
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 C and L Hogg and N and J Seggie
Regarding Coastal Access Proposals by Natural England
Relating to Hopton on Sea to Sea Palling

Site visit made on 18 June 2015

File Ref(s): MCA/Hopton-on-Sea to Sea Palling/05, 06 & 07

Objection Reference: MCA/Hopton on Sea to Sea Palling/05

29 The Promenade, Scratby, Norfolk, NR29 3PA

- On 7 March 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 21 November 2014 to chapter 3 of the Report, Hopton-on-Sea to Sea Palling, has been made by Christopher Hogg. The land in the Report to which the objection relates is route section HSP-3-A007 to HSP-3-A014.
- The objection is made under paragraphs 3(3)(c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out 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/Hopton-on-Sea to Sea Palling/06

29 The Promenade, Scratby, Norfolk, NR29 3PA

- On 7 March 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 21 November 2014 to chapter 3 of the Report, Hopton-on-Sea to Sea Palling, has been made by Letitia Hogg. The land in the Report to which the objection relates is route section HSP-3-A007 to HSP-3-A014.
- The objection is made under paragraphs 3(3)(c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out 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/Hopton-on-Sea to Sea Palling/07

31 The Promenade, Scratby, Norfolk, NR29 3PA

- On 7 March 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 22 November 2014 to chapter 3 of the Report, Hopton-on-Sea to Sea Palling, has been made by N and J Seggie. The land in the Report to which the objection relates is route section HSP-3-A007 to HSP-3-A014.
- The objection is made under paragraphs 3(3)(c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out 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.

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 in this report.

Objections considered in this report

2. On 7 March 2014 NE submitted a Report to the Secretary of State, setting out the proposals for improved access to the Norfolk Coast between Hopton-on-Sea and Sea Palling. The period for making formal representations and objections to the Report closed on 24 November 2014.
3. Nine objections were received to the Report, which I deemed to be admissible. The three objections, relating to chapter 3, considered in this report relate to adjacent areas of affected land at 29 and 31 The Promenade and are on identical grounds. It is therefore expedient to consider these objections together in this report. The other extant objections will be considered in separate reports.
4. In addition to the objections, a total of 32 representations were made in relation to the Report. However, none of these representations relate to the section of the trail subject of the objections.

Site visit

5. I carried out an accompanied site inspection on the morning of 18 June 2015 when I was accompanied by Mr Hogg and representatives of NE, Mrs S Fishwick and Mrs D Curtis. Mr Hogg advised that Mrs Hogg and Mrs Seggie were unable to attend.

Human Rights Act 1998

6. The objectors contend that the implementation of the proposed route subject to the objections will contravene the Human Rights Act 1998 (the 1998 Act).
7. The 2009 Act was drafted following the introduction of the 1998 Act, compatibility with the 1998 Act is implicit within the 2009 Act and associated guidance. The 2009 Act introduces the coastal access duty, to provide a coastal route in the public interest. Provided that the Secretary of State is satisfied that in executing the coastal access duty in this case strikes a fair balance between the owner or occupier's interests and the public interest then the provisions of the 1998 Act will have been met.

Main Issues

8. 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.

9. 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.
10. In discharging the coastal access duty there must be regard to:
 - (c) the safety and convenience of those using the trail,
 - (d) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (e) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
11. 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.
12. 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.
13. The objections have been made under paragraphs 3(3)(c) and (e) of Schedule 1A to the 1949 Act.
14. 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

15. The trail, subject to Chapter 3 of the Report, runs from Caister Point (grid reference: TG5285 1190) to Long Beach Estate, Hemsby (grid reference: TG5041 1791), as shown on maps 3a to 3d (HSP-3-S001 to HSP-3-S016). The trail follows existing walked routes including public rights of way throughout. The trail follows the beach for several kilometres between Caister and Hemsby although part of the route between California Gap and Hemsby is, on occasions, subject to tidal encroachment and coastal erosion. At such times NE propose an optional alternative. The alternative route (HSP-3-A001 to HSP-3-A043) briefly follows Rottenstone Lane before turning westwards to follow Beach Road and then northwards along The Promenade and The Esplanade. The alternative route then continues northwards where it links with the main trail at Hemsby. The objections relate to the alternative route where it passes along The Promenade (HSP-3-A007 to HSP-3-A014).

The case for the objectors

16. The table in the Report describes The Promenade incorrectly as an unadopted road. The Promenade is a private access way. The table also describes the surface of The Promenade incorrectly as aggregate. The Promenade is made up of a variety of materials, is full of potholes and undulates severely.

¹ Approved by the Secretary of State on 9 July 2013

17. The land over which the alternative route passes falls within the curtilages of 29 and 31 The Promenade and therefore constitutes excepted land as designated in Schedule 1 Part 1 item 2 of the Countryside and Rights of Way Act 2009². The land from the eastern wall of the properties to the edge of the cliff, being the gardens of the properties is separated from neighbours land and identified by wooden posts with maintained lawns and flower beds, is also excepted land. The location of the alternative route over this land will be illegal in respect of the Countryside and Rights of Way Act 2009.
18. The objectors propose an alternative route on Rottenstone Lane to Beach Road then easterly³ along Beach Road to the B1159 then proceeding northwards along the B1159 on the public highway to Newport.

The response from NE

19. The categorisation of The Promenade and The Esplanade does not prohibit consideration as a possible alignment option for the coast path. Section 8.27.3 of the Scheme relates specifically to private roads. These roads are existing walked routes with a surface of an acceptable standard.
20. The objector believes that the road is excepted from coastal access because it forms part of the garden. However, the land is not used as a garden and falls outside the curtilage of the buildings known as 29 and 31 The Promenade. If the proposals are approved then no seaward margin is created by an optional alternative route. The grass strip at the top of the cliff would remain unaffected.
21. The alternative proposal put forward by the objectors has been considered but NE are of the view that it does not meet the criteria laid out in the Scheme. The proposal would be an unnecessary inland diversion without sea views and represents a poorer experience for walkers. The Promenade and The Esplanade are already in public use. The use of these two routes identified in the Report is consistent with section 4.7 of the Scheme which favours existing walked routes, if possible, with an emphasis in the legislation on the desirability of the route adhering to the periphery of the coast and providing views of the sea.

Conclusions

22. The objectors raise concerns as to the descriptions provided in the table contained in the Report in relation to the status and surface of the road [16]. On my site visit I noted the surface of The Promenade is made up of a variety of different materials and is potholed. In terms of the status of The Promenade, I have not been provided with any information as to the status other than that provided by the objectors. However, the road has the appearance of a private road used for access to properties. Whilst the Secretary of State may wish to note the views of the objectors as to the description of the surface and status of the road, the description in the Report does not materially affect the consideration of the proposals.

² The objectors make reference to the Countryside and Rights of Way Act 2009. The relevant Act is the Countryside and Rights of Way Act 2000 as amended by the Access to the Countryside (Coastal Margin) (England) Order 2010.

³ The objections refer to the alternative route being in easterly direction along Beach Road. I understand the route to be proceeding in a westerly direction and the reference to an easterly direction is in error.

23. As regards the use of a private road for the alternative route, paragraph 8.27.3 of the Scheme outlines the considerations when using private roads. The Promenade is an existing walked route and is suitable as a walking route. Bearing this in mind I do not consider that the use of The Promenade for the proposed alternative route of the trail will have any significant impact on the residents. Furthermore, there is no indication that any use of the road as an alternative route will have any adverse effects on the private rights associated with the road. The Scheme does suggest that where no suitable option is available then NE may choose a private road for the route of the trail. I have no evidence as to any alternative route other than that proposed by the objectors [18] which I consider below [26 & 27].
24. The objectors contend that the alternative route falls within the curtilage of the two properties [17]. Although the land over which the alternative route passes is within the ownership of the objectors it does not necessarily follow that the land falls within the curtilage of the property. Whilst the dwellings and the associated driveways and gardens could be regarded as being within the curtilage of the property, The Promenade is a private road which will be used by those with rights to do so. In view of this I do not consider that the road forming The Promenade falls within the curtilage of the objector's properties. Furthermore, given that The Promenade is a private road it cannot be considered as excepted land as it does not fall within any of the relevant categories. In view of my conclusions there is nothing to suggest that to take the alternative route along The Promenade would be 'illegal' on account of the fact that it is excepted land.
25. As regards the area between the eastern wall of the properties and the cliff, I have already concluded that the land crossed by The Promenade cannot be considered to be excepted land. In respect of the grassed area to the east of The Promenade, as noted by NE [20], given the intention that The Promenade is proposed to be used as an alternative route, no seaward margin is established. The land to the east of The Promenade will not be affected by any additional rights of public access.
26. The objectors have suggested a different alignment for the alternative route to follow [18]. Section 297 of the 2009 Act emphasises that in discharging the coastal access duties under the Act regard must be given to the desirability for the route adhering to the periphery of the coast and providing views of the sea.
27. The alternative route suggested by the objectors takes a significant detour from the coast and in doing so limits considerably any views of the sea. The alternative route does not therefore meet the objectives of the coastal access duty. The use of The Promenade as an alternative, being a route which is currently walked, is consistent with the Scheme.

Other Matters

28. Appended to the objection form of Mr Hogg is an Email which raises a number of objections in relation to discrepancies, errors and inconsistencies contained within the overview on NE's report to the Secretary of State. Although the Secretary of State may wish to note these issues she will be aware that they are not material to the consideration of whether the proposals strike, or fail to strike, a fair balance.

Recommendation

29. 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)(c) and (e). I therefore recommend that the Secretary of State makes a determination to this effect.

Martin Elliott

APPOINTED PERSON