



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

Marine and Coastal Access Act 2009

Objection by [redacted] on behalf of R.N. Leckonby and Son

Regarding Coastal Access Proposals by Natural England

Relating to Easington to Filey Brigg

Site visit made on 10 October 2018

MCA/EFB/1

Objection Reference: MCA/EFB/1

Easington to Waxholme

- On 28 February 2018 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 to Chapter 1 of the Report, Easington to Waxholme, has been made by [redacted] on behalf of R.H. Leckonby and Son. The land in the Report to which the objection relates is shown on maps 1c, 1d and 1e.
- The objection is made under paragraphs 3(3)(a) and (b) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objections.

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 the 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 28 February 2018 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Yorkshire Coast between Easington and Filey Brigg. The period for making formal representations and objections to the Report closed on 25 April 2018.
3. Objections were received to the Report which I deemed to be admissible. This report considers the objection made in relation to Chapter 1 of the Report. I have dealt with the objections to the other chapters in separate reports to the Secretary of State. In making my recommendation in each report, I have had regard to the representations made to the Report. NE has proposed modifications to Chapter 1 of the Report to address minor errors highlighted by the East Riding of Yorkshire Council. In response to the representation from [redacted] of Withersea Environmental Development Ltd, NE proposes to submit a variation report.

Site visit

4. I carried out a site inspection on 10 October 2018 when I was accompanied by the interested parties.

Main Issues

5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. The objection has been made under paragraphs 3(3)(a) and (b) of Schedule 1A to the 1949 Act.
11. 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 Case for the Objector

12. The Scheme specifically refers to the roll back of the route as the coast changes and does not make provision for pre-emptively assigning land as part of the path in light of what may happen to the coast in time.
13. They purchased the land in 1964 and since then people have walked along the cliff top. Walkers generally follow the coastline and respect the crops grown, with only minimal damage caused to crops.
14. However, NE is now proposing a path with a minimum width of 4 metres into the field, which will be much wider in places due to the nature of the coastline. People derive as much pleasure from seeing the beach and sea as the walk itself. They will not see these if they are walking 5-6 metres into the field and people will continue to walk along the cliff top.

¹ Approved by the Secretary of State on 9 July 2013

15. It would not be possible to farm the land between the proposed path and the cliff top. This will mean having to give up over 3 acres of arable land. Since 1964 they have lost over 40 acres to coastal erosion. Coastal erosion will mean that the path will come further into their fields over time. They will continue to lose land but the path will remain. The land will not even be compulsory purchased but is to be taken. Surely NE should purchase the land in question.

Response from NE

16. NE maintains that in aiming to strike a fair balance it has ensured a minimum disruption to the objector's business, whilst delivering a safe and futureproof route for the public.
17. Although arable land is usually excepted land, there is provision for an access strip, which will normally be 4 metres wide. In practice the walked route may be less than 4 metres. Section 8.7.6 of the Scheme explains how the path may be routed through arable crops.
18. NE have included rollback in the proposals should the cliffs erode, as set out in section 4.10 of the Scheme. Evidence provided by the objector is supportive of these provisions being required. There is no intention that land would be taken from the objector. The land would remain within their ownership. It would; however, ensure that the trail will be accessible in perpetuity.
19. During the preparatory work it became clear that the unusually rapid rate of erosion could present an increased risk to the public using the proposed route along the cliff top. Expert advice was obtained and this was published along with the coastal access proposals. Whilst the situation is complicated and the data is insufficient to provide certainty, the local authority and NE agreed that no part of the route should lie within 4 metres of the cliff top, as it appeared that the risk diminished significantly inland of that point.
20. It is accepted that there will in places be some loss of cropped land. In general there is an uncultivated margin at the seaward extent of the landholding. This is often wide enough to accommodate the access strip set back from the cliff top. Although possible, NE accepts it is unlikely that the land between the route and the cliff edge will be cultivated.
21. NE accepts that these proposals will have an impact on farming operations; however, it believes that this impact will be limited and that a fair balance has been struck.

Conclusions

22. During the site visit, the NE representatives intimated that around 6 metres of land would be required for the cliff top sections of the route. It is apparent from my observations of sections of the proposed route over the objector's land that there are places where the route will sit within the margin and other places where it will pass over a proportion of the agricultural land.
23. I appreciate that the land crossed by the route would remain in the ownership of the objector [18]. However, as outlined above, there are going to be places where there will be a loss of agricultural land. Whilst people may prefer to walk on the cliff edge [13], both parties recognise that there is an issue with erosion. There would therefore seem to be merit in the route being set back a short

distance from the cliff edge on safety grounds [19]. Further, the rollback principal would ensure that the path continues to exist in perpetuity.

24. There will clearly be an adverse impact on the landowner from the proposed route being set back from the cliff edge but this has to be balanced against the safety of the public. Further, there is nothing to indicate that a suitable alternative route is available. In the circumstances, I consider that a fair balance has been struck.

Other Matters

25. The East Riding of Yorkshire and Kingston upon Hull Joint Local Access Forum expresses concern about maintenance funding for the trail. They are also alarmed about the safety of a road section near Withersea.
26. Whilst the Secretary of State may wish to note the contents of the representations, 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. However, I note that NE confirms that a safe footway will be provided for the relevant road section.

Recommendation

27. 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. I therefore recommend that the Secretary of State makes a determination to this effect.

Mark Yates

APPOINTED PERSON