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

by Martin Elliott BSc FIPROW

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

Date

Marine and Coastal Access Act 2009

Objections by J O'Shaughnessy, D Diett, C Payne, C Kingsnorth, R and T Cowan, Mr
and Mrs Alexander and A Hampstead

Regarding Coastal Access Proposals by Natural England

Relating to Camber to Folkestone

Site visit made on 8 July 2015

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Objection Reference: MCA/Camber to Folkestone/03

Land forming part of 20 The Suttons, Camber, TN31 7SA

- On 19 September 2014 Natural England ("NE") submitted a Coastal Access Report ("the Report") to the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State") under section 51 of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act"), pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009 ("the 2009 Act").
- An objection dated 14 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by Julie O'Shaughnessy. The land in the Report to which the objection relates is route section CFK-1-S005.
- The objection is made under paragraphs 3(3)(a) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified 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/Camber to Folkestone/04

Land forming part of 3 The Suttons, Camber, TN31 7SA.

- On 19 September 2014 NE submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 14 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by Mr D Diett. The land in the Report to which the objection relates is CFK-1-026.
- 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 in such respects as are specified in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals do not fail to strike a fair balance.

Objection Reference: MCA/Camber to Folkestone/05

Land forming part of 7 The Suttons, Camber, TN31 7SA.

- On 19 September 2014 NE submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 13 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by C Payne. The land in the Report to which the objection relates is route section CFK-1-S020.
- The objection is made under paragraphs 3(3)(a)(c)(d) & (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals do not fail to strike a fair balance.

Objection Reference: MCA/Camber to Folkestone/06

Land forming part of 2 The Suttons, Camber, TN31 7SA.

- On 19 September 2014 NE submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 13 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by Mr C Kingsnorth. The land in the Report to which the

objection relates is route section CFK-1-S027.

- The objection is made under paragraphs 3(3)(a)(c)(d) & (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals do not fail to strike a fair balance.

Objection Reference: MCA/Camber to Folkestone/07

Land forming part of 9 The Suttons, Camber, TN31 7SA.

- On 19 September 2014 NE submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 14 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by R and T Cowan. The land in the Report to which the objection relates is route section CFK-1-S018.
- 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 in such respects as are specified in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals do not fail to strike a fair balance.

Objection Reference: MCA/Camber to Folkestone/08

Land forming part of 15 The Suttons, Camber, TN31 7SA.

- On 19 September 2014 NE submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 14 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by Mr and Mrs Alexander. The land in the Report to which the objection relates is route section CFK-1-S012.
- The objection is made under paragraphs 3(3)(a)(c)(d) & (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals do not fail to strike a fair balance.

Objection Reference: MCA/Camber to Folkestone/09

Land forming part of 5 The Suttons, Camber, TN31 7SA.

- On 19 September 2014 NE submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 14 November 2014 to chapter 1 of the Report, Camber to Folkestone, has been made by A Hampstead. The land in the Report to which the objection relates is route section CFK-1-S022.
- 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 in such respects as are specified in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals do not fail to strike a fair balance.

Procedural and Preliminary Matters

1. I have been appointed to report to the Secretary of State for Environment Food and Rural Affairs on objections made to a Coastal Access Report. This report includes the gist of submissions made by the objectors, the responses of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs within this report.
2. The objection of J Shaughnessy indicates that the section of the trail to which the objection relates is CFK-1-S5001 to CFK-1-S5003. In the response of NE to the objection the relevant section is identified as CFK-1-S006 to CFK-1-S007. At the site visit it was confirmed that the relevant section is CFK-1-S005. Although the relevant section of the trail has been incorrectly identified it is clear that the objection relates to land at 20 The Suttons.

Objections considered in this report

3. On 19 September 2014 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Kent Coast between Camber and Folkestone. The period for making formal representations and objections to the Report closed on 14 November 2014.
4. Ten objections were received to the Report, of which I deemed seven to be admissible. The seven objections considered in this report relate to land at The Suttons, Camber (CFK-1-S004 to CFK-1-S028). The objections relate to similar issues and the circumstances make it expedient to consider these objections together in this report.
5. In addition to the objections, a total of eight representations were made in relation to the Report. However, none of those representations relate specifically to land subject to the objections considered in this report. A representation from The Ramblers' Association gives full support to NE's report and agreement with the proposed route.

Site visit

6. I carried out an accompanied site inspection on 8 July 2015 when I was accompanied by Jenny Bowen for NE, Mr S Gawad for the Environment Agency and Mr A Mitchell for East Sussex County Council. I was also joined by some of the objectors, namely Julie Shaughnessy, Mr and Mrs Diett and Charlotte Payne. Following the accompanied site visit I walked along the beach below the shingle bank and through Johnson's Field. I walked along Lydd Road and The Suttons on my way to the site visit.

Main Issues

7. 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.

8. The second objective is that, in association with the English coastal route (“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 coastal route or otherwise.
9. In discharging the coastal access duty there must be 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.
10. NE’s Approved Scheme 2013¹ (“the Scheme”) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
11. 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.
12. The objections have been made under paragraphs 3(3)(a)(c)(d) and (e) of Schedule 1A to the 1949 Act.
13. My role is to consider 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. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

14. The trail, subject to chapter 1 of the Report, runs from Camber Car Park (grid reference: TQ9646 1855 to the end of Dengemarsh Gully, Dungeness (grid reference: TR0650 1672) as shown on maps 1a to 1i. The trail generally follows existing walked routes including public rights of way and promoted routes. The section of trail subject to these objections (CFK-1-S004 to CFK-1-S028) runs to the seaward side of the properties on The Suttons. The trail which will follow a 5 metre wide maintenance strip is incorporated in the design for the Environment Agency Broomhill Sands sea defence scheme (the sea defence scheme). The sea defence scheme is now complete in respect of the section in front of the properties on The Suttons; this section has a shingle surface. Although disputed by some of the objectors, NE say that the route along the beach follows an existing walked route.

The Objections

Objection 0/3

15. The proposed route runs across privately owned land. There will be a loss of privacy and at high tides walkers will have to walk in the gardens as there is no

¹ Approved by the Secretary of State on 9 July 2013
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room at these times to walk along the beach. The point is also made that this section of beach is an area where dogs are not allowed.

16. A better option would be along The Suttons or through Johnson's field and along Lydd Road

Objections 0/4, 0/7 and 0/9

17. These objections make the point that the proposed route along the new coastal defences is less than 1 metre from some of the gardens. Walkers at present tend to walk at the bottom of the shingle beach at a lower elevation much further from the gardens.
18. The proposed sea defence scheme² raises the level of the beach to a higher elevation than the gardens which will mean that walkers will now walk closer and look down at the gardens. The route is across private land owned by the house owners and there will be a great loss of privacy. Objection 0/7 also states that the proposal will adversely affect the value of their property.
19. It is suggested that the alternative routes considered by NE would be better choices, namely through Johnson's Field and along the Lydd Road or along The Suttons.

Objection 0/6

20. The proposals fail to take into account, especially at high tide, that walkers will be forced to walk across the objector's land. The proposed route crosses over a planted area and this is unacceptable. At high tide the public should not walk through the resident's decked or planted land. The point is also made that the beach is an SSSI³ and the objector questions whether there are public rights of access over the land. The objector asserts that he will remove any signage and will be putting in claims for damage. It is contended that there is no interest in creating vast traffic of people over the beach.
21. Other options are available along The Suttons or through Johnson's Field and along The Suttons to Lydd Road.

Objections 0/5 and 0/8

22. The proposed route will unfairly and disproportionately affect the landowners. The land owned by the objectors extends beyond the decking and includes the shingle beach to the high water mark. The route passes over private land and is extremely close to the properties and private gardens.
23. The proposed route will encourage substantially more people to access the objector's private land, substantially increase disturbance and adversely affect enjoyment of the properties. The public have been known to cut between the houses on The Suttons and also rest on the decking which is extremely intrusive and unwelcome. Concerns are also raised regarding the security implications with people walking over private property.

² As noted at paragraph 14 the scheme is now partially complete.

³ Site of Special Scientific Interest

24. The objections raise concerns in relation to the sea defence works and make the point that the Report is predicated on the future situation. The effect of the scheme and the trail is unclear in respect of the affected properties.
25. The objections make the point that the Non-Technical summary of the Environmental Statement for the sea defence works makes no reference to a walkway being created nor assesses such implications. Further, there is no assessment as to how increased access proposed by NE will impact on the conclusions of the Environmental Statement. However, it is stated that the beach is an SSSI; proper consideration has not been given to the environmental implications of the proposed route along the beach. In respect of sensitive areas elsewhere along the trail NE propose a direction to exclude access over vegetated shingle.
26. It is noted that the landward boundary of the coastal margin is to coincide with the new maintenance route along the top of the beach. It cannot be fair or reasonable for landowners to assess proposals based on a physical feature which might exist in the future. There can be no clarity as to the landward edge of the maintenance route or the implications of the trail on the properties.
27. It is suggested that access rights could be restricted to the sandy beach below the mean high water mark with an alternative route along The Suttons or through Johnson's Field and then along The Suttons to Lydd Road thereby ensuring that access over private land is excluded. NE have not considered these options. There are no public rights over the land and it is not accepted that the proposed route of the trail is an existing walked route. The private shingle beach is not easily accessible. Those accessing the beach wait until the tide goes out and walk directly to the sand or alternatively walk along The Suttons which is used on a daily basis to access the beach; NE advise that the surface of The Suttons is unsuitable for access.
28. NE have stated that the alternative options would result in access rights being granted along the beach as it would form part of the coastal margin. NE have not considered that access to this private land should be excluded. This should be considered for reasons set out in the objections.

Response by NE

29. NE consider that the proposals strike a fair balance between private and public interests. The objections raise a number of common issues which are identified below

Alignment and consideration of other route options

30. There has been no significant consideration of a route alignment below the mean high water mark but NE say that people should normally be able to expect that the trail is available at all states of the tide. The only exception is where there are no other viable options. The Scheme at paragraph 4.4.2 states that '*People should normally be able to expect this continuity at all states of the tide, so the trail normally avoids any route which is prone to tidal encroachment*'.
31. As regards the three options, the trail should normally offer views of the sea (paragraph 4.6.1 of the Scheme). The proposed alignment provides views of the sea and is a safe option for walkers. The Scheme (4.3) informs that the trail should be reasonably direct and pleasant to walk along. The alternative using

Johnson's Field and Lydd Road is significantly longer and the surface of The Suttons can be waterlogged although passable. The sea defence works are likely to make the shingle surface easier to walk on than the current surface and will provide a direct route available at all states of the tide. The alternatives through Johnson's Field and The Suttons takes people away from an accessible and well used beach.

32. The inland options for the trail will mean that the default coastal margin and seaward spreading room would include the entire beach which would allow walkers to continue along the top of the beach. A direction to exclude access would only be considered for specific land management, public safety, fire prevention, nature conservation and heritage protection, defence and national security reasons. NE do not consider that there are valid grounds for such a direction
33. NE have used their discretion to restrict the landward edge of the coastal margin to the landward edge of the 5 metre strip through the sea defence works. This will be delineated by marker posts thereby limiting the impact to the adjacent houses.

Privacy and amenity use of gardens

34. NE states that there are specific provisions to protect privacy, namely that buildings and land used as a garden are excepted from the coastal access rights. The properties are very clearly delineated from the beach and the proposed alignment avoids these houses and gardens.
35. As highlighted in section 2.3.1 of the Scheme, the trail will normally follow existing walked lines on the ground. The area of open beach in front of The Suttons is currently used by walkers and residents have experience of people using the beach and the public walking along the exposed sand at low tide. It is not expected that patterns of use will change. However, with the implementation of the sea defence scheme walkers are not likely to be pushed up the beach and close to the gardens as currently the situation. The proposed trail is away from the gardens and along a wide crest of shingle which is likely to reduce the impact on residents. The marking of the trail will further clarify the rights of access.
36. The proposed alignment is seaward of the boundary of the works and further from the gardens than the current walked line. The Environment Agency has confirmed that the sea defence works will not raise the height of the shingle such as to allow people to look down into the gardens. The new beach profile will not increase any visual intrusion and may reduce it. Disputes between residents and walkers should be reduced due to the clarity of the trail which will be clearly waymarked. As the beach is well used NE see no reason why issues relating to privacy, security or property value should increase.

Dog controls on the beach

37. NE advises that there are dog controls on the main Camber Sands and that the proposals will require dogs to use Johnson's Field when restrictions apply. In respect of the restrictions on the beach in front of the properties on The Suttons dogs are permitted at all times of the year although dog faeces should be removed by owners.

Alignment of the coastal margin to future infrastructure

38. NE has worked closely with the Environment Agency in the development of the sea defence scheme. This has included discussions regarding the 5 metre accessible strip to be marked on its landward side by piles or posts. As noted previously the landward coastal margin has been aligned with the landward edge of the access strip.

Protection of sensitive features

39. The Dungeness, Romney Marsh and Rye Bay SSSI covers the shingle beach at the location of the proposed trail. The potential impact has been assessed with NE's conservation advisers, considering any possible impacts on the SSSI and the Special Protection Area and potential Ramsar. It was considered that the SSSI would not be vulnerable or impacted upon by the proposals. The Broomhill Sands sea defence scheme and the proposals for the coast path have been developed simultaneously although the schemes are separate with the impacts being considered separately.

Schedule for commencement and future diversions

40. NE notes the concerns regarding restrictions and access management which might be required if the commencement of the trail precedes the completion of the sea defence scheme. The Secretary of State will note that the sea defence works are complete in respect of the section in front of The Suttons. I have therefore not summarised NE's response to the objections in this respect and I have not considered this matter further.

Conclusions

41. A number of objections make reference to the proposed sea defence scheme. As noted above [14], the sea defence scheme is now complete and therefore the effect of the trail can be assessed on the current circumstances which will prevail should the trail be established along the proposed alignment. The specific effects of the sea defence scheme alone and matters relating to the scheme implemented by the Environment Agency are not matters for consideration.

42. The objectors make reference to the fact that the land over which the trail will pass is in private ownership. The fact that the land is in private ownership does not preclude the establishment of any coastal access rights. It is also not necessary for there to be existing public rights over the land. However, the effect on that private land needs to be balanced against the aims of the 2009 Act to improve public access and enjoyment of the English coastline. In considering that balance the Secretary of State should have regard to those factors I have identified above [9].

Effect on properties on The Suttons

43. The proposed trail passes along the seaward side of the dwellings and gardens of the properties on The Suttons. Although NE say that there are specific provisions to protect privacy [34], this is in relation to excepted land. Whilst these exceptions will apply to the dwellings and the gardens of the properties they do not apply to the route of the trail. In my view the use of the trail will have an adverse effect on the privacy and the amenity of the properties on The Suttons.

I note that in some instances the trail is elevated above the gardens of the properties although the height difference is not substantial. However, in most cases the trail is set back a reasonable distance from the gardens of the properties. Although it is disputed that there is an existing walked route, it is apparent that the beach in front of the properties on The Suttons is currently used by the public. In view of these factors I do not consider that any adverse effect on privacy will be significant.

44. The route of the trail will be clearly marked and the landward boundary will be marked by piles/posts [36 & 38]. Whilst this does not provide a physical barrier it will clarify the rights of access to the beach area and will deter the public from coming closer to the gardens of the properties. The identification of the route will therefore reduce the potential for disputes and I note that on occasions the public have been known to sit on decking which forms part of properties. At no point will the trail pass through any planted areas [20]. It may be the case that on occasions the public have been known to pass through the various properties to access The Suttons. However, public access will not extend over the landward side of the trail and there will be no access to the properties.
45. The Secretary of State may note that the discretionary power, which NE have used in this case to limit the extent of coastal access rights, is for reasons of clarity and cohesion. The discretionary powers allow for the landward boundary to be extended or contracted to coincide with a physical feature. As noted above [44], the landward edge of the trail will be the landward edge of the 5 metre access strip through the sea defence scheme marked by wooden posts. Although objections 0/5 and 0/8 say that any physical feature should be current [26], as noted above, the sea defence scheme, including the 5 metre access strip, to the seaward side of The Suttons has been completed since the objections were raised.
46. Of concern to some of the objectors is the fact that at high tides the public will be pushed up the beach and will be forced to walk closer to, or through, the gardens of the properties [15 & 20]. However, with the implementation of the sea defence scheme the mean high water mark has been moved further from the properties. The public are not likely to be pushed up the beach during high tides and will not be forced to walk through the gardens.
47. As regards any effects on security and property values, bearing in mind the beach is currently used by the public without apparent restrictions, there is nothing to suggest that the trail will have any further significant adverse effect.

Alternative proposals

Use of beach below mean high water mark

48. In discharging the coastal access duty regard should be given to the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum [9]. The Scheme also states that the public should expect continuity at all states of the tide [30]. In my view a route along the beach below the mean high water mark will not meet the objectives of the coastal access duty in that access will be interrupted by the tide.

The Suttons, Johnson's Field and Lydd Road

49. 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.
50. In terms of any route along The Suttons, through Johnson's Field or along Lydd Road any direct views of the sea are prevented by dunes or by buildings. As regards convenience, any route through Johnson's Field and along Lydd Road is indirect, although I do not consider, as suggested by NE [31] that any such route would be significantly longer than other routes. I also note the contention of NE that the surface of The Suttons, a private road, can be waterlogged [31]. However, on the day of my site visit the surface was suitable for pedestrian access. Nevertheless any route along The Suttons, through Johnson's Field or along Lydd Road does not meet the objectives of the coastal access duty as these routes do not provide views of the sea.
51. A further consideration in respect of any inland alternative is that the default coastal margin and associated seaward spreading room would include the beach. As such the public would have access up to the gardens of the properties on The Suttons. Whilst it is suggested that such access should be excluded [27], there are no powers to make a direction to exclude access other than those provided for in Chapter II of the Countryside and Rights of Way Act 2000 as amended⁴ and identified above [32]. There are no provisions to make a direction to exclude access solely because the land is private.
52. It is noted that an alternative route for the trail is proposed through Johnson's Field for dog walkers as dogs are prohibited from Camber Sands beach to the west of The Suttons. However, dogs are not prohibited from the beach in front of The Suttons [37]. Notices at the entrance to this part of the beach indicate that dogs are allowed but that any dog fouling should be removed.

Other matters

53. Concerns have been raised as to the impact of the proposals on the SSSI status of the land crossed by the proposed trail [25]. NE have sought advice from their conservation advisers [39] and there is nothing to suggest that the proposed route of the trail will have any adverse effect on the SSSI designation.
54. One objector (0/6) indicates that he will be making claims for damage and will remove any signage on his land [20]. It is also suggested that there is no interest in providing access over the beach [20]. These are not matters which the Secretary of State can take into account in determining whether the proposals strike a fair balance. The Secretary of State will be aware that, in relation to the interest in providing access over the beach, the 2009 Act places a duty on NE and the Secretary of State to secure a route around the whole of the English coast. The Secretary of State will also be aware that there are no provisions as to compensation.

⁴ The Access to the Countryside (Coastal Margin)(England) Order 2010 (Statutory Instrument 2010/558
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Whether the proposals strike a fair balance

55. Having regard to all of the above, the proposed route will have an adverse effect on the privacy and amenity of the relevant properties on The Suttons. However, given that the beach is currently accessed by the public I do not consider that any impacts of the proposal will be significant. Although the issue is finely balanced I do not consider that the adverse effect on the properties outweighs 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

56. 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)(c)(d) and (e) of the 1949 Act. I therefore recommend that the Secretary of State makes determinations to this effect.

Martin Elliott

APPOINTED PERSON