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

by Mark Yates BA(Hons)MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 1 November 2017

Marine and Coastal Access Act 2009

Objection by Ms S. Knill Jones, CS Knill Jones and Partners

Regarding Coastal Access Proposals by Natural England

Relating to Maldon to Salcott

Site visit made on 12 September 2017

File Ref: MCA/MSC/1

Objection Reference: MCA/MSC/1

Land at Salcott Village

- On 30 March 2017 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 25 May 2017 to chapter 5 of the Report, Old Hall Marshes to Salcott, has been made by Ms S. Knill Jones of CS Knill Jones and Partners. The land in the Report to which the objection relates is route section MSC-5-5005 to MSC-5-5010.
- The objection is made under paragraph 3(3)(a) of Schedule 1A to the 1949 Act on the ground that the proposals fail to strike a fair balance as a result of the proposed position of route section MSC-5-5005 to MSC-5-5010.

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 on an objection made to a Coastal Access Report. This report includes the gist of the submissions made by the objector, the response of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs contained in this report.

Objection considered in this report

2. On 30 March 2017 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Essex Coast between Maldon and Salcott. The period for making formal representations and objections to the Report closed on 25 May 2017.
3. One objection was received to the Report, which I deemed to be admissible. The objection considered in this report relates to land at Salcott Village (MSC-5-5005 to MSC-5-5010).
4. In addition to the objection, ten representations were made in relation to the Report. Eight of these representations relate to the whole of the Report or the section of the trail subject to this report and I have had regard to them in making my recommendation. The representation from Ms Knill Jones is made on the same grounds as the objection. Further, a representation from Mr Taylor relates to one of the grounds in the objection¹. In respect of the representation from Tollesbury and Heybridge parish Councils, NE says that any permitted use of the intertidal areas should continue.
5. In response to an issue raised by the Country Land and Business Association, NE states that each chapter of the Report 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*

¹ Whether this section of the trail should proceed along the seawall

upstream from the open coast". NE says that this was omitted in error from the published report overview. The rationale for exercising the estuary discretion is outlined in Appendix 1 attached to the document titled "*Full representations with Natural England's comments*". There is nothing before me to suggest that the trail should not be extended along the estuary.

Site visit

6. I carried out a site inspection on the afternoon of 12 September 2017. Mrs Anglin of Essex County Council and Mr Braine of NE were present at the scheduled meeting place at 13:30. However, no representative for the objector was present. Attempts were made to contact the objector without success. I therefore decided to conduct an unaccompanied visit. The objector has subsequently confirmed that this issue arose from an oversight by the person who should have attended the visit.

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:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
10. NE's Approved Scheme 2013² 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 paragraph 3(3)(a) of Schedule 1A to the 1949 Act.

² Approved by the Secretary of State on 9 July 2013

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, subject to Chapter 5 of the Report, runs from Old Hall Marshes to Salcott. Section MSC-5-5005 to MSC-5-5010 is shown on map 5f. This section of the proposed trail proceeds predominantly along Salcott Street, which is a cul de sac road through the village. It continues between MSC-5-5008 and MSC-5-5005 by way of a public footpath. The proposed route then continues southwards on the seawall to link with a section of public footpath which forms the continuation of the trail eastwards.

The Case for the Objector

15. They have an interest in the land within this section and also land in the next section for which no report has yet been published. At all times they retain the need to graze livestock on any land included within the coastal path and adjacent to it. This will require fencing in light of the route chosen.
16. The route chosen by NE does not follow a continuous trail along the seawall of Salcott Creek. On page 16 of the Report, NE states there is one short minor gap in the trail. However, this is a substantial diversion and not a minor gap.
17. The proposed route for the following section is far closer to residential dwellings than if the route followed a continuous trail around the seawall. The seawall belonging to other landowners that has been excluded from the trail (as garden) is not in receipt of any Defra funding. However, its cultivated condition and use is no different to any of the other seawalls included in the trail.
18. NE has been informed that the objector is willing to take the land out of any funding schemes to be on an equal footing with other adjacent landowners and to allow a continuous path within this section of the route.

Response from NE

19. The landholding affected by the proposed route included no grazed sections at the time of walking it during the development of the proposals, or when writing the report. The proposed route crosses a large arable field on the edge of Salcott village. It is a landowners' prerogative to manage the land as they see fit. Any new fencing felt to be necessary would be part of normal farm management.
20. The reason for describing the public footpath gap as "*minor*" and "*short*" is that this is a small gap in the public rights of way network that exists for the entirety of the remainder of this stretch. This gap is currently utilised by the public in order to link two public rights of way that stop short of each other.
21. It is not accepted that the use of Salcott Street is a substantial diversion. If the trail had been proposed to continue along the seawall, following the line of the creek, it would have meant cutting down the side of the arable field described above to re-join the public rights of way. This would be required due to the presence of several gardens/curtilage preventing onward passage in a westerly direction to the sluice. The option to continue along the seawall was discounted

- as it would have required the loss of arable land and may have impacted upon the desire to fence and graze the seawall.
22. The proposed route along Salcott Street passes the front doors of dwellings, part of which is the pavement for the public to use. If the route passed to the rear of the properties consideration would need to be given to the potential impact on privacy.
 23. Gardens are excepted land and are considered in 8.18 and Figure 22 of the Coastal Access Scheme. NE has visited all major landowners to the south of Salcott Creek and north of Salcott Street. Its view is that at least two are gardens; the state of cultivation is not a material consideration. The rationale for discounting the more seaward route is outlined in 5.2.2 in Chapter 5 of the Report.
 24. It is understood that the objector believes that if the agricultural land is removed from the Basic Payment Scheme it would be on an equal footing with the land NE considers to be gardens. Whether land is claimed for this scheme is not a consideration for the alignment of the trail. The trail alignment is not directed by the land classification, but by a site visit to assess likely proposals and likely excepted land classifications and trail alignment to meet the given criteria.

Conclusions

25. I noted during my visit that a short section of the proposed route bisects an arable field (MSC-5-5006 to MSC-5-5008) and this coincides with the position when NE visited the site [19]. The objector has not put forward any reason why fencing would need to be erected if stock were kept in this field [15]. Further, this section corresponds to an existing public footpath [14]. In my view, there is nothing to indicate that this section of the proposed route would have an adverse effect on agricultural operations.
26. In terms of the suggestion that the trail continues along the seawall [16-17], NE considers that any such route could only go as far as the land considered to comprise of gardens. If this is the case, there would be a need to cross the field where no right of way presently exists [21]. Such a route is likely to have a greater impact on the landowner.
27. During the site visit it was not possible to access the land NE considers to comprise of gardens. However, it was unclear from the objection and my observations of the locality where any viable alternative route could continue to the north of Salcott Street. The placing of the trail along Salcott Street will have a limited impact on the residents of the properties concerned. This issue also needs to be considered in light of the potential adverse impact of taking the trail along a route to the rear of the properties [22].
28. Whilst the proposed route follows a course which deviates away from the creek, it provides a more direct means of access than the seawall. The section along Salcott Street did not appear to me to pose any significant safety concerns for the public. It is a cul de sac that was subjected to limited traffic movements during the course of my visit and pavements exist for a proportion of its length.
29. In terms of the suggestion that land owned by the objector is taken out of a funding Scheme [18], I agree with NE that this will have no bearing on the route

of the trail [24]. The removal of land from a payment scheme only means that it could potentially be viewed as a garden.

Other Matters

30. The representations raise additional concerns in respect of use by cyclists, the lack of provision for horse riders and the maintenance of the trail. Whilst the Secretary of State may wish to note these concerns, he will be aware that the issue to be determined is whether the proposals strike a fair balance between the interests of the public in having rights of access on foot over land and the interests of any person with a relevant interest in the land. The issues raised are not matters for consideration by the Secretary of State in respect of the determination.

Recommendation

31. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objection within paragraph 3(3)(a) of Schedule 1(a) to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Mark Yates

APPOINTED PERSON