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

by **Michael R Lowe** BSc (Hons)

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 Mr Leonard Tabner

Regarding coastal access proposals by Natural England

Relating to the English Coastal Path, Filey Brigg to Newport Bridge

## **Objection Ref: MCA/FNG/01**

### **Objection by Mr Leonard Tabner**

#### **Coastal Access - Filey Brigg to Newport Bridge**

- On 26 March 2015, Natural England submitted a report to the Secretary of State setting out the proposals for improved access to the coast between Filey Brigg and Newport Bridge under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
- Natural England submitted its report in accordance with its duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act) to improve access to the English Coast.
- An objection, dated 21 May 2015, has been made by Mr Leonard Tabner. The land to which the objection relates is the spreading room seaward of route section Boulby Grange to White Stone (East) shown on Map 7b in Chapter 7 of Natural England's report.
- The objection is made under paragraph 3(3)(e) of schedule 1A to the 1949 Act on the grounds that the proposals in the report fail to strike a fair balance as a result of the failure to include an exclusion or restriction of a right of access under section 55D(5) in relation to the land to which the objection relates.

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**Recommendation: I recommend that the Secretary of State makes a determination that the proposals in the report do not fail to strike a fair balance as a result of the matters within paragraph 3(3)(e) of schedule 1A of the 1949 Act specified in the objection.**

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#### **Preliminary Matters**

1. I have been appointed to report to the Secretary of State for Environment, Food and Rural Affairs on the above mentioned appeal made in accordance with paragraph 4(3) of schedule 1A of the 1949 Act.
2. I have considered this case on the basis of the objection from Mr Tabner dated 21 May 2015 and the response by Natural England (NE) submitted on 24 September 2015. Mr Tabner submitted additional representations to NE on 24 September 2015 and NE submitted comments on these on 7 October 2015. I have noted and taken account of these additional comments. I have not visited the site and I am satisfied that I can make a recommendation without the need to do so.

#### **Background**

3. Sections FNG-7-S006 to FNG-7-S009 of the England Coast Path (ECP) are proposed in the report prepared by NE to run along the cliff top path that is mainly a public footpath and part of the Long Distance Route, the Cleveland Way. Coastal access rights (spreading room) apply to the land on the seaward side of the Path.
4. Under section 296 of the 2009 Act, NE and the Secretary of State have a duty to secure a route accessible to the public on foot or by ferry around the whole of the English coast; the ECP and an associated margin of land to be enjoyed in conjunction with it. In discharging this duty NE must aim to strike a fair balance between the interests of the public and those of people having an interest in land affected by the route. NE is required to have specific regard to the safety and

convenience of those using the route; the desirability of it adhering to the periphery of the coast and providing views of the sea; and the desirability of keeping interruptions to the route to a minimum as far as is reasonably practicable.

### **Main Issue**

5. The main issue in this case is whether the proposals in the report fail, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraph 3(3)(e) of schedule 1A of the 1949 Act. That is the inclusion of, or failure to include, a proposal as to the direction to be made for the exclusion or restriction of the right of access in relation to land to which the report relates, or the terms of any such proposal.

### ***The case for Mr Tabner***

6. Mr Tabner purchased Boulby Quarries and cliff top land north west of Boulby in 1990 to establish the land as a nature reserve. It is an important landfall site for migratory birds. Over the last 25 years free access has been permitted to responsible members of the public for lawful enjoyment, research and study. During this time it has been possible to maintain some measure of control over harmful activities. Opening up this sensitive site to unrestricted access would not be in the public interest and would have negative impacts upon nature conservation. It would negate his work over the past 25 years and be a loss of his investment of time and money to purchase the land.
7. A report by the Royal Commission for Historic Monuments in England stated that "extreme caution should be taken when visiting Boulby Alum Quarries; the natural instability of the cliffs coupled with past mining activity means that the cliffs are eroding very rapidly and collapses happen without warning". The same report refers to significant levels of erosion and landslips in the area, stating that it "is the most hazardous cliff section within the surveyed sites". A letter from the North York Moors National Park Authority stated that the site was "potentially dangerous and inappropriate for public access" in 2003.
8. Mr Tabner seeks to retain the permissive public access as this arrangement has worked well for the last 25 years and serves the public interest and the best interests of nature conservation.

### ***The case for Natural England***

9. Natural England acknowledges that the public are currently permitted access to the site and that Mr Tabner and his family have put a lot of effort into preventing illegal activity. Natural England submits that, although there may be increased visitor access to this site, this is unlikely to result in behaviours that would harm the designated features of the Site of Special Scientific Interest (SSSI) or wildlife. In any event, any harmful activities would be illegal or covered by the national restrictions on coastal access.
10. The northern part of the land is notified as a SSSI for its geological features, in particular the fossils in the old alum workings. Fossil collecting, without consent, would remain illegal, and in Natural England's view, that wider public access will not significantly increase the pressure from fossil collecting. If this view proves to be incorrect then an access restriction could be imposed in the future.

11. Natural England does not consider that the diversity of birds on the site significantly differs from that on other areas along this stretch of coast. They conclude that a modest increase in public access is unlikely to present a problem.
12. It is accepted that the cliffs may be dangerous, but the Coastal Access Scheme explains "directions may not be used to prevent danger to the public from natural features (such as sheer drops) or natural events (such as erosion)". The scheme makes clear that hazards are typical characteristics of cliffs "Access along cliffs carries inherent risks, but these are well-understood by most people and enjoyed by some climbers for example. It is therefore neither possible nor desirable to eliminate all dangers to the public of cliffs. Where the hazard is not visible to a person approaching it, but its nature is in keeping with other, natural features nearby- as for example, an abandoned quarry in a landscape of rugged hills or cliffs- it is reasonable to expect visitors to be prepared for the hazard, and intervention is therefore unlikely to be necessary to manage the risk".
13. Natural England would be happy to discuss an outline direction to close the spreading room at times of exceptional fire risk.

### **Appraisal**

14. The proposed English Coast Path would follow the existing Cleveland Way, Long Distance Route. The coastal margin, the land on the seaward side of the Path, would become subject to a right of public access - the 'spreading room'. It is this right of public access that Mr Tabner seeks to control by retaining the existing informal arrangements of permissive access. I accept that Mr Tabner has commendably managed the coastal margin to prevent illegal activities and has successfully managed the land to protect its wildlife and natural assets whilst allowing controlled public access. I also accept the submission from Natural England that the statutory scheme of public access would not permit any of the illegal and undesirable activities that are of genuine concern to Mr Tabner. Natural England's appraisal, that coastal access rights are unlikely to harm the SSSI or the wildlife interests of the coastal margin, is tempered with a commitment to review the need for intervention if evidence of such harm were to materialise.
15. I accept that Natural England have reasonably applied the criteria set out in the Coastal Access Scheme in their assessment of public safety and in their conclusion that no restrictions on coastal access rights are appropriate for reasons of public safety.

### **Conclusion**

16. 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 within paragraph 3(3)(e) of schedule 1A to the 1949 Act.

*Michael R Lowe*

INSPECTOR