

Department for Environment, Food and Rural Affairs

Notice by the Secretary of State under section 52 of the National Parks and Access to the Countryside Act 1949

Maldon to Salcott

25 January 2018

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Introduction

On 30 March 2017 Natural England submitted a coastal access report relating to the stretch of land between Maldon and Salcott (“the 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 (“the 1949 Act”), pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”). The coastal access report is available at www.gov.uk

A person was appointed under paragraph 4(2) of Schedule 1A to the 1949 Act, inserted by Schedule 19 to the 2009 Act (“the Schedule”), for the purpose of considering whether the proposals in the coastal access report failed, in the respects specified in the objection received by Natural England under paragraph 3 of that Schedule in relation to that report, to strike a “fair balance” as a result of the matter or matters specified in the objection¹.

In reaching his determination under section 52 of the 1949 Act the Secretary of State has considered:

- (a) Maldon to Salcott - Natural England’s coastal access report submitted to the Secretary of State on 30 March 2017;
- (b) in accordance with paragraph 16(1)(a) of the Schedule, the objection which the appointed person determined to be an admissible objection;
- (c) in accordance with paragraph 16(1)(b) of the Schedule, Natural England’s comments on the admissible objection which it sent to the Secretary of State;
- (d) in accordance with paragraph 16(1)(c) of the Schedule, the report given to the Secretary of State by the appointed person in respect of the objection which the appointed person determined to be an admissible objection; and
- (e) in accordance with paragraph 16(1)(d) of the Schedule, representations made by a person within paragraph 2(2)(b) to (f) of the Schedule, and the summary of other representations made, and Natural England’s comments on those representations which it sent to the Secretary of State on 12 July 2017.

In this notice –

- (a) “objection” means an objection about the coastal access report which is made under paragraph 3 of the Schedule; and

¹ A “fair balance” means 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, as set out in section 297(3) of the 2009 Act and paragraph 1(b) of the Schedule. A person has “a relevant interest in the land” if he is the owner of the land, holds a term of years absolute in the land, or is in lawful occupation of the land: see section 55J(2) of the 1949 Act.

(b) “representation” means a representation about the coastal access report which is made under paragraph 7 of the Schedule.

Secretary of State’s approval of coastal access proposals

The Secretary of State has determined to approve the proposals set out in the coastal access report so far as they relate to those parts of the route (and associated coastal margin) in relation to which no objections or representations were made.

In the respects specified in the objection set out at **Annex A** to this notice, the Secretary of State determines that the proposals set out in the coastal access report **do not fail** to strike a “fair balance” as a result of the matters specified in the objection. He therefore approves the proposals set out in the coastal access report, so far as they relate to that part of the route (and associated coastal margin) to which that objection relates.

The conclusions and observations of the Secretary of State in relation to the parts of the route (and associated coastal margin) the subject of representations are set out in **Annex B** to this notice.

The Secretary of State has made available at www.gov.uk a copy of this notice and the report given to him by the appointed person. Natural England has also made available:

- (a) Maldon to Salcott - the coastal access report;
- (b) Representations made by a person within paragraph 2(2)(b) to (f) of the Schedule, and Natural England’s comments on those representations, which it sent to the Secretary of State on 12 July 2017; and
- (c) Summary of other representations, and Natural England’s comments on those representations, which it sent to the Secretary of State on 12 July 2017.

Annex A: Objection which did not fail to strike a “fair balance”

In the respects specified in the objection set out below, the Secretary of State has determined that Natural England’s proposal in the coastal access report **did not fail** to strike a “fair balance” as a result of the matters specified in that objection and thus approves it.

Objection Reference: MCA\Maldon to Salcott\O\1\MSC0228

Salcott Village

S Knill-Jones

The land to which the objection relates is route sections MSC-5-S005 to MSC-5-S010.

Annex B: Conclusions and observations on representations

The Secretary of State has considered, in relation to the coastal access report, the following representations made under paragraph 7 of the Schedule. He approves the proposal in respect of which these representations have been made, subject to the conclusions set out below.

Representation No. MCA\Maldon to Salcott\R\1\MSC0501

Name of representation: Private Individual

Report Chapter and route section: Chapter 2

MSC-2-S027 RD

Secretary of State’s conclusion and observation:

Secretary of State notes the comments on improving the level of access to the causeway and intertidal area around Osea Island. He further notes that the landowner was able to demonstrate that routing the England Coast Path in such a way as to include the causeway and island within spreading room would have unfairly disadvantaged their commercial activities. He therefore approves the proposed year round direction to exclude access to Osea Island and its causeway under section 24 of the Countryside and Rights of Way Act 2000.

Representation No. MCA\Maldon to Salcott\R\2\MSC0501

Name of representation: Private Individual

Report Chapter and route section: Chapter 5

MSC-5-S005 to MSC-5-S010

Secretary of State's conclusion and observation:

Secretary of State notes that this representation suggests that the coastal path could have been aligned along the sea wall between route sections MSC-5-S005 to MSC-5-S010. He further notes that the option to continue the path around the whole length of sea wall was discounted as once the sea wall leaves the farmed field it includes two properties which are considered to be gardens, and therefore would be excepted land under Schedule 1 to the Countryside and Rights of Way Act 2000. The sea wall itself is within the coastal margin spreading room, so can be accessed. Users can readily do so, but would be prevented from onward passage by the fenced gardens that occupy a section of this small creek. Secretary of State therefore approves route sections MSC-5-S005 to MSC-5-S010.

Representation No. MCA\Maldon to Salcott\R13\MSC0491

Name of representation: Historic England

Report Chapter and route section(s): Whole Report

Secretary of State's conclusion and observation:

Secretary of State thanks Historic England for their representation and notes that they have no objections to the proposals in Natural England's coastal access report.

Representation No. MCA\Maldon to Salcott\R14\MSC0329

Name of representation: Tollesbury Parish Council

Report Chapter and route section: Whole Report

Secretary of State's conclusion and observation:

Secretary of State notes the questions raised in the representation relating to maintenance and monitoring. He further notes that once established ongoing maintenance of the coastal path will fall to Essex County Council (as the access authority) pending any formation of a local trail partnership, in line with the funding contribution towards national trail maintenance currently made by Natural England.

The monitoring of the condition of the path will be led by Essex County Council. Local parish councils such as Tollesbury also have a potential role, as do local villagers (some of whom use the coastal footpaths daily) and wider access users.

It will be the County's responsibility to take any decisions on prioritisation of future remedial action. As stated in paragraph 3.5.1 of the Coastal Access Scheme, as approved by the Secretary of State under section 298 of the Marine and Coastal Access Act 2009,

the maintenance and management undertaken will reflect the nature of each section of the path.

Representation No. MCA\Maldon to Salcott\R\5\MSC0352

Name of representation: Essex Bridleways Association

Report Chapter and route section(s): Whole Report

Secretary of State's conclusion and observation:

Secretary of State notes that the Marine and Coastal Access Act 2009 provides for a right of access on foot. During development of the proposed route, Natural England specifically asked landowners and managers if there was any appetite to provide higher rights for horse riders or cyclists. In no case was this answered positively. He further notes that the provision of higher access rights are at the discretion of (and in agreement with) the affected landowner.

Representation No. MCA\Maldon to Salcott\R\6\MSC0233

Name of representation: Tollesbury and Heybridge Parish Councils

Report Chapter and route section: Chapter 2 and 5

Secretary of State's conclusion and observation:

Secretary of State notes that section 25 of Countryside and Rights of Way Act 2000 enables Natural England to give a direction excluding the application of new coastal access rights over salt marsh or mud flats if it is satisfied that this is necessary because the land is unsuitable for public access. He notes that the proposed exclusion will not prevent or affect any other use people already make of the land locally by formal agreement with the landowner, or by informal permission or traditional toleration. Natural England expect current use of the intertidal areas by boat users and wildfowling (and others) to continue unaffected.

Representation No. MCA\Maldon to Salcott\R\7\MSC0299

Name of representation: Private Individual

Report Chapter and route section(s): Whole Report

MSC-3-S013 FP

Secretary of State's conclusion and observation:

Secretary of State notes the comments in this representation. He approves route section MSC-3-S013 FP which will follow a public right of way along the majority of the clay sea

wall noting that Essex County Council, as the access authority, has not identified any problems with the continuing use of the sea wall for this purpose.

The Secretary of State requests Natural England and Essex County Council review the need for any structures and existing stiles and further requests that Essex County Council work with the individual land owners to determine what sort of structure is best for them, which can also meet the requirements for flood defence.

He notes the history of unauthorised access and requests that any signage makes it clear that the path is a footpath. Natural England's coastal access report focuses on its statutory remit to provide a route on foot only; cycling or other higher rights are not included within coastal access rights. The ongoing issue of unauthorised access should be addressed through dialogue between Essex County Council and landowners/occupiers.

Representation No. MCA\Maldon to Salcott\R\8\MSC0228

Name of representation: Private Individual

Report Chapter and route section: Whole Report

Secretary of State's conclusion and observation:

The Secretary of State refers to objection reference MCA\Maldon to Salcott\O\1\MSC0228 in the appointed person's report.

Representation No. MCA\Maldon to Salcott\R\9\MSC0004

Name of representation: Country Land and Business Association Limited (CLA)

Report Chapter and route section: Overview and Chapters 1 to 5

Secretary of State's conclusion and observation:

Secretary of State thanks the CLA for their detailed representation and makes the following observations on the issues raised:

Natural England's coastal access report focuses on its statutory remit to provide a route on foot only; cycling or other higher rights are not included within coastal access rights. The long-established and ongoing issue of unauthorised access should be addressed through dialogue between Essex County Council (as the access authority), and landowners/occupiers.

On the issue of erosion of flood banks he notes that there is currently a public right of way along the majority of the clay sea wall and that Essex County Council has not identified any problems with the continuing use of the sea wall for this purpose. Maintenance of the sea wall as a flood defence structure will be an issue for the Environment Agency.

He recognises the concerns raised about the potential conflict between walkers and livestock on public rights of way linking to the coast path and requests that Essex County Council continue to engage with local land managers and land owners on this issue.

He further notes that throughout England there are areas of land grazed by cattle that have public access, showing that the two uses are generally compatible. Concerns are significantly more likely where people bring dogs with them. Two national requirements help to address these concerns. It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock; and on land with coastal access rights, people are required to keep dogs on a short lead in the vicinity of cattle and other livestock.

The representation makes reference to 'significantly higher liability'. Section 306 of the Marine and Coastal Access Act 2009, summarised at section 4.2.2 of the Coastal Access Scheme as approved by the Secretary of State under section 298 of the Act, states that land subject to coastal access rights benefits from the lowest level of occupiers' liability known under English law.

The Secretary of State fully appreciates the CLA's representation that Natural England's coastal access report makes no reference to it using its discretion under section 301 of the Marine and Coastal Access Act 2009. He notes that in its comments on the representation Natural England have said that although its published report left the reader in no doubt that it was proposing to exercise the estuary discretion on this stretch, it agrees with the CLA that each chapter should have contained a formal proposal to the Secretary of State that read "*This report proposes that the trail should contain sections aligned on the estuary of the river Blackwater, extending upstream from the open coast.*"

This text was mistakenly omitted from the published report and the rationale for exercising the estuary discretion was also mistakenly omitted from the published report overview. This text, appended at **Annex C** to this notice, was subsequently submitted to the Secretary of State for consideration, was seen by the Inspector considering the objection, and has been taken fully into account.

The Secretary of State is satisfied therefore, that the initial omission did not materially affect his approval of Natural England's proposals, and approves the report as if the text in question had been included in the published version. The Secretary of State also notes that Natural England have made changes to their report template as a result of this omission in order to ensure that it does not occur again.

Representation No. MCA\Maldon to Salcott\R\10\MSC0338

Name of representation: Royal Society for the Protection of Birds (RSPB)

Report Chapter and route section(s): Whole Report

Secretary of State's conclusion and observation:

Secretary of State thanks for RSPB for their representation and notes that once the coast path is open there will be ongoing monitoring of the condition of the path, its associated spreading room access rights and infrastructure. In the event that public access is identified as a contributing factor to any future problems he notes that coastal access provisions may be modified. He requests that Natural England hold discussions with all parties on the timing and deployment of signage along the coast path

He notes that Natural England held discussions with the wardens at Tollesbury Wick Marshes and Old Hall Marshes to discuss the proposed exclusion under section 26 of the Countryside and Rights of Way Act 2000 on nature conservation grounds from 1 May to 15 August every year. He approves this exclusion noting that it has been based on current visitor management practices but requests that Natural England should consider whether it is necessary to hold further discussions with the RSPB and Wildlife Trust to discuss whether the period of restriction is adequate.

Annex C: Discretion to include part or all of an estuary or estuaries

The following text, detailing the rationale for exercising the discretion to include part or all of an estuary upstream of the seaward limit of the estuarial waters of the River Blackwater, was mistakenly omitted from Natural England's original Report Overview. The text included here was seen by the Inspector considering the objection, and is approved by the Secretary of State as if it had formed part of the published report, and the use of the discretion is approved on this basis.

(a) Introduction

The proposed Maldon to Salcott stretch sits entirely upstream of the seaward limit of the River Blackwater estuarial waters.

This part of the Overview:

- introduces the core statutory duties and considerations for the national programme as a whole in relation to exercising the discretion to include part, or all, of an estuary within our proposals;
- describes the overall nature of the estuary system found in this part of England, identifying the geographical limits of our discretion to align the trail around the part of the River Blackwater Estuary included within this stretch of coast;
- goes on to explain in more detail how each of the specific estuary considerations set out at section 301 of the 2009 Act affects our view of the options for the River Blackwater Estuary
- sets out the options for estuary trail alignment which we have identified as a result of this analysis, and;

- describes and explains our chosen proposal.

(b) Estuary discretion

Under the 2009 Act there is no requirement for the trail to extend up any estuary further than the seaward limit of the estuarial waters (see 'geographical limits of our discretion' below).

But Natural England has a discretion to propose that the trail should extend from the seaward limit as far as the first bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot, or as far as any specified point in between. In exercising its discretion, Natural England must have regard to the core national duties and considerations described in Part B and Chapter 10 of the Coastal Access Scheme.

(c) Core national duties and considerations relevant to estuaries

Section 296 of the 2009 Act places a legal duty (the Coastal Access Duty) on Natural England and the Secretary of State to secure a walking route around the whole of the open coast of England, together with an associated margin of land for the public to enjoy either in conjunction with their use of the route, or otherwise.

Section 297 goes on to require both, in discharging this duty, to have regard among other things to the desirability of ensuring that so far as reasonably practicable, interruptions to this route are kept to a minimum. This is a key consideration for the whole of the national delivery programme for coastal access. The whole concept of the England Coast Path relies on delivering continuity of the route so far as reasonably practicable for the whole country. Although proposing a route around each estuary is a discretion rather than a legal duty, if the presence of an estuary would interrupt this continuity of access along the open coast then this will constitute a strong *prima facie* reason for the trail to serve the estuary too, at least to the extent necessary to enable users to continue their onward journey around the coast.

The Scheme notes at paragraph 10.1.4 that because the seaward limit of estuarial waters is an arbitrary point from an access perspective, we are likely to use our discretion at most estuaries to extend the trail upstream to a more convenient point than this seaward limit. Paragraph 10.1.5 then adds "We will always give careful consideration to our option to extend the trail as far as the first bridge or tunnel with pedestrian public access" – both for reasons of continuity, and with a view to any additional recreational benefits that might result within the estuary itself from doing so.

Chapter 10 of the Scheme explains the statutory estuary criteria that section 301(4) of the 2009 Act requires to be taken into account in deciding whether or not to include an estuary in our proposals. These are discussed in more detail in subsection e) below in relation to the Blackwater Estuary.

The other key considerations, including achieving a fair balance with the interests of owners and occupiers, are discussed in section 6 of this Overview.

(d) Overall nature of estuary systems in this part of England

The Essex coast is characterised by a large number of sizeable estuary systems including the Rivers Stour, Colne, Blackwater, Crouch, Roach and Thames.

This proposed stretch contains sections that fall upstream of the seaward limits the Blackwater estuarial waters.

(e) Blackwater Estuary

Geographical limits of our discretion

The seaward limit of the Blackwater estuary transitional waters lies east of Bradwell Power Station on the southern shore and at West Mersea on Mersea Island on its northern shore.

This proposal extends the trail upstream from Salcott (itself within estuarial waters) on the northern shore as far as Promenade Park in Maldon. Options to extend the trail beyond this point are being considered as part of the yet to publish Salcott to Jaywick stretch on the eastern side and the Burnham to Maldon stretch on the southern side of estuary.

The statutory estuary criteria

We have considered below each of the section 301 criteria under the headings given in Chapter 10 of the Scheme.

i) Ferry services

There are no ferry services running in the Blackwater Estuary

ii) Character of the Estuary

- Estuary width

The Blackwater Estuary is the largest in Essex. At its seaward limit it is more than 1.8 miles /3kilometres wide and for the majority of its length the estuary is over 1.2 miles/ 2 kilometres wide, only narrowing significantly near Northey Island and into Maldon. Where our proposals stop at Promenade Park in Maldon, the estuary is circa 300 metres wide.

- Topography of the shoreline

This northern shoreline of the Blackwater estuary is fairly uniform, with a gently undulating coastline. There is a large saltmarsh dominated bay at Tollesbury Fleet that is bounded by two large headland promontories, characterised by large expanses of flat grazing marsh. The Salcott Channel is a tidal creek that forms the north eastern flank of this stretch. There is one island in this stretch, Osea Island, which is connected to the mainland by a causeway.

- Nature of affected land

This proposal extends the trail upstream predominantly along the crest of a sea wall following existing Public Footpaths for the majority of its length. Landward the countryside is mainly arable or wet grassland. There are a small number of coastal settlements plus four villages (Salcott, Tollesbury, Goldhanger and Heybridge Basin) and the town of Maldon. Seaward there lies saltmarsh and/or mudflats and although these areas are proposed for a long-term access restriction the trail affords good views over them which contribute to the coastal character of the trail.

- Features of interest

The whole extent of the proposed trail is within areas of international wildlife value (the Blackwater Estuary Ramsar, Special Protection Area and Site of Special Scientific Interest) and RSPB and Wildlife Trust reserve complexes open to visitors. The proposals afford views over the estuary to the far shore (with Bradwell Powerstation as a prominent feature), Osea island, the historic light ship at Tollesbury and a feeling of remoteness and wilderness close to major centres of population.

- iii) Recreational Benefit

The proposals extend the trail upstream to Maldon which has good transport provision, including bus stops and a number of car parks as well as a Tourist Information Centre. Maldon and the villages along the stretch support a number of tourism businesses including waterside pubs, tearooms, hotels and overnight accommodation.

- iv) Excepted land

There are no significant areas of excepted land along the stretch.

- v) Options for the Blackwater Estuary.

Option 1 – do not extend the trail up the estuary further than the seaward limit of the Blackwater estuarial waters on the northern shore. Walkers have an interrupted journey along the trail and would have to navigate themselves to the next section of England Coast Path.

Option 2 – extend the trail up the estuary further than the seaward limit of the estuarial waters and stop these proposals in the town of Maldon

Proposed route of the trail

Our proposal is to align the trail up the Blackwater estuary further than the seaward limit of the estuarial waters on the northern shore and stop these proposals at Promenade Park in Maldon. Walkers can enjoy an area rich in natural, social and maritime history and are guided to a location with good public transport links and visitor facilities along an uninterrupted trail. The additional local benefits of this option are potentially significant. Options to extend the trail beyond this point on the southern side of the estuary are being

considered as part of the Burnham to Maldon Coastal Access Report and this will propose the onward journey out to the open coast on the Dengie peninsular.

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