



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
Objections from [redacted] and [redacted]
Regarding Coastal Access Proposals by Natural England
Relating to Easington to Filey Brigg

Site visit made on 9 October 2018

Ref: MCA/EFB/12-13

Objection Reference: MCA/EFB/12

Speeton Moor to Filey Brigg

- 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 5 of the Report, Speeton Moor to Filey Brigg, has been made by [redacted]. The land in the Report to which the objection relates is route sections EFB-5-SO24 to EFB-5-SO28 (shown on map 5c).
- The objection is made under paragraphs 3(3)(a) and (c) 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.

Objection Reference: MCA/EFB/13

Speeton Moor to Filey Brigg

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- An objection to Chapter 5 of the Report, Speeton Moor to Filey Brigg, has been made by [redacted]. The land in the Report to which the objection relates is route sections EFB-5-SO24 to EFB-5-SO28 (shown on map 5c).
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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 objections made to the Report. This report includes the gist of the submissions made by the objectors, the responses of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs contained in this report.

Objections 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 objections made in relation to Chapter 5 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.

Site visit

4. I carried out a site inspection on 9 October 2018 when I was accompanied by the objectors and representatives of NE and North Yorkshire County Council.

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 objections have been made under paragraphs 3(3)(a) and (c) 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 Coastal Route

12. The proposed trail in this locality was confirmed during the site visit to proceed in terms of route section EFB-5-SO24 on land adjacent to that owned by [redacted] and tenanted by [redacted]. The land in question is located generally to the south of Flatt Cliff Gill. At or near to the end of this section the route would need

¹ Approved by the Secretary of State on 9 July 2013

to come onto [redacted] land. Route sections EFB-5-SO25 and EFB-5-SO27 proceed on her land at the edge of agricultural fields and it is proposed to cross a drain by way of a new bridge (EFB-5-SO26). It is apparent that route section EFB-5-SO28 would be adjacent to [redacted] land.

The Cases for the Objectors

[Redacted]

13. No landowner has given consent for route sections EFB-5-SO25 to EFB-5-SO28, particularly the bridge at EFB-5-SO26.
14. Agricultural crops are planted on EFB-5-SO25, EFB-5-SO27 and EFB-5-SO28. It is essential to have a boundary along route sections EFB-5-SO24 to EFB-5-SO28 as the land is used for agricultural purposes. This would protect the crops from vandalism, accidental damage, fire, litter and straying members of the public and their animals; as well as protecting the public from farm machinery and agricultural chemicals. It would be necessary for NE to provide the boundary as either a hedge or fence.
15. The exact width of the path needs to be confirmed for agricultural management of the land. It is also necessary to state that compensation will be given for any loss of income or damage to crops. In addition, it should be made clear that NE is liable to insure the public. She questions who is responsible for maintaining the path and clearing litter and believes that NE should cover the costs involved.
16. It is necessary for NE to erect safe signs and ensure bikes and vehicles cannot have access.
17. Section EFB-5-SO25 is frequently flooded in bad weather and it is suggested that the path crosses Flatt Cliff Gill closer to the coast. She questions whether NE has a plan to drain the flooded area for the path.
18. She seeks clarification regarding the construction process for the bridge at EFB-5-SO26 and says that any damage to agricultural crops will need to be compensated for. She also asks about the future maintenance of the bridge.
19. Section EFB-5-SO24 appears to be on land adjacent to their agricultural land and they insist on a defined boundary of a fence or hedge to protect agriculture and the public.
20. It is suggested that the path crosses Flat Cliff Gill as proposed in the Countryside Stewardship proposal of 1998 with a path through the Gill close to the coast to join the path on the other side. This would shorten the path through the agricultural land and make it more enjoyable for the public. It would also avoid the areas that flood and minimise the costs for the building of bridges. The path could be similar to route section EFB-5-SO52 at Filey which crosses a similar Gill.

[Redacted]

21. He is totally opposed to route section EFB-5-SO24 to EFB-5-SO28. This section leaves the coast unnecessarily.
22. A continuation of the coastal path north of EFB-5-SO23 rather than westwards over EFB-5-SO24 was agreed between the owner of the land and Scarborough

Borough Council in 1998. Documents relating to the 1998 agreement are in the possession of the landowner.

The Responses from NE

23. NE maintains that [redacted] only has a relevant interest in route sections EFB-5-SO25 to EFB-5-SO27. It is not disputed that crops are grown in fields adjacent to sections EFB-5-SO25, EFB-5-SO27 and EFB-5-SO28. However, at the time of the visit to the site, EFB-5-SO25 and EFB-5-SO27 were considered to be aligned along the grassy margins of the fields in question. The other section is aligned on a neighbouring landholding.
24. Section 8.7 of the Scheme addresses where a route crosses arable land and reference is particularly drawn to 8.7.4 and 8.7.5. In this case, the three short sections in question appear to have an uncultivated margin and will be waymarked to provide clarity for the user. There will be no new access rights onto the fields beyond the 4 metres wide trail. In practice, the path will be maintained on a smaller footprint and avoid crops wherever possible. NE does not believe that there is a need for a physical boundary.
25. There is no provision in the legislation for compensation as any impact upon the productivity of the land should be minimal. Land subject to coastal access rights benefits from the lowest level of occupiers' liability in English law. It is extremely unlikely in normal circumstances that an occupier could be successfully sued in relation to injury on land with coastal access rights. Maintenance of the trail will be the responsibility of the North Yorkshire County Council. Should there be a problem with littering, the relevant parties will look at the problem and seek ways of improving the situation.
26. Signage will be kept to the minimum required to ensure users have clarity regarding the route. If [redacted] considers additional signage is necessary in respect of unauthorised use, NE and the local authority will be happy to discuss such signage.
27. Whilst NE has not noticed any issue with flooding, if there is such a problem, it will ask the local authority to undertake whatever work is necessary before the trail is open to the public. No detailed design works have yet been drawn up for the bridge. The bridge will be maintained by the local authority.
28. The modification suggested would require a steep descent into Flatt Cliff Gill, followed immediately by an ascent to the northern side and reference is made to sections 4.3.1, 7.2.3 and 7.2.4 of the Scheme. NE considered an alignment into the Gill but dismissed it due to advice from the local authority that the soil and geology were very unstable as well as the steep ascent and decent. The route proposed by NE would be more convenient, particularly for those with limited mobility. The presence of a car park and holiday village in the locality suggest that many less able visitors are likely to be expected here.
29. Both NE and the local access authority also believe that the proposed route will be more sustainable in the long term than the alternative route due to the unstable nature of the land in the valley. In the long term this is likely to result in less disruption for [redacted] and her tenant.
30. NE's response to the proposed modified route suggested by [redacted] is addressed above [28-29].

Conclusions

31. [Redacted] objection to the proposed route is admissible in so far as it crosses land she owns. The relevant sections are EFB-5-SO25 to EFB-5-SO27. However, I cannot rule out that the route would cross slightly onto her land at the western edge of EFB-5-SO24 [12].
32. There will be an impact on the landowner and tenant arising from the relevant sections being placed on the agricultural land. However, the route would follow the edge of the fields for a short distance. NE does not consider that a physical boundary is required to separate the route from the crops [24]. There would nonetheless be nothing to prevent the landowner or tenant from doing so. The Scheme allows for the provision of a 4 metres wide access strip around the edge of arable land. Further, NE states that the actual width will be maintained to a smaller footprint to lessen the impact on crops [24].
33. [Redacted] raises a number of matters involving compensation, insurance and the maintenance of the path. As highlighted by NE, there is no provision in the legislation for compensation and the path and bridge would be maintained by the relevant local authority [25 and 27]. In terms of occupiers' liability, NE points to the low level of liability for coastal access rights [25]. The potential issue with flooding in the field [17] could be addressed by works in advance of the trail opening [27]. [Redacted] concern regarding the erection of signage [16] is a matter for discussion between the parties [26].
34. I have acknowledged above [32] that there will be an impact on the land owned by [redacted] and tenanted by [redacted]. However, I consider that the impact will be minimal given the proposed position and extent of the route in relation to the land. The route proposed does not in my view fail to strike a fair balance as a result of the matters raised in the objections.
35. NE draws attention to problems with alternative crossings of Flatt Cliff Gill [28] and these were evident on site. However, [redacted] pointed me to a potential location for the continuation of the route northwards which did not have the steep ascents and descents in relation to Flatt Cliff Gill evident to the west. The objectors also pointed to the general direction the route could take over the neighbouring land. Whilst there is nothing in the submissions to indicate that the trail could not take an alternative route from the point identified by [redacted], neither can it be determined that such a route is feasible.
36. I do not consider that there is sufficient information to support the promotion of an alternative route on an adjacent landholding. However, the Secretary of State could seek further clarification on this matter should he consider it appropriate to do so before reaching a decision.

Other Matters

37. The North Yorkshire Local Access Forum expresses disappointment regarding the lack of provision for other users aside from walkers. Further, they expect to see sections that are suitable for wheelchair and disabled users. 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.

38. 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. However, I note that NE has stated that in formulating the proposals they have attempted to follow the principals in sections 4.3.8 to 4.3.11 (adjustments for disabled people and others with limited mobility).

Recommendation

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

Mark Yates

APPOINTED PERSON