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# **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 2 November 2020**

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Marine and Coastal Access Act 2009

Objections from [REDACTED] and [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Southend-on-Sea to Wallasea Island

Site visit made on 22 September 2020

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**Objection Reference: MCA/SWI4/1**  
**Southend-on-Sea to Wallasea Island**

- On 16 October 2019, Natural England ("NE") submitted Coastal Access Reports 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 Report SWI4, Sutton Ford Bridge to Paglesham Eastend ("the Report"), has been made by [REDACTED]. The land to which the objection relates is route sections SWI-4-SO12 to SWI-4-SO16 (shown on map 4a).
- The objection is made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the ground 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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**Objection Reference: MCA/SWI4/2**  
**Southend-on-Sea to Wallasea Island**

- On 16 October 2019 NE submitted Coastal Access Reports to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection to the Report has been made by [REDACTED] on behalf of [REDACTED] Cricket Club. The land to which the objection relates is route sections SWI-4-SO14 to SWI-4-SO16 (shown on map 4a).
- The objection is made under paragraphs 3(3)(a) and (c) of Schedule 1A to the 1949 Act on the ground 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 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 16 October 2019 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Essex Coast between Sutton Ford Bridge and Paglesham Eastend. The period for making formal representations and objections to the Report closed on 11 December 2019.
3. Objections were received to the Report which were deemed to be admissible. This report considers the objections made in relation to the Report. In making my recommendations, I have also had regard to the representations made to the Report.

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## **Site visit**

4. I carried out a site inspection on 22 September 2020 when I was accompanied by [REDACTED] of NE and the two objectors. Having parked on Mill Lane, I also walked along other sections of the proposed route in order to get to and from the agreed meeting point.

## **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 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.
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), (c) and (e) 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 my recommendation to the Secretary of State accordingly.

## **The Coastal Route**

12. From the junction with Mill Lane (route section SWI-4-SO12), the proposed trail corresponds with an existing public footpath (route sections SWI-4-SO13 to SWI-4-SO16). It proceeds across a grazed field, between ponds and through a small woodland area. The objections generally relate to the land beyond the woodland,

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

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and the spreading room seaward of route sections SWI-4-SO15 and SWI-4-SO16. The area involved is to the south and west of the trail and comprises of a cricket pitch, grassland, other land left for nature conservation purposes and a sea bank.

### **The Cases for the Objectors**

#### **[REDACTED]**

13. The land in question comprises of farmland, private gardens and a private cricket pitch used by adults and school children. In each case it is unreasonable and detrimental to the enjoyment of the land to allow public access from the footpath to the coast.

14. It is requested that the relevant area of land is excluded from public access.

#### **[REDACTED]**

15. The relevant section of the proposed coastal path follows the public footpath across Broomhills Meadow between the cricket pitches. This means that the "spreading room" includes their second cricket pitch for which the club pay a significant sum to the landowner annually. They can see no particular benefit to the public in making this area spreading room and it is a potential major inconvenience to the club in a number of ways. People will have the right to wander over the ground at any time including during training, games, maintenance with gang mowers, preparation of wickets and so on.

16. The pitch is used as a facility for youth members and also on at least 14 occasions in the summer for school cricket and area final matches. In their view it is tantamount to a school field. They believe that the proposed spreading room should be exempt. It is also believed that if people are able to walk in this area there is a much greater risk of danger from both machinery when a pitch is being prepared and during games. There will additionally be an increased use by dog walkers and an increase in dog faeces left behind as many people do not clean up along the existing path and this poses health risks for children and adults alike.

17. If the spreading room is not exempted in light of the above, there is a reasonable alternative path which provides walkers with more extensive access to the riverside. This route is marked in green on the plan with their objection and is already used by walkers albeit illegally. Further, it would not impact on the properties it passes to the west and the cricket club could maintain this alternative path.

### **The Response from NE**

18. Sports and playing fields are not one of the excepted land categories unless it is land which is, or forms part of, a school playing field or is otherwise occupied by the school and used for the purposes of the school. The pitch which lies within the coastal margin is used by a local school up to 14 times during the cricket season. Although NE has no formal role in identifying the extent of excepted land, it felt that such use may not meet the criteria for the pitch to be regarded as excepted land. In their opinion the land is a private cricket club used by the school rather than a school playing field.

19. It was initially NE's view that public access to the site could be managed informally. However, following receipt of the objections, NE contacted the objectors to discuss the concerns raised. NE now takes the view on balance that

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there is justification for a land management direction to exclude the public from the cricket pitch seaward of the trail during the playing season (20 April to 10 September). Such a direction would provide clarity for both the public and club users. It would address the concerns of the cricket club whilst allowing the public to have access to the land outside of the core period the pitch is in use.

20. [REDACTED] has stated that he would prefer the exclusion to apply throughout the year but would accept the suggested seasonal restriction. The landowner ([REDACTED]) has rejected the seasonal restriction and believes this should be applicable throughout the year.
21. It is NE's view that a year-round direction cannot be justified as being the 'least restrictive option' under the Scheme as the pitch is not used outside of the playing season and maintenance is kept to a minimum out of season. Despite [REDACTED] reservations, NE are happy to support a proposed modification to place a seasonal direction to exclude access.
22. [REDACTED] proposed route is not supported by [REDACTED]. It is not felt that the proposed route meets the alignment principals in the Scheme. The alternative route would result in there being two public routes in close proximity to each other. Further, NE considers that the alternative route offers little advantage to walkers in terms of views of the estuary or convenience in comparison with the proposed route of the trail. It is believed that the concerns regarding the extent of the coastal margin can be best addressed by the proposed seasonal restriction outlined above.
23. Buildings, their curtilage and gardens are all excepted land types, which means that the properties seaward of the proposed trail will have no access rights on them. NE takes the view that the sea bank in front of Broomhills Cottages forms part of the garden of the property and would be excepted land.
24. The areas of rough grassland to the west of Broomhills Care Home and the woodland to the north would not in their opinion fall within one of the excepted land categories. The grassland areas are not grazed and with the exception of an occasional hay cut involving land immediately to the south of the public footpath, there appears to be little in the way of active management. Given the current use there is insufficient justification for a direction to exclude access for land management or other reasons.
25. The woodland area north of Broomhills is adjacent to ponds used for angling. These areas are small, and NE do not expect a significant increase in their use, with most people likely to remain on the trail. It is not considered that there is sufficient justification for a direction to exclude access for land management or other reasons.

## **Conclusions**

26. NE takes the view that the sea bank at Broomhills Cottages falls within the curtilage of this property [23] and from my observations of the site I see no reason to disagree. It would therefore be taken to be excepted land. The same applies to Broomhills Care Home. No issue appears to be taken by the objectors to the inclusion of a small area of woodland within the coastal margin. Additionally, there is some merit in NE's view that it is likely that people would tend to stay on the trail rather than deviate in the locality of the ponds [25].

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27. The reference by [REDACTED] to farmland appears to relate to the land in the locality of the cricket pitches rather than the field crossed by route section SWI-4-SO13. However, there is nothing to indicate that this section and the associated coastal margin would have any significant impact on the use of the field. The coastal margin in the locality of the southern cricket pitch is not presently subject to any widespread agricultural use and public access is unlikely to impact on the occasional hay cutting. In the circumstances, I agree with NE that there is no justification for a direction to exclude the public for land management purposes [24].
  28. The objection from [REDACTED] outlines the issues that will arise if the southern cricket pitch is subject to public access [15-16] and this was apparent from my observations of the site. Whilst NE do not view the pitch to be excepted land, it considers that there is justification for a seasonal direction to exclude the public from the land during the playing season [19].
  29. It appears that the points raised by [REDACTED] in his objection regarding public access generally relate to the cricket season. Therefore, the direction proposed by NE should address the concerns regarding the public having rights of access over the cricket pitch. However, this would be subject to the direction including the whole of the cricket season, the dates of which may vary from year to year.
  30. I walked the alternative route highlighted by [REDACTED] [17] and it is apparent that this route is subject to some use at the present time. The alternative route would remove the cricket pitch from the coastal margin. In terms of the assertion by NE that the alternative route has little advantage in comparison to the proposed route of the trail, I noted that the sea bank provides closer views of the estuary. It would nonetheless lead to there being two routes in this locality. There is presently no proposal under consideration for the legal diversion of the public footpath. Further, NE states that this alternative is not supported in the circumstances by [REDACTED] [22].
  31. [REDACTED] alternative route could provide a suitable route for the trail. However, there are issues surrounding the existing public footpath over the land. [REDACTED] apparent objection to this proposal may relate to a reluctance for there to be two routes for the public over the land, which would arise if this alternative route was adopted. The inclusion of the cricket pitch within the coastal margin would clearly impact on the use and maintenance of the pitch during the season but this matter could be addressed by the seasonal direction proposed by NE.
  32. I consider that the proposed route and seasonal direction put forward by NE mean that a fair balance has been struck.

### **Other Matters**

33. Details have been provided of two representations made in response to the Report. A representation on behalf of the Ramblers Association refers to land at Potton Island, which lies beyond the land that is the subject of the objections. NE also points out that the land in question is excepted land under paragraph 13 of schedule 1 to the 2000 Act.
34. The second representation is made on behalf of the Disabled Ramblers and draws attention to general concerns involving use of the trail by disabled people and those with reduced mobility. NE outlines that all reasonable steps will be

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undertaken to make the trail as accessible as possible, having regard to British Standard BS5709:2018 Gaps Gates and Stiles.

35. The Secretary of State may wish to note the contents of the representations. He will also 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**

36. 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**