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

**by Susan Doran BA Hons MIPROW**

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

**Date 2 January 2019**

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Marine and Coastal Access Act 2009

Objection by [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Whitstable to Iwade

Site visit made on 3 July 2018

## **Objection Reference: MCA/Whitstable to Iwade/08**

### **Land at Mid-Bay, Seasalter Beach, Whitstable CT5 4EU**

- On 21 June 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 14 August 2017 to chapter 1 of the Report, Whitstable to Iwade, has been made by [REDACTED]. The land in the Report to which the objection relates is route section WSI-1-S032.
- The objection is made under paragraphs 3(3)(a)(c) and (e) of Schedule 1A to 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

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### **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 submissions made by the objector, the response of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs within this report.

### ***Objections considered in this report***

2. The Report submitted by NE to the Secretary of State set out the proposals for improved access to the Kent Coast between Whitstable and Iwade. The period for making formal representations and objections to the Report closed on 16 August 2017.
3. Thirteen objections were received to the Report, of which I deemed 9 to be admissible. The objection considered in this report relates to land at Mid-Bay, Seasalter (WSI-1-S032). The other extant objections will be considered in separate reports.
4. In addition to the objections, a total of 53 representations were made in relation to the Report. Three representations relate to the section of the trail subject to this report and I have had regard to these in making my recommendation.

### ***Site visit***

5. I carried out a site inspection on the morning of 3 July 2018 when I was accompanied by [REDACTED] for NE, [REDACTED] for Kent County Council ("KCC"), and [REDACTED] the Objector.

### **Main Issues**

6. 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.
7. 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.
8. 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.
9. NE’s Approved Scheme 2013<sup>1</sup> (“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.
10. 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.
11. The objection has been made under paragraphs 3(3)(a)(c) and (e) of Schedule 1A to the 1949 Act.
12. 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**

13. The trail, subject to chapter 1 of the Report, runs from Whitstable Harbour (grid reference: TR 1086 6700) to Nagden (grid reference: TR 0305 6328) as shown on maps 1a to 1g. The trail generally follows existing walked routes including public rights of way and promoted routes. The section of trail subject to this objection (WSI-1-S032) runs to the seaward side of the properties on Seasalter Beach.

### **The Objection**

14. The proposed route runs across private land which is owned to the Mean High Water mark (“MHW mark”). The proposal will impose access rights over the land which the landowner already allows people to cross. A proposed public right of way at this location has been considered and rejected by KCC.
15. A better option would be along the Saxon Shore Way (“SSW”), an existing public right of way in use by the public, which is a nationally promoted waymarked

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<sup>1</sup> Approved by the Secretary of State on 9 July 2013

route. Alternatively, the trail should follow a route below the MHW mark which would be available for most of the day, although in practice people will walk above the MHW mark when the tide is in.

## **The Representations**

### ***Representation R/2 – [REDACTED]***

16. The trail between Seasalter Beach and Beach Court Park, Seasalter could be made more accessible to mobility vehicles by replacing proposed new steps at either end with ramps, and hinging the top sections of the groyne to enable them to be kept open to allow access for mobility vehicles, and closed during storm surges.

### ***Representation R/19 – Kent Ramblers Association***

17. A representation from Kent Ramblers' Association gives full support to the Report and agreement with the proposed route.

### ***Representation R/55 – [REDACTED], Whitstable Beach Campaign***

18. Whitstable Beach Campaign supports a route along Seasalter Beach but makes a number of suggestions none of which relate specifically to land subject to the objection considered in this report.

## **Response by NE**

### ***The Objection***

19. NE considers that a fair balance is struck between the occupier's interests and those of the public in having access rights over the land. The objection should be dismissed and its proposals for this section should be approved by the Secretary of State without amendment.

### ***Alignment and consideration of other route options***

20. The proposed alignment follows an existing walked line along the top of the beach and accords with the Scheme through the use of existing walked lines along the coast (section 4.7). It provides good views of the sea and keeps close to the coast (sections 4.6 and 4.5).
21. NE has considered the promoted SSW as an alternative: it runs inland across the railway line, along Joy Lane and Admiralty Walk (although some local people believe it follows Faversham Road further inland, a route also considered). However, these alternatives require a significant detour inland, afford no sea views, are further from the coast and are considered unsuitable. In addition, inland options for the trail mean Seasalter Beach and the proposed alignment would be in the coastal margin and subject to the same coastal access rights.
22. NE notes a footpath application including Seasalter Beach was considered by KCC in 2014, but that no public right of way was found to be reasonably alleged to subsist. The key principles outlined in the Scheme, as followed by NE, are very different to the criteria applied by KCC in relation to the footpath application.
23. NE did not consider a possible alignment along the beach below the MHW mark as it would not afford a continuous safe route available at all states of the tide

(paragraph 4.4.2 of the Scheme). Even if the trail was aligned below the MHW mark, NE expects the majority of users would continue to use the existing walked route which offers a better walking surface at the top of the beach.

### ***The Representations***

#### *Representation R/2 – [REDACTED]*

24. NE aims to choose the least restrictive infrastructure or favour routes that offer accessibility to the widest range of people (sections 4.3.8- 4.3.11 of the Scheme). The possibility of lowering the groyne tops (which protrude above the surface of the compacted shingle beach) was considered. However, Canterbury City Council (which manages the coastal defences) advised the integrity of the whole groyne structure needs to be maintained for coastal protection reasons, thus preventing the hinge suggestion.
25. Ramps would normally be used to access areas such as a beach. However, as the groynes need to remain intact between the two sets of steps, their creation would not significantly benefit less able users at this section of the trail.
26. An alternative route inland of the railway line is significantly longer, involves a number of steps and has more limited views of the sea. On balance NE considered aligning the trail on the existing walked beach route provided a direct, pleasant route which, for the most part, those less able would be able to enjoy.

#### *Representation R/19 – Kent Ramblers Association*

27. NE welcomes the support expressed in the representation.

### **Conclusions**

28. I shall consider matters relating to the objection first and then deal with the issues raised in the representation from [REDACTED].

### ***The Objection***

29. Of principle concern to [REDACTED] is a right of access becoming established over his land [14] when there are alternative existing options available [15].
30. Considering firstly the issue of alternative routes, in discharging the coastal access duty there must be regard to the convenience of the trail and the desirability of that route adhering to the periphery of the coast and providing views of the sea.
31. In terms of the route following the SSW, it is further inland at this location: it leaves the shore to the east of Mid-Bay and Seasalter Beach, crosses the railway via a footbridge and joins Joy Lane before, I understand, crossing back over the railway at the junction with Seasalter Beach and Admiralty Road where it continues to the west. Despite its elevated position along Joy Lane, direct views of the sea are largely interrupted by buildings and vegetation. As regards convenience, the route is less direct, but whilst longer I do not consider, as NE suggests [21] that it presents a significant inland detour at least at this location. It is noted that the SSW is an existing public right of way already provided with appropriate signage and path furniture, and is in use by the public as a nationally promoted long-distance walking route. Nevertheless, a route following the SSW

at this location does not meet the objectives of the coastal access duty as it considerably reduces views of the sea.

32. A further consideration of an inland alternative is that, as NE points out [21], the coastal margin, the margin of land available for the public to enjoy, either in conjunction with access along the route, or otherwise [7], would still include the proposed route through [REDACTED]'s land. Accordingly, the public would enjoy the same coastal access rights as the proposed trail, were it to be amended to follow the SSW.
33. As regards an alignment below the MHW mark as proposed by [REDACTED], in discharging the coastal access duty regard should be given to the continuity of the trail. The Scheme states that the public should normally be able to expect continuity at all states of the tide [23], so the trail normally avoids any route which is prone to tidal encroachment. [REDACTED] points out that the beach has recently been extended seaward, adding to the existing amount of beach above the MHW mark. Nevertheless, I consider that a route along the beach below the MHW mark, as suggested, would not meet the objectives of the coastal access duty. Access would be interrupted by the tide, and there is another viable option further up the beach on an existing walked route, as proposed, which both [REDACTED] and NE anticipate will be used in any event, particularly when the tide is in.
34. [REDACTED] does not wish the route to cross his land as it would establish a right that currently does not exist. However, that the land is in private ownership does not preclude the establishment of any coastal access rights, and there are no provisions to make a direction to exclude access solely because the land is private. Also, there need not be any existing public rights over the land. It is noted that an application to add a public footpath here was unsuccessful, although as NE points out [22] the tests applied in reaching that decision have no bearing on those applied in relation to the England Coast Path. Nevertheless, the effect on that private land needs to be balanced against the aims of the 2009 Act to improve public access and enjoyment of the English coastline. In considering that balance the Secretary of State should have regard to the factors identified above [8]. The Secretary of State will also be aware that there are no provisions for compensation.

### ***Representation R2 – [REDACTED]***

35. The need to retain the integrity of the groyne structures for coastal defence reasons [24] limits adaptation of the trail at this location for those with reduced mobility, in particular mobility vehicle users. An alternative route inland following the SSW, whilst accessible to mobility vehicles along the level highway sections, involves sections with steps. Accordingly there appears to be no suitable alternative and the proposed route appears to be the best fit in terms of the Scheme.

### ***Whether the proposals strike a fair balance***

36. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights [12]. Having regard to all of the above, the proposed route will create a right of access over land in

[REDACTED]'s ownership. However, the beach is currently accessed by the public, and the proposed route is in use. The alternatives proposed by [REDACTED] do not in my view meet the objectives of the coastal access duty for the reasons given above. I do not consider that the adverse effect on [REDACTED]'s property outweighs the interests of the public in having rights of access over coastal land. As such I do not consider that the proposal fails to strike a fair balance.

### **Recommendation**

37. 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 paragraphs 3(3)(a)(c) and (e) of the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

*S Doran*

### **Appointed Person**