were raised that the route of Footpath 426/1/1 shown on the Definitive Map appears to be incorrectly plotted, as it passes directly through the hotel building, which has occupied its current location since the early 1900s.

The applicant understands that the Council identified the need to realign this footpath in 2024, as the actual walked route does not correspond with the Definitive Map. However, due to resourcing constraints, the Council was unable to progress the matter at that time.

Following further discussions, a revised route has been agreed in principle. This new alignment follows the South West Coast Path, reflecting the route currently used by the public. It also addresses our client's concerns that the Definitive Map shows a route which crosses several physical obstructions, including:

- Parts of the hotel building (spa, lounge, and restaurant)
- Fencing around the outdoor children's playground
- Fencing around the outdoor tennis courts
- Hedging along the hotel's boundary

The Council has acknowledged that the proposed route would result in a net increase to the public rights of way network. It would provide a continuous right of way adjacent to Sea Road (a private road), terminating at Beach Road, a public highway. This realignment not only reflects the actual usage but also implements the improvements previously identified by the Council.

The proposed diversion would benefit the public by enhancing the rights of way network, both in terms of length and quality, while resolving the longstanding anomaly.

### **Section 119(1): Expediency**

The current recorded route of the footpath, as shown on the Definitive Map, runs directly through the Carlyon Bay Hotel, which has occupied its present location for over 100 years. It appears that a mapping error has occurred, as the route actually used by the public does not align with the recorded path. Instead, the public follows the South West Coast Path, which is the route we propose to formally designate as the public footpath.

We believe the proposed diversion satisfies the test of expediency under Section 119(1) of the Highways Act 1980. It is clearly in the interests of the applicant, as the freehold owner of the land, to align the right of way with the route currently used by the public. Furthermore, the diversion serves the public interest by formalising a route previously identified by Cornwall Council for realignment. It also results in a net gain to the rights of way network and secures a new public right of way alongside Sea Road, a private road.

### **Section 119(6): Convenience**

The proposed route corresponds with the path currently used by the public and resolves the discrepancy with the Definitive Map.

The proposed route is more convenient for the public for the following reasons:

- **Creation of a new spur and public right of way:** A new spur will be established, providing a public right of way adjacent to Sea Road, which is currently a private road with no public access rights.
- **Net gain to the rights of way network:** The diversion will create a new connection from the South West Coast Path to Sea Road, continuing along Sea Road and linking to the existing public footpath that terminates at Beach Road (a public highway).

**Section 119(2) Point of termination:**

As shown on the accompanying Proposal Map, the proposed diversion does not alter the termination points of the footpath at either end.