



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 J.M. and S. Stainforth

Regarding Coastal Access Proposals by Natural England

Relating to Easington to Filey Brigg

Objection Reference: MCA/EFB/11

Wilsthorpe to Speeton Moor

- 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 4 of the Report, Wilsthorpe to Speeton Moor, has been made by [redacted] of J.M. and S. Stainforth. The land in the Report to which the objection relates is route sections EFB-4-SO46 to EFB-4-SO47 (shown on map 4e).
- The objection is made under paragraph 3(3)(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 objection.

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 4 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 4 of the Report to address minor errors highlighted by the East Riding of Yorkshire Council. It also proposes to amend the references to gates on the maps involving particular route sections in light of the representation from the Yorkshire Wildlife Trust.

Site visit

4. [Redacted] did not respond to correspondence from the Planning Inspectorate regarding the site visit scheduled for 11:00 on 9 October 2018 and he did not attend at the designated meeting point. Following consultation with the parties present, I decided that there was no need to undertake a visit to the site bearing in mind the nature of the objection and the response from NE.

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 paragraph 3(3)(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. There is no reason to change the current status of the path. It has been there for over 70 years and no attempt has been made to disrupt free access. This proposal amounts to theft of the land.
13. The current status of the path should remain as it is. These arrangements have worked perfectly well in the past and the public have always had access along this route.

¹ Approved by the Secretary of State on 9 July 2013

Response from NE

14. It is apparent that the ground of objection relates to the proposed position of the route. NE maintains that the trail should follow the existing walked route rather than the unused public footpath at route section EFB-4-SO46 in line with the principal in paragraph 4.7.1 of the Scheme.
15. It is also apparent that the public footpath in this locality is no longer used as there is a clear walked route on the ground. NE has no intention of creating a new path at this point rather it proposes that the existing path becomes part of the route of the coast path.
16. The existing public footpath at this point is not clear on the ground and would require a steep descent or ascent across a small stream.
17. NE respectively suggests that the landowner will see no change in the line of the existing path should the proposals be approved and that the proposals strike a fair balance.

Conclusions

18. NE points to the route chosen in this locality corresponding to the path currently used by the public [14]. This is supported by the aerial photograph supplied by NE, which shows a clear worn line corresponding to the proposed route of the trail and a lack of signs of wear over the route of the footpath recorded on the definitive map. The walked line corresponds to route sections EFB-4-SO45 and EFB-4-SO46. NE also points to the physical nature of the recorded public footpath [16]. In contrast, it is not asserted that route section EFB-4-SO47 differs from the recorded public footpath.
19. The information supplied is supportive of the proposed route of the trail being the most suitable one in this locality and the route preferred by the public. Nothing has been provided to suggest that the proposed route would have an adverse impact on the landowner. Whilst the proposal may not lead to the physical creation of an additional path [15], there would legally be two paths the public could use in this locality. Nonetheless, the landowner could apply to the local authority to extinguish the section of footpath presently recorded on the definitive map.
20. The Secretary of State may wish to note that route sections EFB-4-SO45 and EFB-4-SO46 are shown on map 4e to the report as following an existing right of way or highway. It appears to me that this is incorrect and it should state that these sections correspond to the existing walked route.

Other Matters

21. A representation from the Royal Society for the Protection of Birds welcomes the restrictions to protect sensitive features. However, they request that the restrictions are extended to the whole of the Flamborough and Filey Coast Special Protection Area. The representation from the Flamborough Head European Marine Site Scheme raises concerns about the lack of a more coordinated approach to disturbance management across the protected area and queries the implementation of the proposed restrictions.

22. 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 particular rights of access over land and the interests of any person with a relevant interest in the land.

Recommendation

23. 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