



# **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: 1 September 2017**

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Marine and Coastal Access Act 2009

Objections from Mr W Bell & Mr P Hornsey

regarding Coastal Access Proposals by Natural England

relating to South Bents to Amble

Accompanied site visit made on 15 August 2017

File Ref: MCA/SBA/O1 & O3

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## **Objection Ref: MCA/SBA/O1**

### **South Bents to Amble, Northumberland**

- On 24 March 2017 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 19 May 2017 to Chapter 6 of the Coastal Access Report, *Cresswell to Leazes Street*, has been made by Mr W Bell. The land to which the objection relates is the route section SBA-6-S006.
- 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.

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## **Objection Ref: MCA/SBA/O3**

### **South Bents to Amble, Northumberland**

- On 24 March 2017 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 19 May 2017 to Chapter 6 of the Coastal Access Report, *Cresswell to Leazes Street*, has been made by Mr P Hornsey. The land to which the objection relates is the route section SBA-6-S006.
- 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.

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## **Procedural matters**

### ***Objections considered in this report***

1. On 24 March 2017 Natural England ("NE") submitted the Coastal Access South Bents to Amble 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 Northumbrian coast between South Bents and Amble. The Coastal Access Scheme<sup>1</sup> ("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 19 May 2017 and four objections were received within the specified timescale. I understand that an additional objection period, to 26 May, was provided, but no further objections were submitted.

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<sup>1</sup> 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

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3. Three of the four objections were determined to be admissible, with one of those subsequently withdrawn following local agreement regarding the matters raised. I have been appointed to report to the Secretary of State on the two outstanding objections.
4. These objections, MCA/SBA/O1 and O3 ("O1" & "O3") were made by the landowner and tenant of the same area of affected land, route section ref. SBA-6-S006 on Map 6b, Cresswell to Leazes Street. The objections refer to the same issue and land, so it is appropriate to consider them together in this report.

### ***Site visit***

5. On 15 August 2017 I made a site visit accompanied by Mr W Bell and Ms A Bell, Mr A Best for NE, Mr T Derbyshire for Northumberland County Council ("NCC") and Mr I Robinson for the Northumberland Coast Path ("NCP") Team.

### ***Request for further information***

6. There had been some discussion on potential mitigation measures regarding fencing on the coastal margin, which NE could undertake. As there appeared to be no consensus as to whether this was, or was not, a good idea I gave the opportunity for the parties to send me their final thoughts on the matter in writing following the site visit. Subsequently NE submitted further comments.
7. Additionally, whilst considering the matters raised, I asked for further comment regarding nature conservation, in particular the effect upon ground-nesting birds. NE provided a further response on this matter.
8. I make my recommendation taking account of all the written representations and my observations on the site visit.

### ***Main issues***

9. 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.
  10. 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.
  11. 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.
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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. 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.
13. The objectors raised concerns about the potential effects of the trail on the farming business and the possibility of increased risk of flooding of the land. During the site inspection I became aware of some issues around the tourism business which also operates on the farm.
14. The alternative suggested was that the route remain on the foreshore, where the NCP is currently recorded and promoted.
15. There were no representations made in relation to the Report.
16. NE commented on the objections, arguing that they should be dismissed, with the proposals approved without amendment. They offered mitigation works in relation to the proposed route.
17. 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***

18. The objection relates to parts of the route referred to within Chapter 6 of the Report. This section runs from Cresswell (grid reference: NZ 2935 9356) to Amble (grid reference: NZ 2669 0471), as shown on maps 6a to 6i.
19. The trail generally follows existing walked routes, including public rights of way, along most of its length. NE indicates that it mainly follows the coastline quite closely and maintains good views of the sea.
20. The trail follows an alignment similar to the existing NCP and the National Cycle Network, with 9 sections of new path.
21. There are few artificial barriers to accessibility on the proposed route, which makes use of existing surface paths wherever these meet the criteria set out by the Scheme. However, there are places which may restrict limited mobility users due to undulating dunes or steps and uneven terrain as seen on Hemscott Hill Links<sup>2</sup>, to which the objections relate, and Blakemoor Links.
22. The route passes through sites designated for nature conservation or heritage preservation. The sections referred to in relation to these objections lies broadly on the inland extent of the Northumberland Shore Site of Special Scientific Interest ("SSSI").
23. 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

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<sup>2</sup> I understand the 'links' to refer to the dunes in this area

need to roll back. It has been identified that roll back is likely to be required in a number of areas including the area referred to by these objections.

***The sections referred to by the objections***

24. O1 is made by the owner of the land crossed by the trail whilst O3 is made by his son-in-law, whom I understand is also a tenant. The objections relate to section SBA-6-S006, shown on map 6b. In this location and neighbouring sections, SBA-6-003 to SBA-6-S009, the current route of the NCP is along the Coast Road or the beach.
25. The proposed trail is not a recorded public highway but is identified as an "*Other existing walked route*". It would provide access over sand dunes, with an existing fence-line forming the landward boundary of the coastal margin.

## **Cases in objection**

### ***Flooding***

26. Both objectors raised concerns regarding flooding of the land and properties lying to the south-east of the proposed route. It was indicated that use of the dunes would lead to erosion, allowing water to breach the dunes, flooding the links. There had been three occasions over fifty years when the spring tides, with a following north-east wind, had flooded this land.
27. As the landowner, O1 raised a number of further points of objection, as set out below.
28. In 2015 Cresswell Parish Council applied to create a path along the dunes and, subsequently, 3 or 4 local residents have walked on the dunes to create a path. The damage from just these few walkers is evident, with grass being killed off, which allows the wind to blow the sand and erode the area.
29. This erosion has been obvious on the south boundary with Blakemoor, near the car park for the beach. The farm boundary fence was cut, allowing cattle to escape, and so an access was provided. A second fence was erected to create a path to the sea, and prevent further cutting of fences, but the effect of people walking on one path has been severe erosion of the dune in this area.
30. Over the past thirty years round straw bales have been placed in the gaps in the dunes, covering them with sand and spreading manure to encourage grass growth and stabilise the area. At the northern end in particular it would not take much to erode the section where it is still only two metres wide on the top. Although the landowner has undertaken work to stabilise the dunes in the past, this would not continue if the trail was put in this location. The trail should not simply move inland due to erosion of the dunes.

### ***Agricultural Impact & Public safety***

31. As farmers of this land for over 120 years the dunes form an important part of the farm. The suckler cows winter on the dunes, with half the herd calving in the autumn, before being put out, and the rest calving on the dunes in the spring. As this is an exposed area the long grass on the dunes provides protection from the weather for the calves. There has been a decrease in pneumonia in the calves born outside.
32. The electric fence, which would form the landward boundary of the coastal margin, stops the cows going to the front of the dunes, causing erosion. However, the calves can pass under the fence, to shelter in the marram grass, and walkers may approach them causing them to panic. A calf once ran into the sea and drowned as a result.
33. There is concern that the general public, rather than just local walkers, do not understand when they may be putting themselves in danger. Due to the cattle calving on the dunes people may approach the calf, thinking it lost or ill, or even the calving cow, without realising that cattle can be very unpredictable; even the quietest cow can be dangerous when giving birth.
34. The majority of walkers in this area are exercising dogs and will walk on the beach to let their dogs run off leash. If people were encouraged to use the sand dunes there would be a greater risk of dogs worrying livestock. There would also be increased dog mess, which leads to concerns over transference of

disease, such as neospora parasite and sarcocytosis, which cause foetal abortion and fatalities in cattle. Dog mess bins would be required, and must also be emptied, and signs should be put in place to keep dogs on leads.

35. In the past sheep grazed the dunes but, due to concerns over dog-worrying, this no longer happens. As a result ragwort grows on the dunes, which is a poisonous weed that can kill cattle and other animals. Therefore the area is sprayed every year, with signs put up to keep people off in case the dogs eat the plants or spray.
36. A proper post and rail fence would need to be put in place to protect both livestock and the public, to be installed and maintained as part of the proposal, not by the landowner.

### ***Nature conservation, ground-nesting birds***

37. The dunes provide a habitat for a number of bird species nesting on the links and in the long grass. There are skylarks, shelducks, grey partridge, wheatears, sand martins and others.
38. Encouraging people to walk through this area, with dogs running loose, is irresponsible and signs to keep dogs on leads will not deter this or stop them disturbing the ground-nesting birds. During the nesting season a dog management plan should be in place and this may include banning dogs from Hemscott Hill beach during the nesting season.

### ***Alternative route***

39. At the present time, with no formal path in place, people tend to use the beach with those who prefer the dunes following a number of different lines, so not creating one area of erosion. When the tide prevents use of the beach people can already walk along the links fence line.
40. Both objectors suggested that the trail could run on the beach, with diversion onto the dunes only when there was no beach access due to the tides.



## **Natural England comments on the objections**

### **Overview**

41. NE understands the landowner's concerns; however, having again given careful consideration to the matter, it is not thought that the proposals would have a significant impact on the farming and tourism business or the conservation of the area. NE also understands the concerns regarding possible increased risk of flooding. However, it is not thought that the proposals would have a significant impact on Hemscott Hill Cottages.
42. Should actual experience of operating the new coastal access rights on the ground demonstrate that intervention is needed, a review would take place in discussion with the objectors on the relevant matters. NE therefore submits that the objections should be dismissed and the proposals in the Report for these sections should be approved by the Secretary of State without amendment.

### **Flooding**

43. NCC is the lead local flood authority for Northumberland. During the preparatory work, and again following publication of the proposals, NCC, as the body responsible for flood defence at Druridge Bay, was consulted regarding any potential flood risks in this area. There is evidence of erosion of the dunes and as part of the proposals NE has budgeted for sea defence measures to protect a small 'blow out' where the dunes are eroding. This was proposed in full consultation with the local authority, which would be responsible for maintaining the route. This part of the establishment works ought to have been made explicit in our Coastal Access Report, for which we apologise. The objectors have been made aware of this proposed work.
44. The dunes are not part of a formal flood defence, (see section 4.10.3 of the Scheme). Following a visit to the site on the 28th June 2017, the Flood & Coastal Erosion Risk Management Engineer at NCC, stated, *"It is my opinion that the formalisation of the Coastal Path through the dunes at Hemscott would be acceptable in terms of any increased risk of erosion and sea flooding. However I do believe there are certain sections of the dune system that would require some sort of dune stabilisation works prior to the formalisation of the path. We have previously used geotextile bags filled with sand to strengthen dune systems and I believe this would be an acceptable solution, we would be happy to offer advice on any such works"*.
45. NE is aware of a Definitive Map Modification Order claim<sup>3</sup> along the line of the proposed route. The view was that this line demonstrated existing use of the route, with few reported incidents save for those that the landowner raises. The limited choice of alternate routes in this area led NE to conclude that the current proposal offered the best balance between public and private interest.
46. The proposed route was considered after reference to various elements of the Scheme including a route that maintains views of the sea and a route where interruptions are kept to a minimum, as detailed in section 4.1.1 of the Scheme.

### **Agricultural Impact & Public safety**

47. Due to concerns raised NE used the discretion not to include the dunes landward of the electric fence as coastal margin, despite it appearing to be part of the

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<sup>3</sup> Made under section 53(2) of the Wildlife and Countryside Act 1981

dune system. NE felt that clarity and cohesion of the margin would be compromised if this land – Hemscott Hill Farm’s fields – were to be included as margin or “spreading room” as they are clearly farmed and greatly improved from their natural state.

48. Section 8.2.2 of the Scheme states that “*A great deal of land grazed by cattle has public access, showing that the two uses are generally compatible*”. Section 8.2.6 goes on to explain that graziers have a responsibility to ensure that any risks posed by cattle are minimised by reasonably practicable measures.
49. Section 8.2.8 points out that intervention is most likely to be necessary where cattle have calves at foot. In this instance, even if the calves are passing under the existing electric fence, the cows would be fully enclosed in land without any coastal access rights, landward of the trail. Section 8.2.11 of the Scheme states that “*the trail may cross land grazed by cattle if it is the most convenient route along the coast.*” It goes on to explain that by following the seaward edge of the field - or in this case by avoiding the field entirely - potential contact with users can be minimised.
50. Where cattle are, as in this case, in large open areas, section 8.2.15 states that “*cattle will naturally avoid visitors when calving, and it is reasonable to expect visitors to avoid cattle provided steps have been taken to alert them to the risks and precautions*”. NE would be happy to provide such information through signage for visitors, including information for dog owners.
51. In the original response NE indicated that they would be prepared to pay for the installation of stock-proof fencing on the landward side of the proposed route, to help to lessen the concerns. However the landowner indicated that this would interfere with his existing grazing regime by preventing calves from leaving the enclosure and seeking shelter in the dunes to the east (seaward side).
52. Following the query raised at the site visit, NE stated that they were normally reluctant to install fencing adjacent to accessible coastal margin, except where there may be a security or conservation issue. In this case, where there is an informal campsite through the summer, with grazing of cattle and their followers through the winter, NE would be prepared to fund the installation of a wire mesh (“pig net”) fence, which would be stock and dog-proof along the inland extent of the coastal margin, up to a maximum length of 1560 metres - the extent of the landholding. Should there be a preference for only a part of the length to be fenced, or for the fence to be not stock-proof in order to allow calves passage into the dunes, NE would also be content to fund the installation.
53. NCC, the access authority, has indicated that they would be willing to undertake this work as a part of the establishment works on the stretch, once approved. NCC would not, however, assume long term maintenance responsibility of any fence and it would become the responsibility of the owner/occupier to effect repairs and alterations to the fence as required.
54. In relation to the concerns regarding dogs and dog faeces there is a general requirement that dogs should be kept on a short lead in the vicinity of livestock on land affected by coastal access rights. This would apply where calves are “straying” across the existing fence and into the dune system (see Scheme section 2.4.6). NE would be happy to erect signage to this effect, reminding users of this requirement. It is also an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock. Allowing dogs to

foul public spaces without clearing it away, is also an offence, as is leaving bags of faeces in the area.

55. A fence could assist in separating calves from walkers and dogs in the dunes seaward of the fields. If the dunes seaward of the fence were to be subject to coastal access rights, the situation whereby dogs must be on leads in the vicinity of livestock would be an improvement of the present, informal access arrangement whereby dogs and their owners are subject to no such requirement.
56. Section 8.15 of the Scheme considers the use of pesticides and the control of pesticides via the Chemicals Regulation Directorate. If instructions and codes of practice are followed, the Scheme states that "*there will be little need for further intervention*". Section 8.15.7 sets out that there are "*very few products of this type where contact poses a genuine risk*". The continued use of signage would be welcomed by NE.

### **Nature conservation, ground-nesting birds**

57. The responsible officer for the Northumberland Shore SSSI was consulted on the chosen route. It was concluded that there would be no likely significant effect on the site, which is designated for foreshore features and not dune features. The proposed line of the trail broadly follows the inland extent of the SSSI, with the coastal margin outside the SSSI and considerably degraded habitat. The dunes crossed by the proposed route, and those inland, have no conservation designation. An Access and Sensitive Features Appraisal was carried out for this stretch, concluding that would be no likely significant effect upon the features of the SSSI which lies adjacent to the proposed route.
58. The narrow strip of dune between the foreshore SSSI and the enclosed fields does not provide most of the species referred to with habitat for foraging, breeding or roosting. Shelduck, ringed plover, grey partridge, golden plover, sanderling, purple sandpiper, redshank, turnstone and little tern do not, or are unlikely to, use the dune. Skylark may occasionally use it but better and more extensive habitat is available in the adjacent agricultural fields owned and managed by O/1, NCC and the National Trust. The sand martins nesting in eroding fresh sand cliffs, created each year by natural coastal erosion, would be unlikely to be disturbed by access to the dunes.
59. Both the beach and path proposed as the trail alignment are well-used and additional walkers on the England Coast Path are unlikely to add significantly to the numbers already using the area. As such the new access rights would not have a negative effect on any of the species mentioned, whether nesting or shoreline feeders. It is not expected that any mitigation would be necessary.

### **Alternative route**

60. The objectors propose that the current arrangements where people walk on the beach, and are only diverted to the dunes on the occasions that there is no beach access due to tides, should continue. The Scheme states at 7.11.3 that, "*The Trail will not normally be aligned on sandy beaches because they can be difficult to walk on for long distances and may be covered at high tides*". Paragraph 7.11.4, states that "*...the trail will be aligned on sandy beaches where there are no other viable route options...*". In this case the dunes offer a viable route option, whereas other options were less acceptable, including the beach, or

the roadside inland of the dunes, which is less convenient and offers no sea views. NE therefore disagrees with the suggested modification to the proposals.

61. It is anticipated that should the proposed route be approved many walkers would continue to use the beach, subject to the tide allowing this, as is the case now. However the proposed route would provide an attractive, well managed trail which would provide clarity and certainty by avoiding areas subject to tidal inundation, with minimal impact upon the farming and tourism businesses or properties.

## Conclusions

62. *Bearing in mind the submissions reported above, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.*

### **Flooding**

63. It is clear that the landowner has carried out a great deal of work, over many years, to assist in stabilising the dunes in this area [30]. I also took the opportunity of visiting the area adjacent to Blakemoor, and walking the access from the car park<sup>4</sup> across the dunes to the foreshore [29] to understand the points raised.
64. I understand that there is currently a claim for a public right of way to be recorded [28 and 45]. The landowner believes that the use is slight but that even this has caused erosion, seen by NE as an *"other existing walked route"* and proposed as the trail alignment.
65. Section 7.10 of the Scheme refers to the use of dunes as part of the trail, noting that they are naturally dynamic, making it difficult in some circumstances to maintain permanent routes through them for the medium to long term. Attempts to retain a fixed route may interfere with dune dynamics, which may form part of the objectives for conservation and flood and coastal risk management.
66. The dunes are not part of the formal flood defence in this area and the responsible body, NCC, are satisfied that overall the formalisation of the path would be acceptable in terms of the risk of erosion and sea flooding [26 and 44]. During the site visit we went to an area where the landowner has concerns as to the narrowness of the dune, lying between the watercourse running from Hemscott Hill to the sea and the section SBA-6-S007 [30]. The map indicates this to be an area where there is *"New revetment required"* and it was confirmed on-site that this was where sea defence measures were proposed as part of the establishment works [43 & 44].
67. I agree with the objector that there is evidence of erosion arising from the access to and from the car park [29] as well as a relatively defined 'path' seen on approximately the proposed line of the trail. Given the local knowledge and experience of the objectors it is unsurprising that the concerns over erosion and potential flooding have been raised. However, I am satisfied that the local flood authority has been involved in the matter during preparation and publication of the proposals and is content that there would be no unacceptable risks arising in this respect.
68. The Scheme sets out that the trail may go through dunes if there is scope for a suitable route through them; it will normally roll back as the dunes develop and change as a result of coastal erosion and other geomorphological processes. All dunes will normally be included as spreading room whether seaward or landward of the trail. A decision has made taken for a slightly different arrangement here with some of the dunes, or links, not included as part of the coastal margin [47].
69. In relation to trampling, and possible erosion, the Scheme sets out that at relatively low levels, recreational use can contribute to the dynamic processes of

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<sup>4</sup> The car park lies adjacent to Hemscott Hill land and is marked on the southern edge of Map 6b, also being part of the coastal margin landward of the trail

dunes. Use may destabilise existing dunes, or prevent new dunes from forming where they would otherwise, with associated loss of plant and animal life, on the trail itself or on secondary routes through dunes, in particular routes leading through the dunes to the beach from the trail or from an arrival point such as a car park. The Scheme accepts that there may be a need for intervention, depending on a number of factors, including overall objectives for conservation and flood and coastal risk management, estimate of the tolerance threshold in sensitive areas and existing and predicted levels and patterns of visitor use.

70. In this instance NE indicate that the trail provides a suitably resilient route through the dunes and that those currently using the foreshore to walk dogs would be likely to continue to do so, rather than follow the trail itself [61].
71. Taking account of the matters raised and, in particular, the establishment works and availability of management options as set out in the Scheme, should these become necessary, I am satisfied that the issue of potential flooding has been, and will be, appropriately addressed. The related matter of erosion will similarly be dealt with as part of the establishment works and can be dealt with through management options should that prove necessary on review [42].

### ***Agricultural Impact & Public Safety***

72. The dunes crossed by the proposed route lie to the east of the obviously improved and farmed land of Hemscott Hill Farm. During the site visit the extent of the tourism business associated with the farm became clear, with camping and glamping on the land to the west of the dunes at the time. These are the fields used for calving and grazing outside the tourist season, with the calves able to access the dunes under the wire fence [31, 32 and 47].
73. I understand that Ms Bell, who runs the tourism operation with Mr Hornsey (O/3), was concerned about safety for camping clientele with the trail running alongside the boundary. Freedom Camping, an organisation to which she was affiliated or considering affiliation, had advised that fencing would be required if a footpath was placed alongside the camping site. Whether or not fencing was sought by the objectors, and whether NE would provide it, was a point on which I sought further information following the site visit [6].
74. As pointed out by NE, the Scheme notes that a great deal of land grazed by livestock has public access and the two uses are generally compatible<sup>5</sup> [48]. Intervention may be necessary when cows have calves at foot, which is one reason for which the fields are used [31 and 49]. However, in this case the trail lies outside the fields used by the cattle [32]. It is noted that calves may access the dunes at present and, depending upon any fencing alterations in association with the establishment works [36, 51, 52 and 53], may continue to do so.
75. The current fence should be adequate to separate members of the public from calving cows, as the fields are obviously improved [32, 33 and 47]. However, if the landowner feels there would be benefit from additional fencing and signage, which I consider may be the case, this is available [36, 51 and 54]. Such fencing would also increase security in relation to the tourism business, which could itself benefit from the establishment of the trail<sup>6</sup>. Future maintenance would revert to the landowner [36 and 53], which I consider appropriate as it would replace an existing fence for which he is already responsible.

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<sup>5</sup> Scheme reference 8.2

<sup>6</sup> Scheme reference 10.5.2

76. It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock [34 and 54]. 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 consider that most dog-walkers are likely to be local people, who will most probably continue to use the land in this area as they always have, which was indicated to be on the foreshore, to let their dogs off the lead [34 and 61].
77. I agree with NE that if the landowner would like it then a fence could assist in separating walkers, dogs and calves [55]. However, should continued access to the dunes for the calves be desired [31] then the requirement for dogs to be on lead near livestock would be an improvement on the current situation, where there is no such requirement and the public clearly do access the dunes [55]. Signage may also be helpful in this respect and can be dealt with during the establishment works, depending on final agreement as to fencing works [50].
78. With regard to concerns about 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 [34 and 54]. 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 walking<sup>7</sup>. That situation is not the case here at present but the management solution is available if required. Stock-proof fencing, if requested, would prevent dogs from accessing areas with cattle present.
79. In relation to spraying to control ragwort (*Senecio jacobaea*) [35] the Scheme sets out that intervention is generally not necessary<sup>8</sup>. The use of signage, as is already undertaken by the landowner, would be appropriate [56] and other management interventions are available should they be required.
80. I consider that the Secretary of State can be satisfied that the NE proposal implements the Scheme appropriately in relation to the current use of the land. It lies outside the fields used for grazing, calving and tourism, with establishment works offered in terms of fencing and signage should that be desirable to assist with future management.

### **Nature conservation, ground-nesting birds**

81. In objection reference was made to a number of bird species: skylark (*Alauda arvensis*), shelduck (*Tadorna tadorna*), grey partridge (*Perdix perdix*), wheatear (*Oenanthe oenanthe*) and sand martin (*Riparia riparia*) [37]. The foreshore is part of the SSSI for which the citation sets out that the reason for notification was as wintering grounds for shore birds, being of international, or national significance for these species: ringed plover (*Charadrius hiaticula*), golden plover (*Pluvialis apricaria*), sanderling (*Calidris alba*), purple sandpiper (*Calidris maritima*), redshank (*Tringa totanus*), turnstone (*Arenaria interpres*) and little tern (*Sternula albifrons*) [57].
82. The Wildlife and Countryside Act 1981 ("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 into three categories of conservation importance - red, amber and green, with red the highest conservation priority and amber the next most critical group, followed by green. Of the species referred to above, grey partridge, ringed plover and

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<sup>7</sup> Scheme reference 8.6.12

<sup>8</sup> Scheme reference 8.15

skylark are red-list species, whilst little tern, purple sandpiper, redshank, sanderling, shelduck and turnstone are amber-listed in the 2015 publication, Birds of Conservation Concern 4.

83. The Scheme recognises that birds may nest on the ground in any of the constituent parts of a dune system and then be vulnerable to people or their dogs trampling on nests, because they are usually difficult to see<sup>9</sup>. There can also be disturbance to nesting birds by passing very close to the nest, causing the nests to be abandoned or left for short periods which may expose them to adverse weather conditions or allow predatory species (including dogs) to take eggs or young birds. Some ground nesting species, including certain species which nest on beaches in front of dunes, are rare or declining and therefore subject to special protection<sup>10</sup>.
84. NE is satisfied that the species referred to do not generally make use of the dunes, which are degraded habitat [58]. Any species on this land appears to already be successfully sharing the area with existing users [59] and, therefore, it does not appear to be an area which is particularly sensitive to access.
85. It is suggested that during the nesting season a dog management plan should be in place [38]. Although NE are satisfied at this time that no mitigation works are expected to be required in this respect [59] there are informal management techniques available should they be found necessary during either establishment or operational stages<sup>11</sup>. Such measures may include signs where there are ground-nesting birds, reminding people to keep their dogs under effective control, temporary guide fencing or directions to restrict or exclude access.
86. In relation to the SSSI I consider that the Secretary of State can be satisfied that NE has taken appropriate account of the potential effects on nature conservation. In relation to the dunes themselves NE are satisfied that there is no issue with regard to nature conservation and I consider that the availability of management techniques, should these prove necessary, is sufficient in this case. The requirements of the 1981 Act places control on the physical works at establishment stage separately to the Scheme requirements.

### **Roll back**

87. There are concerns that changes to the alignment, moving the route inland, should not simply occur [30] due to changes to the dunes themselves. Section 6.2.1 of the Report shows that '*Normal*' roll-back provision is expected in relation to this part of the route [23]. Part 8 of the Report Overview sets out that roll-back would occur either:
- in direct response to coastal erosion or other geomorphological processes, or significant encroachment by the sea; or
  - in order to link with other parts of the route that need to roll back as a direct result of coastal erosion or other geomorphological processes, or a significant encroachment by the sea.
88. The Scheme sets out that a continuous and sustainable trail cannot follow the same fixed route year after year on parts of coast that are changing significantly<sup>12</sup>. Section 55B of the 1949 Act provides powers for the future line of

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<sup>9</sup> Scheme reference 7.10.20

<sup>10</sup> Scheme reference 7.11

<sup>11</sup> Scheme reference from 7.10.22

<sup>12</sup> Scheme reference 4.10



the trail to be determined in accordance with provision made in our proposals to the Secretary of State, enabling the trail to be moved inland as the coast changes, which is referred to as 'roll back'.

89. Where such changes are required NE can determine a new route without any further reference to the Secretary of State. In determining such a new route NE would take account of local factors present at that time, including any views expressed by people with a relevant interest in affected land; the terms of the coastal access duty, including the requirement to aim to strike a fair balance between the interests of the public and the interests of any person with a relevant interest in the land; and, the relevant criteria in the Scheme.
90. The proposals set out in the Report are in line with the requirements and powers set out in the Scheme and would need to take appropriate account of the views of the interested persons. Whilst there is understandable concern in relation to this possibility, I consider that the Secretary of State can be satisfied that the normal roll back proposals are appropriate in relation to this area.

### **Alternative route**

91. Both objectors refer to the alignment of the existing NCP, asking why that already promoted route could not be used as the route of the England Coast Path. It is indicated that people already have the option to divert onto the dunes when there is no beach access due to tides [39 and 40]. The Scheme sets out that the trail may go through dunes if there is scope for a suitable route<sup>13</sup>. The trail will not normally be aligned on sandy beaches because they can be difficult to walk on for long distances [60]<sup>14</sup>. It is also the case that the trail would not normally be aligned on land subject to periodic flooding or tidal action, as would be the case on the beach<sup>15</sup>.
92. Given the availability of a suitable route on the dunes in this area I consider that the Scheme has been implemented appropriately.

### **Overall Conclusion**

93. Taking account of all matters viewed on my site inspection, as well as the objections and comments, 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.

### **Recommendation**

94. 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 either objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Heidi Cruickshank*

**Inspector**

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<sup>13</sup> Scheme reference 7.10.4

<sup>14</sup> Scheme reference 7.11.3

<sup>15</sup> Scheme reference 4.10.7