



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 3 December 2018

Marine and Coastal Access Act 2009

Objection by [redacted]

to Coastal Access Proposals by Natural England

Relating to the England Coast Path: Kingswear to Lyme Regis

Site visit made on 6 February 2018

File Ref(s): MCA/Kingswear to Lyme Regis/KLR-5-S017

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Objection Reference: MCA\Kingswear to Lyme Regis\O\10\KLR1890

Location: Land to the east of Eastdon Farm, Starcross, EX6 8RH

- On 30 March 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 Kingswear and Lyme Regis 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 objection, dated 24 May 2017, was made by [redacted]. The land to which the objection relates is the coastal margin seaward of route section KLR-5-S017 between Dawlish Warren and Cockwood as shown on Map 5d in Chapter 5 of Natural England's report.
- The objection is made on the grounds set out in paragraphs 3(3)(d) and (e) 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 (d) the inclusion of, or failure to include, proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal, and (e) the inclusion or failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates or the terms of any such proposal.

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)(d) and (e) 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 Kingswear to Lyme Regis section of the England Coast Path (the Report).
2. On 30 March 2017 Natural England (NE) submitted to the Secretary of State its Report, setting out the proposals for improved access to the Devon and Dorset coast between Kingswear and Lyme Regis. The period for making formal representations and objections to the Report closed on 25 May 2017.
3. Ten objections were received to the Report, all of which I deemed to be admissible. Nine of these objections relate to the section between Kingswear and Sharkham Point (addressed in Chapter 1 of the Report) and are considered in separate reports.
4. This report relates to the one objection submitted in relation to land between Dawlish Warren and Cockwood, specifically section KLR-5-S017. 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.
5. In addition to this objection, a total of 225 representations were submitted relating to the Report, two of which concern section KLR-5-S017. One was from [redacted] and raises issues related to the objection. The other is from Devon Countryside Access Forum and is of a more general nature.

6. I carried out a site inspection on 6 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]. During the visit we walked the proposed trail section KLR-5-S017 in both directions and entered the field in question.

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 2013¹ (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the NE's proposals set out 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)(d) and (e) 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 the 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.

¹ 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 5 of the Report runs from Holcombe (grid reference: SX 9584 7510) to Exmouth (grid reference: SX 9943 8064) as shown on maps 5a to 5q. Between these two points, the trail must negotiate the Exe Estuary. It is proposed to do so by following the existing South West Coast Path national trail, generally along public rights of way or public highways, and turning inland from the open coast as far as the ferry across the River Exe between Starcross and Exmouth.
15. The section of trail to which this objection refers (KLR-5-S017) lies on the west side of this estuary between Dawlish Warren and Cockwood, south of Starcross. Here the trail follows a tarmac-surfaced 4 metre-wide cycle path situated between the public road to the west and the field in question to the east. This route was initially established as a public right of way by agreement² with the local authority but was upgraded to a cycleway by Sustrans in 2000. Hedges and fences lie at both sides of the path with three double gates³ providing vehicular access from the road into the field. On the day of the site visit, the field was laid to grass but it had been ploughed early in 2017 for a crop of oats and wheat. It is generally wet and marshy ground that is cropped every 5 years or so but otherwise used as grazing land for sheep and cattle.
16. To the east of the field lies a raised embankment carrying the main-line railway between Exeter and Dawlish broadly parallel to the River Exe. Consequently there are no views eastwards towards the mud flats of the Dawlish National Nature Reserve which lie to the east of the railway.

The Objection

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17. The objection relates to land which lies to the east of the proposed route (section KLR-5-S017) between the fenced cycle path and railway track. [Redacted] argues that this field should not be included as coastal margin as it does not fit the criteria for coastal access spreading room as intended. The field is alongside a busy railway line. There is no access from the field to the foreshore, sea or estuary. There is no view of the coast from the field whatsoever, this being obscured by the railway embankment which is poorly fenced and may encourage people to cross the busy railway line to access the foreshore. The proposal goes against the coastal access legislation and is not in the spirit of the England Coast Path and what was proposed by the Government. It should not be designated as coastal margin. The ECP should run along the existing double-fenced path with no access to the adjacent field.
18. Whilst the objector does not suggest any alternative route (only that the land should not be designated as coastal margin), the associated representation⁴ suggests that the boundary of the proposed long-term access exclusion area (including the Dawlish Warren National Nature Reserve) be extended westwards to include the field.

² Under Section 25 of the Highways Act 1980

³ A locked gate from the road and a locked gate into the field

⁴ When assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections can be considered.

Response by Natural England

19. 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.
20. 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)*
 - *Excepted land categories (section 2.3.15)*
 - *Occupier's liability is reduced (section 4.2.2) and walkers are responsible for their own safety (section 4.2.1)*
 - *Privacy (section 5.4)*
 - *Natural England must have regard to any potential changes in use of affected land (section 5.5)*
 - *Natural England's estuary discretion (section 10.1.2)*
21. Natural England maintains that the land referred to is seaward of the proposed ordinary route of the ECP and therefore under the coastal access legislation automatically becomes coastal margin. Although there are no sea views at this location due to the railway embankment it considers that the alignment of the route of the ECP is appropriate as it follows the route of the South West Coast Path and the Exe Estuary Trail. No seaward alternative is available. Land used for the purposes of a railway is excepted from coastal access rights under Schedule 1 of the Countryside and Rights of Way Act 2000 (the 2000 Act).
22. The Scheme proposes that the ordinary route of the trail should extend upstream from the open coast a short distance as far as the ferry between Starcross and Exmouth which is the first crossing point on the River Exe. NE chose to exercise this discretion in order to allow continuity of the trail (section 4.4.1.). This also fits with the principle of following the route of any existing national trail providing the alignment is deemed appropriate in terms of the statutory criteria and guidelines set out in the Scheme (section 4.7.1).
23. NE met the farmer on site in June 2016 to discuss the proposals and implications of the coastal margin and spreading room. At the time the field referred to was used for grazing sheep and would therefore not be excepted from coastal access rights. An email received from the farmer on 3 January 2017 stated that he had drilled the field with a crop of winter oats. As a result the field would become excepted land under the Coastal Access Scheme while continuing in arable use.
24. Under the approved Scheme, all land seaward of an approved route is classified as coastal margin. Areas of excepted land are not separately depicted in the proposals or on the maps. Natural England has no responsibility for definitively identifying such areas, nor any powers to do so. NE therefore disagrees with any suggested modification to its proposals so as to explicitly exclude the field in question.

The Representations

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25. The representation from [redacted] refers to matters that relate to the objection and have been addressed above.
26. In its representation, the Devon Countryside Access Forum (DCAF) comments on the area of land between Dawlish and Cockwood (to the east of section KLR-5-S017) which would be subject to coastal access exclusion to protect sensitive feeding water birds. Highlighting potentially conflicting messages arising from byelaws put in place by Teignbridge District Council to prohibit dogs, DCAF makes the case for clear information to assist the public to understand the reasons for this restriction.

Response by Natural England

27. Existing byelaws in this area will remain and will prevail over coastal access rights. NE will continue to work with the Exe Estuary Management Partnership to ensure that clarity is provided for walkers and signage in the area clearly reflects the rights afforded to them under coastal access in relation to the excluded area.

Conclusions

28. As noted by NE, the field in question is seaward of the proposed ordinary route of the ECP. It would automatically become coastal margin under the coastal access legislation [21] and therefore (potentially) accessible to the public.
29. However, as highlighted by [redacted] [17], there is no possibility of access from the field to the foreshore, sea or estuary since the railway to the east forms an effective boundary, comprising land that is excepted from coastal access rights under Schedule 1 of the 2000 Act [21]. Further, the Report proposes that the land to the east of the railway (including the Dawlish Warren National Nature Reserve) will be subject to a direction under section 26(3)(a) of the 2000 Act to exclude public access year round to protect sensitive wildlife.
30. Although [redacted] points to the poor fencing⁵ between the field and railway which he fears may enable people to unlawfully cross the line in order to reach the foreshore [17], it seems clear that there will be no legitimate means of reaching either the sea, the River Exe or the foreshore from this field.
31. There are no views from the field eastwards towards the coast and no intrinsic value to the public in terms of access, the only possible exception being use by people wishing to exercise their dogs in an enclosed space. Given the proximity of the Dawlish Sands Caravan Park and Dawlish Warren, this has the potential to become a popular activity and one which could seriously conflict with farming operations.
32. When the field is ploughed and cropped, it would be classed as 'excepted land' and cease to be open for public access. However when used for grazing animals, the public would be entitled to gain access on foot and with dogs [23]. The possible consequences of such access could severely constrain [redacted] ability to graze the field as he does at present.

⁵ This is the responsibility of Network Rail.

33. Should this issue arise, the Scheme suggests possible solutions, firstly through informal management techniques and secondly by means of a direction. Two national provisions are highlighted in the guidance: that it is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock, and that on land with coastal access rights, people are required to keep dogs on short leads in the vicinity of livestock. Amongst other suggestions, the Scheme advises that by displaying notices to inform the public of these provisions, problems might be avoided. However, if the issue persists, section 24 of the 2000 Act provides powers for NE to give directions for the purposes of land management; such a direction may exclude people with dogs from the land. Alternatively, the introduction of byelaws to restrict dogs could be considered.
34. No alternative routes for the ECP have been suggested here and there are no other options on the seaward side of the proposed section KLR-05-S017. The question is whether the land which would become spreading room alongside the trail could qualify for exclusion from the coastal access provisions.
35. It would not be appropriate to extend westwards the boundary of the area of coastal margin proposed for exclusion on conservation grounds (as requested in the representation [18]) since the relevant criteria would not apply. However, as noted by NE [23], the field in question would constitute 'excepted land' whilst in arable use so that the public access provisions would not apply, although it would not be appropriate to formally identify this on the published maps since that is not the standard practice anticipated under the Scheme. When in use for grazing, the public would be entitled to access the field.
36. In summary, it is clear that [redacted] field offers little to the public in terms of the vision for the ECP providing spreading room alongside the trail to facilitate improved access to the coast. Nevertheless, it would automatically become coastal margin, an unintended consequence of which could see people bringing dogs into the field, thereby causing serious concerns for the objector over likely conflicts with his grazing animals. However, as noted above [33] informal management techniques, a direction or byelaws all offer possible remedies to deal with such problems if they arise.
37. The effect of the proposals on 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 must have regard to the likely impact on the objector and his livelihood whilst also taking account of the circumstances which have led NE to propose to follow the South West Coast Path between Dawlish Warren and the ferry at Starcross.

Other matters

38. The Secretary of State will be aware that there are no provisions within the Scheme for compensation.

Whether the proposals strike a fair balance

39. The spreading room alongside the proposed route could have an adverse effect on the ability of the owner and occupier, [redacted], to fully utilise the field in question for grazing purposes. Whilst there would be no incentive for members of the public to seek access through the field to the foreshore on account of the railway and the proposed exclusion zone to its east, there remains a possibility that people may use the land for dog-walking, particularly holiday-makers from

the neighbouring caravan park. However, there are remedies available to address any resulting problems.

40. Having regard to all of the above, I do not consider that the proposals fail to strike a fair balance in relation to the section between Holcombe and Exmouth.

Recommendation

41. 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)(d) and (e) of the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Sue Arnott

APPOINTED PERSON