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

by Barney Grimshaw BA DPA MRTPI(Rtd)

The person appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 20 October 2016

Marine and Coastal Access Act 2009

Objection by The Whitstable Oyster Fishery Company
regarding coastal access proposals by Natural England relating to
the England Coast Path, Ramsgate to Whitstable, Kent

Site visit made on 26 November 2015

Land east of Whitstable Harbour, Kent

File Ref: MCA/Ramsgate to Whitstable/O/3

Objection Ref: MCA/Ramsgate to Whitstable/O/3

Route section RGW-4-S020 to S024

- On 25 March 2015 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), pursuant to its duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection dated 19 May 2015, to Chapter 4 of the Report, Reculver to Whitstable Harbour, has been made on behalf of the Whitstable Oyster Fishery Company (WOFC). The land to which the objection relates is route sections RGW-4-S020 to RGW-4-S024.
- The objection is made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance as a result of the 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.

Summary of Recommendation: 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 matters within paragraph 3(3)(e) of Schedule 1A to the 1949 Act specified in the objection, subject to a minor modification to the Report.

Procedural matters

1. I have been appointed to report to the Secretary of State on objections made to the Report. My report therefore includes a summary of submissions made by the objector and the response of NE and my conclusions and recommendations.
2. Another inspector, Michael Lowe, was originally appointed to report on these objections but, as a result of his absence due to illness, the case has now been transferred to me.

Objections considered in this report

3. On 25 March 2015 NE submitted the Report to the Secretary of State, setting out proposals for improved access to the Kent Coast between Ramsgate and Whitstable.
4. Three objections were received to the Report that were deemed admissible. The objection considered in this report relates to land on the seaward side of sections RGW-4-S020 to RGW-4-S024 to the east of Whitstable Harbour (the objection specifically refers only to section RGW-4-S023 but on consideration it would seem to relate to all sections of the trail adjoining the company's land). The other objections are considered in separate reports.
5. Besides objections, representations may be made regarding NE's report. However, in assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections should be considered. In this case, no representations have been made which specifically relate to the sections being considered.

Site Visit

6. Inspector, Michael Lowe, made a site visit on 26 November 2015 accompanied by Mrs J Bowen, representing NE, and a representative of WOFC. Having considered all the submissions made, I did not feel that a further site visit was necessary or desirable.

Main Issues

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. The objection has been made under paragraphs 3(3)(e) of Schedule 1A to the 1949 Act.
13. 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

14. The trail described in Chapter 4 of the Report runs from Reculver to Whitstable Harbour. The proposed route mainly follows the coastline quite closely and in the

¹ Approved by the Secretary of State on 9 July 2013

sections considered in this report it follows an existing walked route or public highway.

The case for the objector

15. WOFC object because they need to have the ability to exclude access below the Mean High Water Mark (MHWM) on their land east of Whitstable Harbour where in future they wish to commence use as an oyster fishery and possibly re-establish sea grass beds. They also need to exclude access to the footprint and associated land of a possible marina/watersports facility if given planning permission.
16. The objection states that the proposals in the Report do not strike a fair balance as a result of:
 - failure to take due account of the adverse effect on the Company's business of unrestricted public access to the company's land below the MHWM while that land is in active use for an oyster fishery business. A business of great commercial importance and an iconic historical pursuit which has had an immense contribution to the character and prosperity of Whitstable
 - failure to take due account of the adverse effect on the proposed marina/watersports facility, which will be very beneficial to the public and the company, if such part of its footprint that is not excepted land is open to public access.

The response from NE

17. In discussions with WOFC before the Report was prepared, concerns with regard to land to the east of Whitstable were not raised. The potential for a new fishery in this area is not therefore mentioned in the 'Future Changes' section of Chapter 4. However, in developing coastal access proposals NE seeks to balance private and public interests and take account of future land use changes as far as practicable. It is accepted that changes in land use around the coast are inevitable and the flexible nature of coastal access aims to ensure that coastal access rights will not interfere in any significant way with the operational needs of coastal businesses.
18. With regard to Whitstable West Beach, which WOFC already use as an oyster fishery, it is proposed that a direction will be made excluding public access seaward of a line along the bottom of the groynes. In addition, an outline direction may be made to cover WOFCs land between the bottom of the groynes and MHWM which can be activated by the company when needed.
19. On the East Beach adjacent to section RGW-4-S020, the current access situation is similar to West Beach – with significant access along the shingle beach and on a sandy promontory called 'The Street' that is exposed at low tide. It is suggested that a similar set of directions could be set up when fishery operations are due to start. This would include a full exclusion of access on the active fishery areas below the groynes and an outline direction to exclude access between the bottom of the groynes and MHWM, and 'The Street' which can be activated by the company when needed.
20. It is not normal practice for such directions to be issued in advance of operations not yet started unless significant issues associated with the introduction of

coastal access rights would jeopardise future commercial interests. In this case, new coastal access rights are not likely to change the existing use of the area so as to warrant directions now. Once plans are defined for the commencement of use of the area for a fishery, NE can rapidly create the appropriate directions.

21. With regard to the proposed marina/watersports facility, plans for this were not raised before the Report was prepared and no reference was included. However, the coastal access rights proposed do not prevent any land being developed in the future for such a facility. The local planning authority and the Marine Management Organisation have indicated that they are unaware of a forthcoming application for the facility; it would therefore not strike a fair balance to exclude public access at this stage because of a future unspecified development.
22. However, once plans for the location and design of the facility have been progressed, NE would welcome discussion with the company. At this stage measures to counter safety, security or commercial risks on land that is not automatically excepted from access rights could be discussed.

Appraisal

23. WOFC has the right to use its land to the east of Whitstable Harbour for the extension of its oyster fishery operations and unlimited public access would be incompatible with these operations.
24. On the company's land to the west of Whitstable Harbour, it is proposed that directions will be made to exclude or restrict public access to safeguard the company's interests. It would seem appropriate that similar arrangements should be made with respect of land to the east of the harbour when this used as part of the fishery.
25. As the area of East Beach and 'The Street' is already used by the public and access is unlikely to be changed significantly as a result of the Report, it would appear unnecessary for directions to be made for the exclusion or restriction of public access until oyster fishery operations are to be established. However, if WOFCs plans for the extension of their operations had been known when the Report was being prepared, it seems likely that some reference to the likely need for future change to the access provisions proposed could have been included in the 'Future Changes' section of Chapter 4. It would therefore be appropriate for such a reference to be added now.
26. With regard to the proposed marina/watersports facility, plans are not yet sufficiently advanced to warrant any restriction of public access rights at present. If any future restrictions are appropriate these can be discussed when more details of the location and design of the facility are available.
27. Overall, it is my view that NE has followed the key principles of alignment and management as set out in the approved scheme and has appropriately balanced the issues relating to the proposed route.

Conclusion and Recommendation

28. 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. I therefore recommend that the

Secretary of State makes a determination to this effect, subject to the following amendment being made to the report:

- After Paragraph 4.1.13 add a new paragraph to read:

"4.1.14 The Whitstable Oyster Fishery Company has plans to extend its operations on land to the seaward of section RGW-4-S020. When this is to take place, it will be necessary for public access to some of this area to be restricted by directions."

- Re-number existing Paragraph 4.1.14 as 4.1.15.

Barney Grimshaw

APPOINTED PERSON