



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 Donald Jordan

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

Accompanied site visit made on 18 May 2015

File Ref: MCA/WHS/O4

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Objection Ref: MCA/WHS/O4

Walkhole 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 10 December 2014 to Chapter 4 of the Coastal Access Report, *Whitehaven to Silecroft*, has been made by Donald Jordan. The land to which the objection relates are the route sections WHS-4-S051 to WHS-4-S054.
- 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. 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/O4² ("O4"), with the remaining objections considered separately.

Site visit

4. On 18 May 2015 I made a site visit with respect to the objection O4 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 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:

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\O4\WHS0610

- 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 about the potential effects of the trail on ground-nesting birds nesting on the coastal slopes, particularly in relation to dogs. Additionally, he objected to the position with regard to his animal catching pens. He also raised concerns that dogs could damage livestock directly or indirectly, by passing on parasitic worms to his own dogs, sheep or cattle.
10. An alternative route was suggested running on the landward side of the fence at the bottom of the coastal slope, with the proposed steps to the south of WHS-4-S054, rather than north on the section WHS-4-S051, as proposed.
11. In addition to the objection, a total of twenty-one representations were made in relation to the Report. Three of the representations relate to this land, those from the Ramblers, the Amphibian and Reptile Conservation ("ARC") and the owners of the property Summer Hill, located just to the north.
12. NE commented on the representations 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 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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 O4

20. O4 relates to sections WHS-4-S051 to WHS-4-S054, shown on map 4h. This is not an existing walked route and so sections WHS-4-S053 and WHS-4-S054 will provide new access over grass on the cliff top. WHS-4-S051 and WHS-4-S052 would be steps giving access to and from the beach and benching to provide an appropriate profile on the upper part of the coastal slope.
21. The map attached to the objection shows that the objector owns and farms the land excluding WHS-4-S051. Whilst the Secretary of State may take the view that this part of the objection should be inadmissible, as the objector has no relevant interest, I am satisfied that it is appropriate for me to deal with the matters raised as they relate directly to the land over which he does have a relevant interest.

Case in objection

22. The public's dogs will inhibit and damage ground nesting birds, namely, oystercatcher, brown partridge, skylarks, meadow pipit and others, which are known to nest on the coastal slopes. For the past 16 years this site has been protected as a haven for wildlife and ground-nesting birds in particular. NE have a duty to protect these and other species, not proposed public access routes which will lead to their habitat destruction.

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

23. The route should not pass through the animal catching pens. Public access to this land, which is grazed with sheep and cattle, could lead to damage to stock from dogs and possible infection to working sheep dogs and livestock; if the public's dogs are not wormed correctly there is a real risk they may pass parasitic worms to the animals.
24. The route could run landward of the fence line at the bottom of the coastal slope, giving public access that would be passable whether the tide was in or out. This would avoid the top of the coastal slope, where the birds nest, and the need for new steps cut down a very steep bank. If steps are necessary they should be placed further south, between the southern end of WHS-4-S054 and the gulleys as the slope is less steep and easier to climb. This would take the public and dogs away from nesting birds and livestock.

Natural England comments on the objection

25. NE have followed the key principles of alignment set out by the Scheme. The proposed route largely avoids the coastal slopes. Whilst they would form part of the coastal margin, NE think it highly unlikely that there would be a significant increase in visitors walking on these slopes, due to the difficult terrain. The Access and Sensitive Features Appraisal ("the ASFA") does not identify any significant issues in relation to ground-nesting birds in this area.
26. It would be relatively straightforward to modify the animal holding pens, in discussion with the objector, to avoid any potential conflict. The trail will pass through land grazed by sheep, cattle and other livestock on much of the coast. The proposals here are consistent with the approach set out in paragraphs 8.2.11 and 8.4.9 of the Scheme. Part 8.6 of the Scheme deals with concerns regarding animal disease. NE would discuss appropriate management measures with the objector and the access authority during the planning of establishment works. This may include signs reminding walkers to keep dogs on leads in the vicinity of livestock and advice on minimising the risk of spreading disease.
27. 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 and damage anthills on the grassland slopes, which are features of concern for nature conservation reasons. Therefore, NE disagree with the suggested modifications.

Reasons

Agricultural Impact

28. The field crossed by sections WHS-4-S053 and WHS-4-S054 was being used for grazing sheep and lambs at the time of my site visit and I understand it is also used for grazing cattle.
29. Section 8.2 of the Scheme refers to the issue of cattle and section 8.4 sheep. It is noted that a great deal of land grazed by such livestock has public access and the two uses are generally compatible. The main concern raised by the objector relates to people bringing dogs onto the land and it is noted that 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.

30. Another matter raised in this regard was the possibility of the introduction of diseases via the faeces of unwormed dogs. The Scheme acknowledges that there is evidence of a link between dog faeces and Sarcocytosis in sheep and Neosporosis in cattle. It indicates that special measures may be required to prevent contamination locally where there is already an outbreak of disease or in an area heavily used for dog walking⁴.
31. I note that the ASFA indicates that it is expected that most people who currently walk in the area would not change current patterns of access, continuing to use the beach and foreshore. However, it also notes that there are plans by Copeland Borough Council to upgrade the car park and its facilities, which NE says will undoubtedly attract many more visitors to this location.
32. I consider it to be a reasonable expectation that people are likely to use the England Coast Path here in higher numbers than may otherwise be likely, given the proximity of the area to the facilities of parking and public toilets at Silecroft. I also agree that the existence of steps down to the beach at WHS-4-S051 may encourage people to make a circular route, with or without dogs, from the Silecroft car park. NE has identified the car park as a key location for information signs to encourage walkers to stay on the path and remind dog owners to prevent dogs from disturbing wildlife. Further information regarding interaction with livestock may be necessary here and/or at the field entrances and can be dealt with during the establishment of the route.
33. The proposed trail is in line with the Scheme, following the seaward edge of the field with no additional landward margin to minimise any potential conflict between livestock and access users. At present there are temporary holding pens for sheep handling in the southern-most corner, on the alignment of WHS-4-S054. The Scheme sets out that such land is excepted from coastal access rights⁵. NE believes that these pens could be modified.
34. It is generally easier to manage animals by the siting of such pens in field corners, as is currently the case. In this area the eastern corners are already used in connection with an access track to the property Summer Hill, whilst the trail itself affects the other potential areas. Although the north-western corner, against the Summer Hill boundary, is not crossed by trail the proximity to the public access may make this a more difficult area to use for livestock handling purposes. Nonetheless, I consider that it should be possible for NE to assist in modification of the pens, in consultation with the landowner and taking the above points into account, such that they need not be sited on or near the trail.
35. I consider that the NE proposal implements the Scheme appropriately in relation to the current agricultural use of the land. However, given the possibility of heavy use by dog walkers, the Secretary of State should note that NE has the ability to implement additional special measures if required in this location.

Nature conservation

Amphibians

36. The northern part of the objector's land lies within Summer Hill Local Wildlife Site ("the SHLWS"). The ASFA identifies that parts of the SHLWS are important for natterjack toads (*Bufo calamita*), which breed in shallow, often temporary, pools in dune systems or heathland. These are often referred to as scrapes.

⁴ Scheme reference 8.6.12

⁵ Scheme reference 8.4.2

37. A representation from ARC⁶ 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.
38. 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. It is proposed to deal with this using informal management techniques to warn people of the importance of the site and to ensure that dogs, in particular, are kept away from pools at certain times of the year.
39. Whilst parts of the SHLWS are important for natterjack toads, with a few scrapes located just to the landward side of the trail, NE do not believe there would be any significant risk to the habitats and species here. NE has identified the fields to the south-east of the SHLWS, north of Silecroft car park and Shaw Meadow and Sea Pasture Site of Special Scientific Interest⁷ as important habitat for this species. The sections WHS-4-S057 to WHS-4-S059 run here, although only WHS-4-S057 introduces new access. A length of guide fencing will be installed north of the car park to encourage people to remain on the route, away from the natterjack toad breeding pools. ARC also raised concerns regarding the timing of establishment works and the infrastructure on the route.
40. The natterjack toad is afforded full protection under the Wildlife and Countryside Act 1981 ("the 1981 Act") and is a protected species under the EC Habitats Directive 1992, implemented in the UK by the Conservation (Natural Habitats &c.) Regulations 1994 ("the 1994 Regulations"). Activities affecting such species, including development, require a licence from Defra to derogate from the protection afforded under the provisions of the 1994 Regulations⁸. Before a licence can be granted, three tests specified in regulation 44 of the 1994 Regulations, must be satisfied:
- i. that the development is in the interests of "*...preserving public health and public safety or [for] other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment*";
 - ii. "*...that there is no satisfactory alternative; and*
 - iii. *that the [derogation] will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range*".
41. I consider that the Secretary of State can be satisfied that the management of the establishment works will be by an appropriate authority, obliged to comply with the relevant legislation and best practice, including consents if required.

⁶ NE Reference MCA\Whitehaven Silecroft\R\12\WHS0709

⁷ Known as Rayrick Hole

⁸ 1994 No. 2716

Birds

42. The objector was concerned about the effects of access on ground-nesting birds, which nest on the coastal slopes. NE comments that the proposed route largely avoids the coastal slopes and, whilst they form part of the Coastal Margin, I agree that it seems highly unlikely that there would be a significant increase in access there, due to the topography.
43. The 1981 Act provides statutory protection to all wild birds, fulfilling the United Kingdom's obligations under the EC Wild Birds Directive. Additionally, the UK's birds are split in to three categories of conservation importance - red, amber and green, with red the highest conservation priority. Amber is the next most critical group, followed by green. Skylark (*Alauda Arvensis*) and grey partridge (*Perdix perdix*)⁹ are red-list species whilst meadow pipit (*Anthus pratensis*) and oystercatcher (*Haematopus ostralegus*) are amber-listed in the 2009 publication, Birds of Conservation Concern.
44. The objector's land is fenced from the coastal slopes and so there would be no free access between the trail and the slopes. The exception to this is the northern end, where sections WHS-4-S051 and WHS-4-S052 could potentially provide access onto the slopes, by dogs if not people. It may be sensible for fencing to be erected to prevent direct access onto the coastal slopes from this area, however, I note that the physical establishment of the trail would be carried out in consultation with the landowners and occupiers. This would relate to relevant aspects of the design, installation and maintenance of new signs and infrastructure, conforming to the published standards for National Trails and relevant criteria within the Scheme.
45. As further consultation will be required I do not consider it necessary for the Secretary of State to impose a condition in relation to this issue at this stage. In my view it is a matter best determined on site.

Conclusion

46. 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 they have generally identified appropriate mitigation, including information signs at Silecroft car park to raise awareness and help prevent disturbance to birds and amphibians. Some additional consideration may need to be given to the access to the coastal slopes from the steps, sections WHS-4-S051 and WHS-4-S052 and whether any of the development requires a licence.

Residential Impact

47. Summer Hill is a residential smallholding to the north of the objector's land. The proposed trail passes to the west of the property on WHS-4-050, having descended the steps on WHS-4-S051. The owners do not have a relevant interest in the land crossed by the proposed route, as set out in paragraph 8 above, and so are not entitled to make an objection but made a representation¹⁰.
48. The Scheme sets out that "*The trail will wherever possible be aligned on the seaward side of...private residences and any gardens...associated with them...land used as a...garden is excepted from any new coastal access rights...*"¹¹. The

⁹ Thought to be the relevant species

¹⁰ NE Reference MCA\Whitehaven Silecroft\R\18\WHS0559

¹¹ Scheme reference 8.18

proposed trail meets these criteria, with the garden and house separated from the trail by the area of rough pasture and coastal slope. I also note that the benching to the steps means that the kissing gate at the junction of WHS-4-S052 and WHS-4-S053 is not directly on the Summer Hill boundary.

49. It is noted that this is an area where roll-back, if required, will be more complex. If no viable route remains seaward of the house and garden then a landward route may be sought in the future.
50. I fully understand the concerns of the residents at the introduction of new legal rights of access in this area. However, I consider that the Secretary of State can be satisfied that in moving the trail to the bottom of the coastal slope, rather than following what may have been a preferred route at the top of the slope, NE have taken appropriate account of the security and privacy concerns, whilst meeting the coastal access duty.

Alternative route

51. Both O4 and the representation from Summer Hill suggested that an alternative route should be used with the access to the beach on WHS-4-S051 and WHS-4-S052 being implemented further south. This would avoid crossing the land owned by the objector and remove the steps near the southern boundary of Summer Hill. NE indicates, on the basis of expert advice, that the slope to the south does not provide the stability required for the construction of a path or steps. Taking account of the safety of users of the route it would not offer a suitable alternative to the proposed trail. NE also commented that this route would damage anthills on the unimproved grassland slopes in the area suggested as an alternative.
52. The Report indicates that in many areas, such as this, NE have proposed entirely new routes so as to avoid long distances of beach-walking, which would not be in accordance with the Scheme. Whilst the lower parts of the adjacent beach are sand at low tide the area adjacent to the coastal slopes is shingle, which is noted in the Scheme as being difficult to walk on for any distance. As a result NE will normally avoid aligning the trail along it.¹²
53. 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 sea¹³. Additionally, in this area I consider it a positive point that the proposed trail on this higher ground provides views to the east 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 beach.
54. 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

55. 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 landowner's management of the area and the requirements of public access. I

¹² Scheme reference 7.12.4

¹³ Scheme reference 7.1

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

56. 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

57. 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