

NOTICE BY THE APPOINTED PERSON UNDER PARAGRAPH 10 OF SCHEDULE 1A TO THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949: OBJECTION ABOUT A COASTAL ACCESS REPORT

On 8 July 2015 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. The report relates to Lyme Regis to Rufus Castle.

A person has been appointed<sup>(a)</sup> for the purpose of considering an objection which has been received in relation to the report. Details of that objection are given below.

The appointed person is minded to determine that the proposals in the report fail, in the respects specified in the objection, to strike a fair balance<sup>(b)</sup> as a result of the matter or matters specified in that objection.

A. Land in the report to which the objection relates:

**Abbotsbury Swannery to Rodden Hive.**

B. Reference to the relevant section of the report to which the objection relates:

Chapter 6 of Natural England's report, Abbotsbury Beach to Rodden Hive (Maps 6b, 6c, 6d, 6e and 6f) route sections LR-6-S010 to LRR-6-S026.

C. Details of the objection, including details of:

- (a) the matter(s) specified in the objection as the ground(s) on which that objection was made, and  
(b) any modifications proposed by the objection:

The objection is made on the grounds set out in paragraph 3(3)(a),(c) and (e) of Schedule 1A to the 1949 Act that the proposals in the report, fail to strike a fair balance as a result of; the position of any part of the proposed route; the inclusion of, or failure to include, proposals for an alternative route, or the position of such a route or any part of it, and; the inclusion of, or failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal.

**Summary of Objections**

- 1) Approval of the proposed route would be unlawful in the absence of an appropriate assessment/Habitats Regulation Assessment as required by the Habitats Directive and Habitats Regulations.
- 2) The proposal would have a serious impact on nature conservation interests of a site which is of international, European and national importance. Those impacts will apply throughout the year and will not be adequately mitigated by the proposed winter closure arrangements.
- 3) Impacts on the nature conservation interest of the West Fleet and its hinterland also impact on the interests of the objector as a very long term landowner which has historically managed the land in the interest of nature conservation and continues to do so (now pursuant to a Heritage Management Plan).
- 4) The proposed route will have real and significant adverse consequences for the management by the objector of its agricultural land and associated business and tourism enterprises.
- 5) Whilst the proposed route is overall nearer to the sea than alternative routes, it does not offer advantages in terms of safety or convenience to users over those routes, and indeed in some respects is less convenient, and will require greater public expenditure on infrastructure and maintenance.
- 6) Natural England (NE) has not satisfactorily addressed how difficulties with the proposed route will be resolved, in particular enforcing its closure during the winter season, and preventing unauthorised access by the public to the area between the route and the West Fleet. These are fundamental problems.
- 7) The proposed route would offer some new views of the sea. However, both the existing South West Coast Path (SWCP) and the alternative route proposed by the objector offer views of the sea for large proportions of their length; in the case of the existing SWCP offers views which are

comparable with, if not superior to, those of the proposed route. Such advantages that the proposed route may have in terms of views (if any) and the proximity to the coast are not such as to outweigh its clear disadvantages and as such it does not strike a fair balance required by the Act.

- 8) The clearly reasoned conclusions reached by the Inspector and the Secretary of State in 1979 against a near-coastal route on this stretch of the Fleet still holds good. Indeed they are now stronger since the West Fleet's vulnerable environment is protected at European and international level.
- 9) The alternative route proposed by the objector would have significant benefits in terms of good sea views (and panoramic inland views), it would form an attractive circular route with the existing SWCP and would not require the improvement and mitigation measures which would be necessary for the proposed route. It would also avoid the serious impacts on the management of the Estate which would be caused by the proposed route.
- 10) The objector asks that the Secretary of State does not approve the proposals but instead approve the alternative route proposed by the objector, together with a direction excluding access over the relevant coastal margin, pursuant to sections 24 and 26 of the Countryside and Rights of Way Act 2000.

### **Proposed modifications**

The objector proposes an alternative route. From New Barn Road to the south east corner of Chester's Coppice the proposed alternative follows the route proposed in the coastal access report (route sections LRR-6-S010 to the end of LRR-6-S013). To the south east of Chester's Coppice the route crosses a dry stone wall and follows an old drove to meet New Barn Road again. The route continues along New Barn Road. After New Barn Farm the proposed alternative leaves the road and follows a public footpath along the edge of Wyke Wood descending to the south east corner of the wood to join the existing SWCP. The route continues towards Rodden Hive to its junction with the route proposed in the coastal access report at the junction between LRR-6-S026 and LRR-6-S027.

Should the proposed alternative be accepted then the objector suggests that it would be appropriate to exclude access, all year round, from the coastal margin formed as a consequence of adopting the alternative route proposed by the objector. This also includes the Great Meadow being land to the south of the Abbotsbury Swannery and Horsepool Farm part of the land being used in part as an overflow car park. The basis on any exclusion being on grounds of nature conservation and land management.

D. Details of Natural England's comments on the objection, including any relevant alternative modifications<sup>(c)</sup>:

The numbered comments relate to those set out above in respect of the objection.  
In summary:

- 1) NE have adopted the approach as outlined in section 4.9 of the Coastal Access Scheme. Appraisals (contained in the Lyme Regis to Rufus Castle, Portland: Access and Sensitive Features Appraisals) carried out by NE form the Habitats Regulation Assessment required by European Law. The appraisal includes an assessment on the effects on features not protected under the relevant European Directives and Regulations; this is to ensure compliance with other duties set out at paragraph 4.9.7 of the Coastal Access Scheme. NE maintain that there would be no effect from the new access proposals and an appropriate assessment is not required. An appropriate assessment is only required when there is likely to be a significant effect. NE consider that the proposals strike the appropriate balance and that the principles of the scheme have been applied.
- 2) NE contends that this part of the objection relates to the potential impacts on the various habitats and species listed in part 3 of the Appraisal. NE refers to observations in respect of point 1 of the objection in relation to potential impacts on nature conservation features of international and European importance. In terms of impacts on other features of interest, including notified features of the Chesil and Fleet Site of Special Scientific Interest, NE acknowledges a duty to take reasonable steps, consistent with the proper exercise of all their functions, to further conservation and enhancement. NE have adopted the approach set out in section 4.9.15 of the Coastal Access Scheme. This is to use flexible powers under the legislation to find solutions that best integrate their nature conservation and coastal objectives. NE contend that the proposals for new access rights at West Fleet comply with legal obligations with respect to protected species and features. In

- respect of this part of the objection NE considers that the proposals strike an appropriate balance and that the Coastal Access Scheme has been correctly applied.
- 3) NE acknowledges the objector's private interest in nature conservation and its commitments pursuant to the Heritage Management Plan. NE considers that the proposal would have no significant effects on the scenic interest of the land. In terms of nature conservation NE refer to the responses to objections 1, 2, 6 and 8. As regards concerns relating to the operations of the objector NE refers to comments in respect of objection 4.
  - 4) NE have sought to address concerns in consultation with the objector and have made a number of changes to address previously stated concerns. NE maintain that the changes address to a reasonable extent the main potential impacts on land management. NE also notes additional concerns raised in the objection relating to the impact on the Swannery tourism enterprise, agricultural management, game management and sporting interests, the impact on property and other relevant factors including public losing their way and the objector losing control on access to Chesil Bank. NE maintain that the proposals strike the fair balance required by the legislation and that the principles of the scheme have been correctly applied.
  - 5) As regards safety, the proposed route and the existing SWCP offer advantages over the route suggested by the objector as both routes involve less road walking. However NE do not consider any advantages to be significant. As regards convenience NE acknowledge advantages with both the proposed route and the route proposed by the objector. The route proposed by the objector is shorter and more direct and includes a road section which is more readily accessible for people with reduced mobility. However, some may consider the route less pleasant to walk along due to its hard surface and it being shared with vehicles. NE acknowledge that the cost of implementing the proposed route would be greater than the cost of establishing the route proposed by the objector but maintain that the significant public advantages outweigh the additional costs. It is contended that the proposals strike the appropriate balance.
  - 6) Measures described in paragraph 6.1.18 of the report address the issue of preventing unauthorised access to excluded areas. Between March 1<sup>st</sup> and September 30<sup>th</sup> the route will be clearly waymarked and there will be a barrier, almost always, on the seaward side of the trail. Outside these months directional signs at Horsepool Farm will be removed with other signs indicating the alternative route. The gate at Rodden Hive at the junction of LRR-6-S025 and LRR-6-S026 will be locked and the directional sign at the exit point of the route onto New Barn Road will be removed and the gate locked. Signage will be placed on the route explaining the access arrangements and NE consider that it is very rare for people to disregard well worded notices and are certain that the arrangements would not cause any significant increase in the current low levels of trespass on to agricultural land.
  - 7) NE agrees that the views from the existing SWCP on Linton Hill are comparable to those from the proposed route. However, the advantages of the proposed route over the existing SWCP and the objector's preferred route are of much greater significance. The availability of sea views from the proposed route, and its proximity to the sea, are compelling in terms of the criteria of public interest in chapter 4 of the Coastal Access Scheme. These outweigh the disadvantages in terms of private interest.
  - 8) The South West Way 'Coastal' Route which was being considered by the Inspector and the Secretary of State was described as a route along the water's edge of the West Fleet and was rejected, in particular, because it would cause unacceptable disturbance to wildlife. A water's edge route was also ruled out by NE in order to protect the sensitive features and NE concur with the decision. However, the Inspector outlined in his conclusion that this would not debar campaigning for a true coastal route in the future. There is nothing from the Inspector's conclusion to suggest that the current proposal, set back a significant distance from the water's edge supported by other measures affording additional protection to wildlife, should be rejected.
  - 9) NE notes that, in respect of the alternative route proposed by the objector, views of the sea, on the section from Chester's Coppice to Rodden Hive, would be afforded along 26% of its length. In respect of the proposed route this amounts to 78% of its length. Inland views provided by the alternative route are not one of the criteria of public interest set out in the coastal access duty. The same would apply to a circular walk using the route proposed by the objector and the existing SWCP. In terms of the impacts on land management NE consider that the proposals strike the appropriate fair balance and that the principles of the scheme have been correctly applied.
  - 10) The alternative route proposed by the objector, between Horsepool Farm and Chester's Coppice, was incorporated within the proposed route. In so doing the potential impact on land management and nature conservation was further reduced. In respect of the remainder of the route proposed by the objector NE do not consider that the route would strike a fair balance between the relevant

interests and do not agree to this modification. The route modification proposed by the objector would have the effect of creating an additional 115 hectares of coastal margin. The modification to exclude access rights to this additional coastal margin is on the basis of nature conservation and land management. NE has not been able to consider in any detail the exclusions. However, in relation to nature conservation they find it difficult to envisage circumstances in which exclusion on this basis would arise. For the purpose of land management, any limitations on access would be selectively applied according to the activities giving rise to them.

#### **Alternative modifications proposed by Natural England**

NE do not propose any alternative modifications. However, they refer the appointed person to alternative access arrangements at the Swannery and at Berry Coppice.

In respect of the Swannery, more specifically the Great Meadow, there is no duty on NE or the landowner to make the whole of the coastal margin with access rights physically accessible. The objector could still maintain an electric fence and those wishing to exercise access rights would be able to make use of the field entrance closer to Horsepool Farm.

At Berry Coppice NE notes the concern that the proposed fencing will prevent access for machinery to maintain the ditch. NE have explored the scope for a path through the woodland thus removing the need for a fence along the edge of the route. This would need the area excluded from coastal access rights to be adjusted to incorporate the land seaward of the resulting trail which would become coastal margin by default.

E. If applicable, any observations of the appointed person on any relevant alternative modifications or any modifications proposed by the objection:

The appointed person makes no observations.

A copy of the report and a map of the area indicating the proposed line of the route and (if applicable) the boundaries of the associated coastal margin which is the subject of the objection above are available at <https://www.gov.uk/government/consultations/england-coast-path-from-lyme-regis-to-rufus-castle-comment-on-proposals> or may be viewed free of charge at

Weymouth Library	Great George Street, Weymouth, DT4 8NN	01305 762418
Wyke Regis Library	Portland Road, Wyke Regis, DT4 9BE	01305 760191
Portland Library	The Straits, Portland DT5 1HG	01305 820171
Bridport Library	South Street, Bridport DT6 3NY	01308 422778
Lyme Regis Library	Silver Street, Lyme Regis DT7 3HR	01297 443151
Burton Bradstock Library	The Old Wesleyan Chapel, Burton Bradstock, Bridport DT6 4QR	01308 897563
Lyme Regis TIC	Church Street, Lyme Regis DT7 3BS	01297 443361
Dorchester TIC	11 Antelope Walk, Dorchester, DT1 1BE	01305 267992
Weymouth TIC	Colwel Shopping Centre, School Street, Weymouth, DT4 8NJ	01305 561643
Weymouth and Portland Borough Council	Council Offices, North Quay, Weymouth, Dorset, DT4 8TA	01305 838000
West Dorset District Council	South Walks House, Dorchester, DT1 1UZ	01305 251010
Lyme Regis Town Council	Town Council Offices, Guildhall Cottage, Church Street, Lyme Regis DT7 3BS	01297 445175

Dorset County Council	County Hall, Colliton Park, Dorchester, DT1 1XJ	01305 221000
Portland Town Council	Council Offices, Fortuneswell, Portland, DT5 1LW	01305 821638

and at Natural England, First Floor, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6DG between the hours of 9am and 5pm.

This notice invites any person to make representations to the appointed person in connection with the above objection.

Representations may be made about any of the following matters:

- (a) the objection (including any modifications proposed by the objection) (see box C above);
- (b) any relevant alternative modifications in relation to that objection (see box D above); or
- (c) any observations of the appointed person on any relevant alternative modifications or any modifications proposed by the objection (see box E above).

Any representations must be received by the appointed person no later than **21 March 2016**.

Any representations must be made on the appropriate form which may be obtained from the appointed person at: *The Planning Inspectorate, Rights of Way Section, Room 3/25 Hawk Wing, Temple Quay House, 2 The Square, Bristol, BS1 6PN*

or from <https://www.gov.uk/government/collections/england-coast-path-lyme-regis-to-rufus-castle>

Representations should be sent to the appointed person at the above postal address, or to [RightsofWay2@pins.gsi.gov.uk](mailto:RightsofWay2@pins.gsi.gov.uk).

25 January 2016

- (a) See paragraph 4(2) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.
- (b) A fair balance means 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 (see paragraph 1(b) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 and section 297(3) of the Marine and Coastal Access Act 2009).
- (c) See paragraph 6(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 for the meaning of “relevant alternative modifications”.