



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

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

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

**Date:**

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Marine and Coastal Access Act 2009

Objection by John Brough

regarding Coastal Access Proposals by Natural England  
relating to Whitehaven to Silecroft

Accompanied site visit made on 18 May 2015

File Ref: MCA/WHS/O2

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## **Objection Ref: MCA/WHS/O2**

### **Townhead Farm, Nethertown, Egremont, Cumbria, CA22 2UU**

- On 15 October 2014 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949, pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 8 December 2014 to Chapter 2 of the Coastal Access Report, *Whitehaven to Silecroft*, has been made by John Brough. The land to which the objection relates are route sections WHS-2-S037 to WHS-2-S038.
- The objection is made under paragraphs 3(3)(a) of Schedule 1A to the National Parks and Access to the Countryside Act 1949, in relation to the position of any part of the proposed route.

**Summary of Recommendation:** I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail, in the respects specified in the objection, to strike a fair balance as a result of the matters within paragraph 3(3)(a) of the 1949 Act.

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### **Procedural matters**

#### ***Objection considered in this report***

1. On 15 October 2014 Natural England ("NE") submitted the Coastal Access Whitehaven to Silecroft Report ("the Report") to the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State"), setting out the proposals for improved access to the Cumbrian coast between Whitehaven and Silecroft. The Coastal Access Scheme<sup>1</sup> ("the Scheme") sets out the principles which were to be followed in producing the Report.
2. The period for making formal representations and objections to the Report closed on 10 December 2014 and four objections were received within the specified timescale. However, there was an oversight in relation to giving notice to a small group of landowners, who were then offered a further eight weeks to make a response to the report. A further objection was received by the extended deadline of 11 February 2015.
3. Four of the five objections were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference APP/MCA/WHS/O2<sup>2</sup> ("O2"), with the remaining objections considered separately.

#### ***Site visit***

4. On 18 May 2015 I made a site visit with respect to the objection O2 accompanied by the objector and a representative from NE. I make my recommendation taking account of the written representations and my observations on the site visit.

### **Main issues**

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ("the 2009 Act") and requires NE and the Secretary of State to

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<sup>1</sup> Coastal Access Natural England's Approved Scheme approved by the Secretary of State under section 298(2) of the Marine and Coastal Access Act 2009 on 9 July 2013

<sup>2</sup> NE Reference MCA\Whitehaven Silecroft\O\2\WHS0609

- exercise their relevant functions to secure a route for the whole of the English coast which:
- i) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - ii) (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 coastal route ("the route"), 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 coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
7. In discharging the coastal access duty there must be regard to:
- i) the safety and convenience of those using the coastal route,
  - ii) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - iii) 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 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. A relevant interest arises where a person:
- i) holds an estate in fee simple absolute in possession of the land,
  - ii) holds a term of years absolute in the land, or
  - iii) is in lawful occupation of the land.
9. The objector raised concerns that the proposed route passed two gateways and a water trough around which the cows frequently congregate, resulting in poaching which would be conflict with the surface of the proposed route. In particular the northern gateway was noted as a frequently used access at milking times, with cattle tending to congregate in anticipation.
10. An alternative route was suggested, running along the coastal side of the field north of the scramble track and following the coast alongside the railway fence to Nethertown Road.
11. In addition to the objection, twenty-one representations were made regarding the Report. The representation from the Ramblers relates to this land.
12. NE commented on the representation and objection, arguing that the objection should be dismissed, with the proposals approved without amendment.
13. My role is to determine whether or not a fair balance has been struck by NE 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 and to make a recommendation to the Secretary of State accordingly.

## **The Coastal Route**

### ***General description***

14. The objection relates to parts of the route referred to within Chapter 2 of the Report. This section runs from Pow Beck, St Bees (grid reference: NX 969 511) to Seascale promenade (grid reference: NY 037 009), as shown on maps 2a to 2g.
15. The route generally follows existing walked routes, including public rights of way and minor roads. However, the majority of the route covered by Chapter 2, including that to which the objection relates, requires the creation of a new path. NE indicate that it mainly follows the coastline quite closely, maintaining good views of the sea.
16. Whilst sections to the south of Braystones<sup>3</sup> generally follow the route of the existing Cumbria Coastal Way the northern sections, including that subject to the objection, departs from this. The trail follows a new route on higher ground, rather than along the foreshore, to avoid long sections on a shingle beach.
17. Although there are few artificial barriers to accessibility on the proposed route, much of this length will not be easily accessible to users with reduced mobility due to the undulating terrain and surface.
18. The route passes through sites designated for nature conservation or heritage preservation. None have been identified in relation to the objector's land, although there is a Site of Special Scientific Interest at Harnsey Moss, situated just to the south-east.

### ***The sections referred to by O2***

19. O2 relates to sections WHS-2-S038, shown on map 2c. This is not an existing walked route and so the proposal is for new access over grass adjacent to the road. At the northern end the route exits the field to run on the road through Nethertown, section WHS-2-S037-RD.

### **Case in objection**

20. The northern part of section WHS-2-S038 passes two gateways and a water trough, around which Townhead Farm's herd of 150 milk cows frequently congregate. In adverse weather conditions these areas can become poached, which would conflict with the surface of the proposed path. The northernmost gateway is heavily trafficked by the herd at milking times and many cattle congregate there in anticipation of milking times.
21. The route could be realigned to the coastal side of the field north of the scramble track, prior to the water trough, on the southern edge of Lady Moss, following a ridge of land towards the coast. This would give a view of Nethertown Beach fish garth<sup>4</sup> and the route could follow the railway fence to Nethertown Beach road and back into Nethertown to re-join the proposed route at the village green, midway along section WHS-2-S037-RD.

### **Natural England comments on the objection**

22. The proposed route follows the landward edge of the field to avoid the motorcycle scramble track, which may pose a risk to walkers in close vicinity.

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<sup>3</sup> Map 2d

<sup>4</sup> I understand this to be an historic structure used to keep and easily catch fish

NE believe it would be possible to manage the issues raised regarding poaching by relocating the water trough (in liaison with the objector), thereby reducing the damage to the surface, consistent with paragraphs 8.2.11 and 8.1.12 of the Scheme.

23. The proposed modification would rely on a route through neighbouring land, used as a pony paddock. NE do not believe it would be possible to ensure safe separation of walkers and stock in this area, consistent with paragraph 8.3.10 of the Scheme. This view was also expressed by the owner of the land. The objector's field is significantly larger than the adjacent paddock, making it less likely that users would come into close proximity to stock. The modification also would align the route closer to the scramble track, increasing the risk that walkers might stray into that area.
24. It is nice to be able to see different features of the surrounding countryside from the trail, and it is possible to see the fish garth from the proposed trail. In this case NE believe that there are more important considerations, such as safety to the public and potential disruption to the existing motor bike scrambling, that need to be taken into account. To minimise risks to walkers from the scramble track NE propose that, with the exception of the coastal access trail on the landward edge of the field, the field should be subject to an access exclusion. NE believe that it is more likely that walkers will heed the proposed direction to exclude access over the rest of the field if they are walking along the edge of it, rather than through the middle. Therefore, NE do not believe this to be a viable modification to the proposal.

## Reasons

25. The trail moves away from the periphery of the coast partway along the section WHS-2-S040, south of the area referred to. This is due to the use of the south-western area of the land as a scramble track. I agree with NE that there is a need to maintain adequate separation between walkers and the scramble track. Whilst an option would have been to fence the scramble track from the field as part of the establishment works, it appears reasonable to impose an access exclusion in relation to the field, which would otherwise be coastal margin.
26. The representation from the Ramblers<sup>5</sup> indicates that they have no objection to the proposed exclusion. However, they raise the issue that the route should be reconsidered if the land use were to alter. NE indicates that long term exclusions or restrictions must be periodically reviewed, with renewal only occurring where still proven to be necessary. I consider that this is a reasonable way forward in relation to this use of the land.
27. In order to avoid the scramble track, the trail runs along the north-eastern boundary of the field rather than on the seaward edge of the field, as would otherwise be expected<sup>6</sup>. Although the route follows a field edge in this case this means that there will potentially be more contact between cattle and users due to the water trough and, in particular, the northern gateway, used for access to the milking parlour. I am satisfied that NE should be able to reach agreement with regard to moving the cattle trough. The issue of cattle using and congregating at the northern gate is dealt with by the positioning of a kissing gate alongside a new field gate. However, there remains a strong likelihood of

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<sup>5</sup> NE Reference MCA\Whitehaven Silcroft\R\7\WHS0013

<sup>6</sup> Scheme reference 8.2.11

some interaction between users and cattle in this area at particular times of the day, however, the separation of the field exit points will assist to some extent.

### **Alternative route**

28. The objector suggested an alternative route, which once north of the scramble track, would be in line with the principle of section 297(2) of the 2009 Act that it is desirable that the route should adhere to the periphery of the coast<sup>7</sup>. Cliff tops usually provide the most convenient route and, where there is a cliff, the trail should normally be aligned along it wherever practicable, because it usually provides the best views of the sea<sup>8</sup>.
29. Whilst NE indicates that the fish garth on Nethertown Beach can be seen from parts of the proposed trail, I agree with the objector that the coastal views offered by his suggested route are superior. In my view, the interest of the fish garth visible at low tide would add to the enjoyment of the route for members of the public.
30. However, in order to access the road to the north-west, which leads between Nethertown Station and Nethertown, it would be necessary to cross a field used for keeping horses. The Scheme notes that the use of land for access and grazing by horses and ponies is broadly compatible<sup>9</sup>. NE believe that the field to the south is more appropriate for access as it is larger, which they say will make it less likely that walkers will come into close proximity to stock than they would in the field currently used by horses.
31. Taking account of the effect of the scramble track on the use of the coastline in this area, I consider that NE is correct to place greater significance on safety to the public. I agree with NE that it is far more likely that walkers will heed the proposed direction to exclude access over the field if they are walking along the landward edge, rather than through the middle. I agree with the objector that his proposed route would have recreational benefits, however, it would replace one potential interaction between animals and users with another.
32. I consider NE has appropriately balanced the issues relating to the potential alternative route with the issue of public safety. I am satisfied that the proposed route meets the coastal access duty regarding the safety and convenience of those using the coastal route.

### **Conclusion**

33. Taking account of all matters viewed on my site inspection, as well as the objection, representation and comments made relating to this objection I consider that the proposed position of the route balances the effect upon the landowner's management of the area, in use for grazing cattle or horses and as a scramble track, with the requirements of public access. I conclude that the proposals do not fail, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraph 3(3)(a) of Schedule 1(a) to the 1949 Act. I note the ability to review the route and exclusions should use of the land alter.

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<sup>7</sup> Scheme reference 4.5.1

<sup>8</sup> Scheme reference 7.1

<sup>9</sup> Scheme reference 8.3

**Other matters**

34. I have noted all the representations made with respect to the Report, however, I have only taken account of that directly relevant to the objection dealt with in this report.

**Recommendation**

35. 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 objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Heidi Cruickshank*

**Inspector**