



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

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

Date:

Marine and Coastal Access Act 2009

Objection by John Lowery

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

Accompanied site visit made on 18 May 2015

File Ref: MCA/WHS/O5

Table of Contents

Section	Page number	Paragraph(s)
Report Details	1	
Procedural matters		
Objection considered in this report	1	1 - 3
Site visit	1	4
Main Issues	2	6 - 14
The Coastal Route		
General description	3	15 - 20
The sections referred to by O5	3	21 - 22
Case in objection	3	23 - 26
Natural England comments on the objection	4	27 - 31
Reasons		
Agricultural Impact	5	32 - 43
Nature Conservation		
Amphibians	7	44 - 47
Alternative route	7	48 - 51
Conclusion	8	52
Other Matters	8	53
Recommendation	8	54

Objection Ref: MCA/WHS/O5

Townend Bank, Silecroft, Cumbria

- 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 9 February 2015 to Chapter 4 of the Coastal Access Report, *Whitehaven to Silecroft*, has been made by John Lowery. The land to which the objection relates is the route section WHS-4-S048.
- 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.

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 Scheme¹ ("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. This additional 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/O5² ("O5"), with the remaining objections considered separately.

Site visit

4. On 18 May 2015 I made a site visit with respect to the objection O5 accompanied by the objector and family members, who tenant the land in question, and a representative from NE.

Request for further information

5. Following the site visit I asked the objector whether there were additional mitigation measures which NE could undertake to allay his concerns. As a result, a further site visit was carried out between the objector and NE on 17 June

¹ 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

² NE Reference MCA\Whitehaven Silecroft\O\4\WHS0353

2015. Subsequently both parties submitted further comments. I make my recommendation taking account of all the written representations and my observations on the site visit.

Main issues

6. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 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:
 - 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.
7. 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.
8. 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.
9. 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.
10. The objector raised concerns about the potential effects of the trail on an expansion to the free range hen flock on the land by his tenants. There was concern regarding both biosecurity for the flock and potential disturbance of the hens by people and dogs walking on the trail.
11. An alternative route was suggested running on the landward side of the fence at the bottom of the coastal slope, with access back onto the cliffs further north.
12. In addition to the objection, a total of twenty-one representations were made in relation to the Report. Two of the representations relate specifically to this land, those from the Ramblers and the Amphibian and Reptile Conservation ("ARC").
13. NE commented on the representations and objection, arguing that the objection should be dismissed, with the proposals approved without amendment.
14. 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

15. The objection relates to parts of the route referred to within Chapter 4 of the Report. This section runs from Eskmeals (grid reference: SD 087 942) to Silecroft beach car park (grid reference: SD 121 811), as shown on maps 4a to 4i.
16. The route generally follows existing walked routes, including public rights of way and minor roads, where they exist and are suitable. NE indicate that it mainly follows the coastline closely, maintaining good views of the sea. The exception to this is in the vicinity of Eskmeals firing range. The Secretary of State will find a representation on this matter within the NE report on full representations³.
17. The route to the north follows a route similar to the existing Cumbria Coastal Way. However, the areas south of Gutterby, which includes the section subject to the objection, departs from this, following a new route on higher ground rather than along the foreshore.
18. There are few artificial barriers to accessibility on the proposed route, however, there are places which may restrict limited mobility users due to uneven grass or bare soil and crossing steeper ground, sometimes by means of steps.
19. The route passes through sites designated for nature conservation or heritage preservation and the sections referred to in relation to this objection lie within the Lake District National Park.
20. There are proposals for the trail to 'roll back' either in direct response to coastal erosion, or other geological processes or to link with other parts of the trail that need to roll back. It has been identified that roll back is likely to be required in a number of areas including much of the length south of Eskmeals, which covers the area subject to this objection.

The sections referred to by O5

21. O5 relates to section WHS-4-S048, shown on map 4h. This is not an existing walked route and will provide new access over grass on the cliff top, with access to and from the beach at the southern end.
22. The objector owns the land crossed by the trail. Land to the north-east of the trail is fenced from the cliffs and the land is tenanted by family members, who have just invested in the expansion of the free range flock.

Case in objection

23. The location of the trail would risk contact between the public and dogs with the hens, breaching biosecurity; bio-security practice is followed on the farm, requiring people to sign in, wear suits and overshoes and disinfect in footbaths. There would be no such security in relation to those using the trail. Both people and dogs may frighten the hens, risking the investment.
24. From the initial objection and site visit, my understanding, and that of NE even following the additional site visit, was that the land to be used for the free range

³ NE Reference MCA\Whitehaven Silecroft\R\9\WHS0013

hens was to the landward side of the fence alongside the proposed trail. The final comments made by the objector, following the June site visit, said that they had been advised, and the Royal Society for the Protection of Animals ("the RSCPA") Freedom Foods⁴ documentation indicated, that hens can roam up to 350 yards⁵ from the hen house. Therefore, they wished to use the land on the seaward side of that fence, including the coastal slopes. As such, users would come into contact with the hens, breaching bio-security, which is imperative in maintaining a healthy flock. With three other families in an 850 metre radius with free range hens there would be a possibility of disease spreading between the farms with devastating impact on the family and neighbours.

25. Dogs and the public passing through the flock would lead to stress and damage to the hens. As such, the proposals made by NE following the June site visit were insufficient and would prevent occupiers from using their land as they normally would⁶, failing to strike a fair balance between the public and the occupiers' interests.
26. The route could run at the bottom of the coastal slope, on the landward side of the fence line, where there is already an old path in places. Access could come back up to the top of the coastal slope further north, beyond the fields used for the hens, taking the public and dogs away from this area.

Natural England comments on the objection

27. NE have followed the key principles of alignment set out by the Scheme. Following the June site visit additional infrastructure was proposed including signage regarding biosecurity, fencing and gates to ensure separation between the public and dogs on the trail and the hens. These biosecurity measures were centred on the existing fence, understood to be the boundary of the free range area. The poultry house is situated roughly 350 yards from this fence; no further information has been given on the location of the poultry house or suggested ranging area.
28. Whilst understanding the concerns over biosecurity and wish to segregate walkers and dogs from the poultry, as the line of the trail is more than the reported 350 yard ranging limit from the poultry house this is entirely possible. The RSCPA welfare standards for chickens, November 2013⁷ ("the RSPCA WSC"), states that a Wild Animal Control Plan must be written detailing how the hens will be protected. We would expect such measures, such as fencing, cover and shelter, to also reduce possible biosecurity risks which the objector believes may arise from the England Coast Path.
29. The initial comments on the alternative route related to the possible use of shingle or soft sand, understanding the proposed route to be on the foreshore, and indicated that it would not be possible to create a safe, viable and sustainable route on the suggested line, due to the topography and geology in this area. Whilst it may be partly feasible the steepness of the slope would require substantial groundwork, which may destabilise surrounding land, leading to further coastal erosion.
30. In relation to the route subsequently proposed, on the landward side of the fence at the bottom of the coastal slope, NE said that they thought it unlikely that it

⁴ Now 'RSPCA Assured'

⁵ 320 metres

⁶ Scheme reference 5.2.4

⁷ ISBN 1 898331 93 6

would be possible to create a sustainable route at the bottom of the slope due to the soft nature of the geology in this area. They indicated a need to ask for further advice on this matter from Cumbria County Council, who would be responsible for establishing and maintaining the approved route, however, there is no indication that further advice was sought.

31. NE believe the proposed route at the top of the bank is safe, convenient, accessible and more sustainable in the long term, being less prone to the effects of coastal erosion, than any other route located closer to the sea.

Reasons

Agricultural Impact

32. Poultry are not considered separately within the Scheme and so section 8.5, '*Animals (where not covered elsewhere)*', is relevant, along with section 8.6 '*Animal diseases*'. I agree with the objector that biosecurity is imperative to maintain healthy hens. However, as noted in the Scheme, despite concerns about visitors and their dogs helping to spread animal disease, in practice, other types of movement (e.g. of sick animals, contaminated products, equipment, vehicles and animal handlers) are generally considered far more significant factors in promoting any spread that occurs⁸. This is the reason that the good biosecurity practice requires actions in relation to farm visitors, meaning those in direct or indirect contact with the poultry.
33. It is noted that some intensive commercial poultry enterprises may be subject to more stringent biosecurity requirements than normal, however, the matters referred to by the objector do not suggest more measures being taken than might be expected on any well-run agricultural enterprise. Should an outbreak of a notifiable disease occur, and if it is judged necessary by the authorities to introduce temporary measures to manage public access to contain the disease until it has been brought under effective control, then intervention measures can be taken. In line with the Scheme the poultry house, situated to the east of the trail at New Buildings, is not affected by the access rights.
34. In considering the potential effect upon the free range area consideration needs to be given to whether the current fence line can be fairly said to be the extent of the range, and therefore, whether the mitigation measures proposed are sufficient, or whether the range may be reasonably extended, such that the trail would interfere with the operational needs of the land owners or occupiers⁹, due to walkers and dogs being within the free range area.
35. The initial objection referred to the existing fence and concerns about access alongside that fence and NE have dealt with the matter on that basis. The suggestion that a greater range may be implemented is a new matter arising at a late stage in the process. I note that 12,000 pullets were ordered, or delivered to the farm, in the week commencing 9 February 2015. It is not clear whether the farm is operating entirely under the RSPCA Assured scheme, or has just referred to these standards. If within the scheme then the RSPCA welfare standards for laying hens, September 2013¹⁰ ("the RSPCA WSLH"), sets out that where birds are intended to be kept for free-range purposes they must be given access to the range within 3 weeks of entering the house at the latest. Therefore, I would have expected any required changes to the range to have

⁸ Scheme reference 8.6.10

⁹ Scheme reference 5.2

¹⁰ ISBN 1 898331 91 x

been made by the time of my site visit in May; no such changes had been made or were mentioned during that site inspection.

36. In relation to the suggestion that the hens may roam up to 320 metres from the poultry house I agree with NE that the proposed trail alignment appears to be beyond that range from the existing buildings. I note that the RSPCA WSLH sets out that the perimeter of the range must be within 350 metres from the poultry house (my emphasis). The majority of the length of the existing fence under discussion meets that criterion.
37. Extension of the range to the bottom of the banks, as suggested, would take the perimeter at least 50 metres beyond the 350 metres set out by the RSPCA. Setting out fencing partway down the slope, which would allow a little extension of the range onto the cliff banks at a couple of points but still within 350 metres, would not, in my view, be a practicable measure given both the topography and instability of the slope. I would note that moving the perimeter of the range to the bottom of the slope, and also moving the trail here, would mean that the same issues of users walking alongside the boundary of the free range area would occur as raised in relation to the existing fence and proposal.
38. On balance, I consider it unlikely that the objector would wish to extend the range beyond the existing fence line for practical reasons and in order to comply with the RSCPA standards to which he himself has referred. As such, I shall consider the mitigation matters in relation to the existing proposal and current fence line. The trail would not, therefore, pass through the free range area and users would not be walking among the flock.
39. I understand the concern that members of the public, and dogs in particular, may frighten the birds. It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock. Section 2.4.6 of the Scheme sets out that a person with a dog must keep it on a short lead in the vicinity of livestock. I note the intention of NE to provide map boards with specific reference to biosecurity and consideration may also be given to reference to the control of dogs in this vicinity.
40. NE referred to the RSPCA WSC and the possible use of the Wild Animal Control Plan to help reduce biosecurity risks. I consider that the point of this plan is to improve biosecurity in relation to wild animals, which in this area would include the large numbers of seabirds, likely to pose a far higher biosecurity risk to the flock than any visitors using the trail. I do not consider that it is designed to assist with biosecurity in relation to users, although I accept that construction/maintenance of fencing appropriate for excluding wild animals would also be likely to exclude dogs.
41. Whilst the Scheme sets out that the trail may cross land where animals are kept, if this is the most convenient route along the coast¹¹, the most important measure in relation to the biosecurity concerns raised is to exclude walkers and accompanying dogs from the area of the range. I consider that this can be easily achieved here. Further works are proposed in relation to the existing fence, including provision of access gates for the owners and occupiers and additional barbed wire on the top and bottom of the fencing to deter dogs and people from entering the free range area. NE have also proposed signage, including information that there is no landward exit from the England Coast Path

¹¹ Scheme reference 8.5.5

over this area, at the ends of the relevant section and on the fence alongside the trail adjacent to the range.

42. The proposed trail is in line with the Scheme, following the cliff tops, with no landward margin to the north-east of the existing fence, which, for the reasons set out above, I am satisfied would form the seaward boundary of the range in connection with the existing poultry housing. As such, there is no interaction between livestock and access users.
43. I consider that the NE proposal implements the Scheme appropriately in relation to the current and foreseeable agricultural use of the land. Should the agricultural enterprise develop further, such that a greater free range area was required, there are powers to amend access arrangements after the Report is confirmed, should this be necessary¹². This would ensure the continued ability of the occupiers to use their land as they normally would.

Nature conservation, Amphibians

44. The southern part of the objector's land lies within Summer Hill Local Wildlife Site ("the SHLWS"). The Access and Sensitive Features Appraisal ("the ASFA") identifies that parts of the SHLWS are important for natterjack toads (*Bufo calamita*), which breed in shallow, often temporary, pools, or scrapes, in dune systems or heathland.
45. A representation from ARC¹³ recommended that no new access should be created on the sections WHS-4-S046 to WHS-4-S057. The ASFA indicates that natterjack toads are vulnerable to access pressure, particularly where the access is close to key breeding sites, basking areas or foraging areas. NE accepts that the level and patterns of access would change as there is no existing access here. However, they expect that this would only apply to the line of the trail itself as no discretionary coastal margin is proposed to the landward side.
46. NE does not agree with ARC that there is such risk of disease to amphibians from walkers that access rights should not be introduced. However, they accept that there is evidence that dogs swimming in pools or accessing water-edge habitats used by the toads can have an impact, causing suffocation of spawn by siltation and a risk of spreading disease from one breeding pool to the next.
47. Whilst parts of the SHLWS are important for natterjack toads, the main affected areas, and proposed mitigation measures, lie further to the south-east, as referred to in the Report reference APP/MCA/WHS/O4. I consider that the Secretary of State can be satisfied that NE has taken appropriate account of the potential effects on nature conservation. Following the ASFA NE have identified suitable mitigation at the appropriate points on the trail.

Alternative route

48. It is clear that there is no objection to the principle of the England Coast Path itself, simply concern over the potential effects on the free range enterprise. The suggested alternative would still run on the objector's land, returning to the cliff top on the section WHS-4-S046, where there is a gradual incline, beyond the area used for free ranging hens.
49. NE indicates that the ground works to establish such a route would be likely to destabilise the surrounding slopes, leading to further coastal erosion. It is clear

¹² Scheme reference 5.5.2

¹³ NE Reference MCA\Whitehaven Silecroft\R\12\WHS0709

from the visible slumping of the land that it is quite soft and unstable. NE have not carried out further investigation in relation to the alternative proposed. However, taking account of my findings in relation to the potential effect of the existing proposed route on agricultural use of the land, I consider that the route currently proposed is appropriate in this area.

50. The Scheme notes that 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 sea¹⁴. In this area I consider it a positive point that the proposed trail on the higher ground provides easterly views of fells typical of the Lake District National Park, as well as the sea to the west. These dual aspect views are not available from the bottom of the coastal slope.

51. Taking account of all the relevant factors I am satisfied that the proposed route meets the coastal access duty regarding the safety and convenience of those using the coastal route and the desirability of that route adhering to the periphery of the coast and providing views of the sea.

Conclusion

52. Taking account of all matters viewed on my site inspection, as well as the objection, representations and comments made relating to this objection, I consider that the proposed position of the route balances the effect upon the landowners and occupiers management of the area and 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.

Other matters

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

Recommendation

54. 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

¹⁴ Scheme reference 7.1