

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

by Sue Arnott FIPROW

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

Date 22 June 2018

Marine and Coastal Access Act 2009

Objection by [redacted]

to Coastal Access Proposals by Natural England

Relating to the England Coast Path: Minehead to Combe Martin

Site visit made on 7 February 2018

File Ref(s): MCA/Minehead to Combe Martin/MCM-2-S011-S012

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Objection Reference: MCA\Minehead to Combe Martin\O\1\MCM0336

Location: Land at Porlock Marsh, Porlock, Somerset

- On 20 June 2017 Natural England submitted a report to the Secretary of State for Environment, Food and Rural Affairs setting out the proposals for improved access to the coast between Minehead and Combe Martin under section 51 of the National Parks and Access to the Countryside Act 1949.
- Natural England submitted its report in accordance with its duty under section 296 of the Marine and Coastal Access Act 2009 to improve access to the English Coast.
- An (undated) objection¹ was made by [redacted] on behalf of I Palmer and Son. The land to which the objection relates is that affected by route sections MCM-2-S011 and MCM-2-S012 at Porlock Marsh as shown on Map 2b in Chapter 2 of Natural England's report.
- The objection is made on the grounds set out in paragraphs 3(3)(a), (b) and (c) of Schedule 1A to the National Parks and Access to the Countryside Act 1949: that Natural England's report fails to strike a fair balance in relation to (a) the position of any part of the route; (b) the inclusion of proposals under sub-section (2) of section 55B or the nature of any proposal under that section, and (c) the inclusion of, or failure to include, an alternative route under sub-section 55C(2) or the position of any such alternative route or any part of such a route.

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 in relation to the matters within paragraph 3(3)(a), (b) and (c) of Schedule 1A of the 1949 Act as specified in the objection.

Preliminary Matters

1. I have been appointed to report to the Secretary of State for Environment, Food and Rural Affairs on objections made in accordance with paragraph 4(3) of Schedule 1A of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) to Natural England's Report on the Minehead to Combe Martin section of the England Coast Path (the Report).
2. On 20 June 2017 Natural England (NE) submitted to the Secretary of State its Report, setting out proposals for improved access to the Somerset and Devon coast between Minehead and Combe Martin. The period for making formal representations and objections to the Report closed on 15 August 2017.
3. Two objections were received to the Report, both of which I deemed to be admissible. One of these objections² related to the section between Woody Bay and Combe Martin (addressed in Chapter 6 of the Report) but was subsequently withdrawn on 9 October 2017.
4. This report relates to the one objection that remains outstanding, submitted in relation to land at Porlock Marsh to the north west of the village of Porlock affected by route sections MCM-2-S011 and MCM-2-S012. It 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.

¹ The objection was nonetheless on the prescribed form and submitted within the prescribed time period.

² Objection reference MCA\02\MCM0310

5. In addition to this objection, two representations have been submitted in relation to proposals in the Report for the same sections of the proposed ECP. These are from Porlock Parish Council (MCA\MCM\R\1\MCM0289) and Porlock Manor Estate (MCA\MCM\R\33\MCM0185), both of which are referred to below.
6. I carried out an accompanied site inspection on 7 February 2018 when I was accompanied by [redacted] (Senior Advisor for Devon and Cornwall) and [redacted] (Lead Advisor for Coastal Access) for Natural England, [redacted] (objector) and [redacted] (Exmoor National Park Authority). During the visit, we walked the proposed trail sections MCM-2-S012 to MCM-2-S010, then returned to Porlock via other public rights of way.

Main Issues

7. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (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 England Coast Path (ECP), 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 ECP 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 2013³ (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 with reference to paragraphs 3(3)(a), (b) and (c) 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.

³ Approved by the Secretary of State on 9 July 2013

The Coastal Route

14. The part of the proposed trail that is the subject of Chapter 2 of the Report runs from Hurlstone Combe (grid reference: SS 8991 4894) to Worthy (grid reference: SS 8584 4818) as shown on maps 2a to 2d. Between these two points, the proposed ECP would follow the South West Coast Path national trail, mainly along existing public rights of way.
15. The section of trail to which this objection refers (MCM-2-S011 and MCM-2-S012) lies on the landward side of Porlock Marsh, some 600-800 metres from the mean low water line. Views of the sea are constrained by a shingle ridge which carries a public footpath but which was breached in 1996, leaving the right of way inaccessible as a through-route. The marsh now floods 4-5 times per year.
16. Along the two sections in question, the South West Coast Path follows a permissive path on a raised grass bank around the southern and south eastern sides of the Marsh. At this point the coastal margin is defined on the landward side of this footpath along the hedgerow⁴ separating good grazing pastures from the marsh, although spreading room on the landward side of the path is minimal.

The Objection

MCA\Minehead to Combe Martin\O\02\MCM0336

17. The objection relates to proposed route sections MCM-2-S011 and MCM-2-S012. It is submitted by [redacted] of Court Place Farm, Porlock, who is a long-term tenant of Porlock Manor Estate.
18. When the sea breached the pebble ridge in 1996 [redacted] allowed a permissive route on this section of the coastal path on the Porlock Manor Estate marsh. He does not want to lose his rights over this section. Also, all of the marsh footpath is under water at very high tides. [redacted] does not want NE to be moving the path further inland in a couple of years' time into his good grazing land as there is a very good alternative path through the village and woods which is what was used when the marsh first flooded; this is now used on high tides.
19. [Redacted] has provided documentary evidence to substantiate the permissive nature of the present path. By agreement with Exmoor National Park Authority in 1999 works were carried out to facilitate public access along the route.

Response by Natural England

20. NE considers that the proposals strike a fair balance between the occupier's interests and the public's interest in having access rights over land.
21. Natural England has followed the key principles of alignment and management as set out in the approved Coastal Access Scheme. Particularly relevant in this case are the following principles in the Scheme:
 - *Land on the seaward side of the trail automatically becomes coastal margin (section 2.3.4 of the Scheme)*
 - *The trail should be reasonably direct (section 4.3.2)*

⁴ The reason for this landward boundary discretion is stated to be "clarity and cohesion".

- *People should normally be able to use the route at all states of the tide (section 4.4.2)*
 - *The trail should normally be close to the sea (section 4.5)*
 - *The trail should normally offer views of the sea (section 4.6)*
 - *The trail will make use of existing walked lines along the coast (section 4.7)*
 - *The trail rolls back in an area which is subject to significant encroachment by the sea (section 4.10.7)*
 - *Natural England must consider the interests of owners and occupiers, such as operational needs (section 5.2)*
22. In this area (route sections MCM-2-S010 to MCM-2-S012), NE is proposing that the ECP follows the line of the existing South West Coast Path (SWCP) as currently walked and managed. This is along a permissive footpath. Where the existing SWCP meets the criteria of the Coastal Access Scheme, whatever its status, NE normally proposes to adopt it as the line for the ECP (section 4.7), so long as: it is safe and practicable for the public to use; it can be used at all times; and the alignment makes sense in terms of the statutory criteria and principles set out in the Scheme. This proposed section of the trail meets with these criteria, apart from being unable to be used on occasions during times of an exceptionally high tide. These exceptionally high tides occur approximately four times a year and when this happens the SWCP is impassable for about one or two hours.
23. If an inland route through the village and woodland were to be adopted as the ECP, this would mean that a significant area of land to the seaward side of the path would become part of the coastal margin (section 2.3.4). It would also mean that the route would be further away from the sea and with fewer views of the sea (sections 4.5 and 4.6). The Scheme (section 4.7.4) also says that where the ECP does not follow the line of an existing national trail along the coast, Natural England will subsequently propose that the existing national trail itself be realigned along the new route, using a separate variation report. If the trail were to follow the inland route then NE would be obliged to vary the line of the existing SWCP which would have the effect of making the access provisions in the area less good.
24. Therefore, on balance and after careful consideration and discussion of these issues with Exmoor National Park Authority and the owner of Porlock Manor Estate, NE decided that the existing route of the SWCP, even though it is impassable on rare occasions, would most closely meet the statutory criteria set out in the Scheme and strikes a fair balance between the occupier's interests and the public's interest in having access rights over this land.
25. NE wrote to [redacted] on 5 December 2016 setting out its indicative proposals and stating that the route of the England Coast Path would follow the existing South West Coast Path route along the landward edge of Porlock Marsh. In the letter, his views on the proposals were welcomed and he was encouraged to get in touch before 5 January 2017 to ensure that his views could be taken into account. NE also offered to meet with [redacted] to discuss the proposals in more detail but no reply was received.
26. In terms of the points that [redacted] raises in connection with losing permissive path rights and objecting to the use of 'roll-back', NE responds as follows:

27. If this route is approved it will no longer have the status of a 'permissive' path. However the interests and operational needs of the occupier can still be addressed (section 5.2) as if the owner or occupier wishes to restrict or exclude access along the trail or in the coastal margin for land management reasons, they may employ informal management techniques in discussion with the access authority or apply to NE for land management directions (whether in relation to commercial or non-commercial activities). NE understands that, since this permissive path has been in place as the route of the SWCP, neither [redacted] nor the landowners (Porlock Manor Estate) have applied to restrict or exclude access along this section of the route for land management reasons.
28. NE has proposed 'roll-back' for sections of the trail along the landward edge of Porlock Marsh and identified the need for this with owners and occupiers during the preparation of the Report (section 4.10.7). NE took advice from the local authority and paid particular attention to the Shoreline Management Plan for this area of coast. The plan has a policy of 'no active intervention' and this area is considered an area at risk of coastal erosion. So, whilst NE believes the proposed alignment of the England Coast Path is sensible, as it has not been advised that it is immediately at risk of being lost because of significant coastal change, NE believes there is a possibility 'roll-back' will be required within the short to medium term of the Shoreline Management Plan. In NE's view, the fact that parts of this coastline are subject to periodic flooding lends weight to this argument.
29. Proposing 'roll-back' provides a means by which onward access on foot along this section of coast can be maintained. If the trail has to be rolled back in the future, this will be done in consultation with all owners and occupiers of affected land and there will be the usual requirement to strike a fair balance, when deciding how the route is to be re-aligned, between their interests and those of the public. Any discussions about 'roll-back' with the owners will follow the requirements of the Scheme.

Alternative proposals

30. [Redacted] did not formally set out his proposals for a modification on the objection form. However his objection indicates that he would favour an inland route through the village and woods. Natural England does not offer any alternative proposals but has provided comments on [redacted]'s suggestion.

Representations in relation to the Report

Representation by [redacted] on behalf of Porlock Parish Council

(MCA\Minehead to Combe Martin\R\1\MCM0289)

31. This comment relates to Chapter 2. The Vale of Porlock is an economically poor area with tourism as the main source of income. It has the most elderly population in England and is becoming an unbalanced community with few job opportunities. Tourism forms a vital part of the economy and people walking the SW Coast Path bring much needed income to the area. The SW Coast Path is a positive asset and anything that helps to improve and sustain it is to be commended. The Report should be accepted and sufficient resources allocated and plans put in place so that the recommendations are implemented.

Response of Natural England:

32. NE welcomes this expression of support.

Representation by [redacted] of Porlock Manor Estate

(MCA\Minehead to Combe Martin\R\33\MCM0185)

33. This representation relates to sections MCM\02\S010 to MCM\02\S012.
34. The Porlock Manor Estate does not wish to see the proposals implemented for these sections of path. The current status is that of Permissive Right of Way and the Estate would like this to continue and not be upgraded to greater public rights. Currently the Estate as landowner has the ability to vary the route for any management reasons and wishes to retain that ability.
35. Additionally the 'roll-back' provisions are going to cause issues in the future and the Estate may want to oppose proposed changes that affect farming on this land. Any changes should be subject to scrutiny.

Response of Natural England:

36. In this area (route sections MCM-2-S010 to MCM-2-S012), NE is proposing that the England Coast Path (ECP) follows the line of the existing South West Coast Path (SWCP) as currently walked and managed. This is along a permissive footpath. Where the existing SWCP meets the criteria of the Coastal Access Scheme, whatever its status, NE normally propose to adopt it as the line for the ECP, so long as: it is safe and practicable for the public to use; it can be used at all times; and the alignment makes sense in terms of the statutory criteria and principles set out in the Scheme. This proposed section of the trail meets with these criteria and if approved will no longer have the status of a 'permissive' path.
37. If the owner or occupier wishes to restrict or exclude access along the trail or in the coastal margin for land management reasons, they may employ informal management techniques in discussion with the access authority or apply to NE for land management directions (whether in relation to commercial or non-commercial activities).
38. NE has proposed 'roll-back' for the sections of trail along the landward edge of Porlock Marsh and identified the need for this with the owners and occupiers during the preparation of the Report. There is a need for 'roll-back' here because the coastline is subject to periodic flooding and tidal action and parts of the existing SWCP can be impassable at times. Proposing 'roll-back' provides a means by which onward access on foot along this section of coast can be maintained. If the trail has to be rolled back in the future then this would be done in consultation with all owners and occupiers of affected land and there would be the usual requirement to aim to strike a fair balance between their interests and those of the public when deciding how the route is to be re-aligned. Any discussions about 'roll-back' with the owners will follow the statutory process as set out in the Scheme.

Conclusions

39. The issues of concern to the objector, [redacted] [17-19], are echoed in the representation from the landowner, Porlock Manor Estate [33-35]. Natural England's responses to both refer to similar points and are therefore addressed together below.
40. These relate to the section of the proposed ECP route at Porlock Marsh which would follow the South West Coast Path national trail along a permissive path.

This arrangement was negotiated in 1999 by the Exmoor National Park Authority after the shingle bank which carries the public right of way closest to the sea was breached, leaving that footpath impassable. Given the current long-term Shoreline Management Policy of 'no active intervention', access is not likely to be restored. Thus the proposed ECP route is now the nearest practical alternative, albeit available to the public only on a permissive basis.

41. The first point of objection concerns the change in the legal status of the route to a public right of way which would result from designation as ECP as proposed in the Report. Both the owner and occupier oppose what they consider to be a loss of control over public use of the footpath. Both [redacted] and Porlock Manor Estate foresee this constraining their ability to vary the route for management reasons if or whenever necessary [18, 34].
42. However NE has confirmed that, even as a public right of way, the owner or occupier would still have a degree of flexibility insofar as restricting or excluding access along the trail for land management reasons is concerned, either by employing informal management techniques in discussion with the access authority or by applying to NE for a land management direction [27,37].
43. It should be noted that no compensation is payable under the Scheme for this change in status of the footpath although it is normally available to landowners where public rights of way are formally created under the Highways Act 1980, whether by agreement with the highway authority or by order.
44. In this case, whilst the interests of the owner and occupier will undoubtedly be restricted if the public acquire the right to use the footpath, in practical terms there would be remedies available to address any land management concerns that may arise in future.
45. The second (related) issue of concern raised by the representation relates to the proposed 'roll-back' arrangement for these two sections (MCM-2-S011 and MCM-2-S012) [35]. Section 55B of the 1949 Act provides powers for the future line of the trail to be determined in accordance with provision made in NE's proposals to the Secretary of State enabling the trail to be moved inland or 'rolled back' as the coast changes.
46. The objector's worry is that if this becomes necessary in future, it would mean the path moving landward and into adjacent fields that are currently used for grazing and cut for hay and silage.
47. NE has provided reassurance that if 'roll-back' were to become necessary, the issue would be discussed with the owners in accordance with the provisions set out in the Scheme [38] and the solution proposed would be required to strike a fair balance between the owners' interests and those of the public.
48. Here again, the interests of the owner and occupier would be substantively affected in such circumstances, with grazing severely constrained in the adjoining fields but without any financial compensation.
49. There is no doubt that the approved Scheme is designed to ensure continuity of access for the public along the ECP whilst responding to physical changes brought about by tidal erosion. It also acknowledges the need to take into account the effects on owners and occupiers of affected land by providing for prior consultation if roll-back becomes necessary so that any land management concerns can be taken into account. Should that situation arise here, the

- requirement to strike a fair balance would be a serious challenge in these circumstances but one that would have to be met if the route of the trail is ever to be altered.
50. The third issue concerns the alternative route referred to by the objector [18]. This would involve public paths further inland, following a promoted trail known as 'The Coleridge Way'.
51. NE has pointed out that if such a route were to be adopted as ECP through Porlock village and woodland to the west, the resulting land categorised as coastal margin would cover a considerable area and obviously would be further from the sea [23].
52. The information provided indicates that exceptionally high tides occur 4-5 times a year during which the SWCP can be impassable for a couple of hours. After careful consideration and discussion of these issues with Exmoor National Park Authority and the owner of Porlock Manor Estate, NE decided [24] that the existing route of the South West Coast Path would most closely meet the statutory criteria set out in the Scheme despite being unavailable on rare occasions.
53. The grounds for objection refer to Section 55C of the 1949 Act. This provision enables NE to propose alternative routes for the ECP that could operate as a diversion from the ordinary (main) route either for specified periods or whenever access along the ordinary route is excluded by means of a direction. The Scheme indicates that such alternative routes are likely to be an effective solution for circumstances which arise during the preparation of the initial proposals and for any long-term needs which arise after the proposals in the Report have been confirmed by the Secretary of State. At Porlock Marsh, given the relatively short-term nature of the blockages due to flooding, no alternative is proposed in the Report.
54. On balance I agree that the advantages of the SWCP route over the Coleridge Way in this context outweigh the occasional difficulties raised at times of exceptionally high tides.

Whether the proposals strike a fair balance

55. In summary, I consider the change in legal status of the trail route will constrain the future use and management of the land but accept there are remedies available that will substantially overcome the management concerns of the owner and occupier.
56. Fears over the impact of 'roll-back', should this become necessary in future, ought to be addressed by the statutory procedures in place to ensure that any such proposals strike a fair balance between land management interests and the public.
57. However the decision-maker may consider that the scope for a practical and mutually acceptable solution in such circumstances would be too limited, and therefore that the proposal to subject sections MCM-2-S011 and MCM-2-S012 to the 'roll-back' provision fails to strike a fair balance.
58. As regards the suggestion that the ECP should instead follow the Coleridge Way, I consider this would create more problems than it might solve.

59. Having regard to all of the above, I accept that the proposals do not fail to strike a fair balance between the interests of the owner and occupier of land affected by the proposals in the Report and the interests of the public in relation to the section between Hurlstone and Worthy.

60. However, attention is drawn to the concerns noted in paragraph 57 above.

Recommendation

61. 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), (b) and (c) of the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Sue Arnott

APPOINTED PERSON