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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/09**

### **Land forming part of the Granville Cliff Estate, Preston Parade, Seasalter**

- 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] on behalf of the [REDACTED] ("the Company"). The land in the Report to which the objection relates is route section WSI-1-SO34 and WSI-1-SO35<sup>1</sup>.
- The objection is made under paragraphs 3(3)(a)(c) and (d) 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.
2. The Objection indicates that the section of the trail to which it relates is WSI-1-SO30 to WSI-1-SO33 and WSI-1-SO41 to WSI-1-SO46. NE's response to the objection identifies land ownership affected by the proposal as WSI-1-SO34 and WSI-1-SO35. At the site visit it was apparent that this is the relevant section. Although the section of the trail has been more widely identified it is clear that the objection relates to land owned by the Company at Preston Parade.

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

3. 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.
4. 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 Preston Parade (WSI-1-SO34 and WSI-1-SO35), which comprises 187 separate households within the residential estate. The other extant objections will be considered in separate reports.
5. 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.

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<sup>1</sup> See paragraph 2

### **Site visit**

6. I carried out a site inspection on 3 July 2018 when I was accompanied by [REDACTED] for NE, [REDACTED] for Kent County Council ("KCC"), and [REDACTED] representing the Company. At the site visit we walked along the proposed route and back along Preston Parade.

### **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 2013<sup>2</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.
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 paragraphs 3(3)(a)(c) and (d) of Schedule 1A to the 1949 Act.
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.

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<sup>2</sup> Approved by the Secretary of State on 9 July 2013

## **The Coastal Route**

14. 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-S034 and WSI-1-S035) runs to the seaward side of Preston Parade, and follows a surfaced maintenance access road.

## **The Objection**

15. The Company is concerned that the proposed route runs along the top of the sea wall defence (on the landward side) along a maintenance access, and does not utilise existing public rights of way and promoted routes, in this case the nearby waymarked Saxon Shore Way ("SSW") and National Cycle Network Route<sup>3</sup>, which is a better option. The proposed route is not consistent with agreements and licences with and from Canterbury City Council ("CCC"), KCC and Whitstable Urban District Council ("WUDC"). Presently the Company has the right to refuse access to non-residents to the estate and wishes to retain that right. There is no public right of way here, a proposal having been considered and rejected by KCC; neither will there be a cycle way without the Company's consent.
16. The maintenance access should be regarded as "excepted land". The sea wall and maintenance access were granted under licence between the then owners and WUDC to enable the latter to carry out their duties as coast protection authority. Further, the Council were not to permit the service road to be used for other purposes, nor to give permission for it to be used as a promenade.
17. The section WSI-1-S035 is incorrectly described<sup>4</sup> and in fact has an asphalt surface and grass bank or cliff.
18. The open nature of the land increases the risk of trespass, burglary, vandalism, litter and danger to children. The beach is privately owned and used by residents to store boats and other recreational equipment which will be vulnerable to damage with increased public access, and raises safety concerns. The estate provides a quiet, safe environment for residents' children to play: uncontrolled access by strangers could pose dangers to these children. Increased public access will result in a loss of residents' privacy and strike an unfair balance between public benefit and the residents' right to peaceful enjoyment. Unauthorised parking will increase congestion, wear and tear on the roads, health issues and littering, resulting in increased costs of running and managing the private estate, including public liability insurance premiums.
19. There will be additional maintenance costs of the sea wall and maintenance access road for CCC which maintains it. Higher volumes of litter on the beach will need to be removed by the Company and residents. The rights of the Company over its own land would be diminished with permission required from NE to stage various events for the residents. Property values will be diminished as the proposed route will reduce the amenity for residents.

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<sup>3</sup> Sustrans Cycle Route (Canterbury to Gillingham)

<sup>4</sup> At Chapter 1: Whitstable to Nagden, section 1.2.1, table Map 1b

## **The Representations**

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

20. 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 groynes to enable them to be kept open to allow access for mobility vehicles, and closed during storm surges.

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

21. 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***

22. The Whitstable Beach Campaign supports a route along this path at Seasalter Beach. However, it is suggested the landward coastal margin should include the triangular section of beach between the proposed route and the sea wall at WSI-1-S034 and WSI-1-S035. Also, at the western end of WSI-1-S035, near to the proposed information panel, access to the beach from the path is restricted where two sets of steps have been fenced off.

## **Response by NE**

### ***The Objection***

23. NE submits the objection should be dismissed and that its proposals for this section should be approved without amendment. The Scheme's key principles of alignment have been followed, in particular that the trail should normally be close to the sea (section 4.5), and normally offer views of the sea (section 4.6); the use of existing clear walked lines along the coast (section 4.7); identifying the landward boundary of the coastal margin (4.8.10); adopting the least restrictive option in addressing a concern (6.3); and the general approach to alignment seaward of private residences (8.18.4). NE believes an appropriate balance is struck between the occupier's interests and the public's interest.
24. Public access routes exist through the estate including a public right of way, the promoted SSW, and along the maintenance access. The proposal follows this well-used existing walked line along the sea defence which is close to the beach with clear sea views. Seaward of the dwellings it would channel existing and new walkers along the periphery of the estate away from homes and communal open spaces. Any alternative route inland would create coastal margin over a greater extent of the residential estate.

### ***Impacts on the maintenance and control of the private estate***

25. NE does not expect the introduction of public access along the seaward edge will significantly impact on the rest of the estate, and the Company's current high standards of management on the land can continue.
26. The proposed alignment would provide a new right of access along the coastal periphery of the Company's landholding (where people currently walk) and NE does not expect a significant increase in parking on the private roads here. The

- residents' ability to control or restrict vehicular access and parking along the private roads to and through the estate would not be affected.
27. NE believes most walkers will keep to the proposed trail and not interfere with community events on adjacent land. Alternatively, informal techniques such as roping off the area or placing temporary signs would alert walkers to keep clear. For larger one-off events a temporary diversion and a direction to exclude access could be sought through NE's Open Access Team.
  28. NE has no evidence the proposal would have any significant effect on incidents of theft and anti-social behaviour. Neither should it create added danger nor an increase in the level of liability owed. Coast path walkers are familiar with beach and boat activities and a simple shouted alert is likely to be sufficient for them to avoid any hazards. The coastal access rights provide the lowest level of occupiers' liability under English law.
  29. Given its existing use by the public the amenity of the beach frontage for local residents would not be adversely affected. As the public already pass along the right of way close to the houses, and informally use the sea defence structure and beach, NE considers that parents and carers are already mindful of children's safety. NE proposes to erect appropriately worded signage at the western end of the estate to raise awareness of the need to respect other's use of the land.
  30. There is no evidence from other parts of the coast, where the path is now open, to suggest property prices might be affected.

*Refusal of a public right of way along the proposed route, and existing maintenance agreement*

31. NE notes a footpath application including Seasalter Beach was considered by KCC in 2014, but no public right of way was found to be reasonably alleged to subsist. The key principles outlined in the Scheme, as followed by NE (in this case to follow an existing walked line that is close to the sea with good views of the coast), are very different to the criteria applied by KCC to that application.
32. The licence states the Council will not use the service road or allow it to be used as a promenade, esplanade, way or public open space. However, these proposals would not be implemented by the Council. If approved by the Secretary of State, public access rights will automatically come into effect along the route under the terms of the coastal access legislation. NE advises that Section 12(2) of the Countryside and Rights of Way Act 2000 ("the 2000 Act"), under which these rights will apply, makes clear that 'any restriction arising under a covenant or otherwise as to the use of any access land shall have effect subject to the provisions of this Part'.
33. The increased footfall is unlikely to have an adverse effect on maintenance costs of the proposed route's tarmac surface. If necessary, KCC will liaise with CCC over any significant repairs.

*The trail should follow the Saxon Shore Way deemed to run inland and along Faversham Road*

34. This option was considered by NE but rejected as it has no sea views, is a significant inland diversion and is further from the coast than the public rights of

way within the estate. It would create a wide expanse of coastal margin across the residential estate, providing new access rights to the private access roads, communal spaces and the sea defence structure on which the proposed trail is aligned. KCC advises the SSW follows the line of the public footpath close to the houses, rather than an inland route. The proposed alignment is further from the residential area, close to the sea and affords more privacy to residents' homes.

#### *Excepted land*

35. NE's proposed alignment would create coastal margin across the sea defence structure and beach. Sea defence works are specifically excluded from excepted land status (paragraph 8 of Schedule 1 to the 2000 Act). In addition NE advises the 2000 Act has been amended regarding excluded land within 20 metres of a dwelling to 'other than coastal margin'.

#### *Report inaccuracies*

36. The proposed route here does not follow a public right of way. NE acknowledges the surface of WSI-1-S035 should be described as asphalt. The landward boundary of the coastal margin is defined by an intermittent low post and rail fence which provides a clear and recognisable feature close to the trail. Whilst not high enough to deter or prevent people accessing the grassed area it is easily identifiable to walkers and would mark the extent of the coastal access rights.

### **The Representations**

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

37. 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, CCC (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.

38. 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.

39. 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 that aligning the trail on the existing walked beach route provided a direct and pleasant route which, for the most part, those less able could enjoy.

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

40. NE welcomes the support expressed in the representation.

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

41. NE says the Landward Coastal Margin ("LCM") proposal for WSI-1-S034 and WSI-1-S035 is to align to a default land type, in this case the sea wall. Further, the area of beach identified is within the LCM, but not visible on the relevant map (Map 1b) at the chosen scale. At WSI-1-S035, the fenced-off steps would not

obstruct the proposed trail alignment, and the land manager does not have a duty to provide access to the spreading room. They may continue to manage the land as they see fit. NE advises that matters relating to means of access to the spreading room should be discussed with the access authority, KCC.

## **Conclusions**

42. I shall consider matters relating to the objection first and then deal with the issues raised in the representations.

### ***The Objection***

#### *Alternative route*

43. 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. The Scheme provides that the trail will follow existing walked routes wherever possible and these may utilise existing public rights of way and promoted routes [14].
44. Considering firstly the issue of the alternative route suggested by the Company [15], there seems to be some doubt regarding the alignment of the SSW. Whilst NE is advised by KCC that the SSW follows Preston Parade, thus passing through the Company's land, the Company maintains it passes further inland along Faversham Road, as evidenced by signage. It is noted that the SSW is an existing public right of way already in use by the public as a nationally promoted long-distance walking route. It is also noted that the proposed alignment is an existing walked route.
45. In terms of the trail following a route along Faversham Road, a route considered by NE, it is further inland, lacks sea views, and is longer and less direct thereby presenting a significant and less convenient detour. In my view it would not meet the objectives of the coastal access duty as it considerably reduces or does not provide views of the sea. A further consideration in respect of aligning the trail further inland as suggested by the Company is, as NE points out [34], an increase in the extent of coastal margin. Accordingly, the Secretary of State may wish to note that this would mean that all the seaward land, other than that which is excepted land, would be subject to the Coastal access provisions. In my view this would have an adverse impact on the interests of the residential estate as the public would have access to more of the land including the communal spaces, private roads and the maintenance access<sup>5</sup>, than would be the case were the alignment proposed in the Report to be accepted. It would establish coastal margin across the sea defence and beach. Having regard to these factors, I consider the alternative alignment along Faversham Road would not fulfil the coastal access duty.

#### *The maintenance access and excepted land*

46. An application to add a public footpath along the sea wall defence/maintenance access was unsuccessful, although as NE points out [31] the tests applied by KCC in reaching that decision have no bearing on those applied in relation to the

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<sup>5</sup> The gardens and dwellings are considered excepted from coastal access



England Coast Path. Accordingly, no public right of way exists along the proposed route.

47. As regards the terms of the licence under which the sea wall defence/maintenance access was constructed, as NE comments [32] any implementation of the proposed route will come about under the terms of the coastal access legislation, rather than by reference to the parties to the agreement.
48. The Company argues the maintenance access should be regarded as "excepted land" [16]. Schedule 1 to the 2000 Act sets out the categories of excepted land, which have been amended to reflect the provisions brought in in 2010<sup>6</sup>. Amongst these, sea defence works are excluded [35]. Accordingly, the proposed route and its associated coastal margin would not appear to fall within the definition of excepted land. Similarly, whereas land within 20 metres of a dwelling would be excluded, this does not apply to land which is coastal margin, although the proposal appears to be further away from the dwellings in any event. Neither does the land appear to fall within the excepted category of land used as a park or garden, which guidance suggests may typically be regarded as a municipal recreation ground or play area, the landscaped grounds of a country house, or enclosed land near a building<sup>7</sup>.

#### *Error*

49. NE acknowledges that the surface of the proposed route is incorrectly recorded [36]. Should the Secretary of State be minded to determine in favour of the proposal then he may wish to amend the wording in Chapter 1, Table 1.2.2 to record an asphalt surface.

#### *Effect on the estate*

50. The proposed trail passes along the maintenance access at the bottom of a slope (or cliff) some distance away from the dwellings and gardens of the properties facing Preston Parade, on a route already used by the public. Accordingly, in my view, any adverse effect on the privacy and amenity of the properties [18] will not be significant, although it is accepted that more people may use the trail than is currently the case. The Secretary of State may wish to note the public right of way existing along Preston Parade - the alignment of the SSW according to NE and KCC - which already impacts on the residents' privacy and amenity.
51. NE suggests various low-key means of alerting walkers to communal activities held on the land adjacent to the proposed trail [27] so as to minimise possible public interference. In addition, whilst the sea wall defence/maintenance access is not fenced off from the adjoining land on the landward side in the sense of preventing unwanted access, the intermittent low fencing [36] acts to define the extent of coastal access rights. It is possible, however, that some events will require permission from NE [19, 27], and in that regard the Company's rights over its own land will be diminished. Nevertheless, this is unlikely to be a frequent occurrence.

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<sup>6</sup> The Access to the Countryside (Coastal Margin)(England) Order 2010, Statutory Instrument 2010 No. 558

<sup>7</sup> Marine and Coastal Access Act 2009 Natural England's coastal access reports: Guidance on the Secretary of State's decision making process December 2012, Department for Environment, Food and Rural Affairs

52. With regard to any effects on security, anti-social behaviour, the safety of children, property values and so forth [18, 19], taking into account that the proposed trail is currently used by the public, there is nothing to suggest that it will have any further significant adverse effect. It is noted that the Company has the power to refuse access to non-residents [15], nevertheless, as noted above, the public already has a right of access over the public right of way along Preston Parade of which the Company and residents will be aware, and will have factored in to their management and/or enjoyment of the land. As regards safety matters and liabilities, NE comments that land subject to coastal access rights attracts the lowest level of occupiers' liability [28]. Accordingly, there is nothing to suggest that the trail would have a significant adverse impact on security or on property values or insurance premiums. It is noted that there are no provisions for compensation under the coastal access scheme.
53. It is acknowledged that there have been issues with unauthorised parking by the public. It is possible that more people will or will attempt to park on the private estate roads, but there is nothing to suggest that this will be exacerbated by the proposed alignment. The Company's existing powers to deal with such matters are unaffected. 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 [13]. There are no rights of access created as regards vehicles, including cycles, through the coastal access provisions.
54. Given the asphalt surface of the proposed trail, maintenance costs resulting from footfall are unlikely to be significant.

**Representation R/2 – [REDACTED]**

55. The need to retain the integrity of the groyne structures for coastal defence reasons [37] limits adaptation of the trail at this location for those with reduced mobility, in particular mobility vehicle users. An alternative route inland following Faversham Road, whilst accessible, limits sea views and amounts to a considerable and inconvenient detour. The existing public right of way along Preston Parade offers something of an alternative retaining open views of the coast, but for mobility vehicle users does not provide a continuous link with the trail due to other existing limitations. Of the available options considered, the proposed route appears to be the best fit in terms of the Scheme.

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

56. NE has confirmed that the area of beach identified in the representation is included within the coastal margin but is not shown due to the limitations of the mapping scale [41]. As regards access to the beach at the western end, there is no impact on the trail alignment, although this could be raised with the access authority, KCC [41].

**Other matters**

57. NE has identified an area of misaligned trail at sections WSI-1-SO40 and WSI-1-SO41 on Map 1b Lower Island Golf Course to Beach Court Park in relation to Representation R/56, for which it seeks an amendment accordingly. NE's comments on this representation are that it does not affect the details in the formal proposals but would require an amendment to the map to show the new

alignment, associated infrastructure and area of landward coastal margin. The Secretary of State may wish to consider an amendment at this location in his deliberations.

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

58. 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 [13]. Having regard to all of the above, the proposed route will create a right of access over the Company's land. However, the maintenance access, over which the trail is proposed, is currently used by the public. Given this, and noting the existence of a public right of way along Preston Parade, there is nothing to suggest that the trail would have a significant adverse impact with regard to the concerns raised by the Company. The alternative route suggested by the Company does not in my view meet the objectives of the coastal access duty for the reasons given above. Notwithstanding the existing licence under which the sea wall defence/maintenance access was constructed, were the trail to be implemented it would be by reference to the coastal access legislation. On balance any adverse effects do not in my view outweigh the interests of the public in having rights of access over coastal land. As such I do not consider that the proposals fail to strike a fair balance.

**Recommendation**

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

*S Doran*

**Appointed Person**