



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

by Alan Beckett BA MSc MIPROW

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

Date 23 April 2020

Marine and Coastal Access Act 2009

Objections by [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED],
[REDACTED] (of East Bracklesham Drive Property Owners Association), [REDACTED]
(of Bracklesham Caravan & Boat Club Limited), [REDACTED], [REDACTED]
[REDACTED], [REDACTED], [REDACTED] (of Bracklesham Bay Residents Association)
and [REDACTED]

Regarding Coastal Access Proposals by Natural England

Regarding East Head to Shoreham by Sea

Site visit made on 29 October 2019

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Objection Reference: MCA/East Head to Shoreham by Sea/01 Private Road known as East Bracklesham Drive; the cul-de-sac called Charlmead & twitten leading to the beach

- On 27 September 2017, Natural England ('NE') submitted a Coastal Access Report ('the CA 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') setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009 ('the 2009 Act').
- An objection dated 16 November 2017 to Chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S020, EHS-1-S021, EHS-1-S022, EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026, EHS-1-S027.
- The objection is made under paragraphs 3(3)(a) and (c) 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: That the proposals set out in the CA Report do not fail to strike a fair balance.

Objection Reference: MCA/East Head to Shoreham by Sea/02 Private Road known as East Bracklesham Drive

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 13 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026, EHS-1-S027.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/03
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 14 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026, EHS-1-S027.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/04
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 14 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026, EHS-1-S027.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/05
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 21 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026, EHS-1-S027 and EHS-1-S028.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/06
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 18 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED] on behalf of the East Bracklesham Drive Property Owners Association. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026 and EHS-1-S027.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/07
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 17 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED] on behalf of the Bracklesham Caravan and Boat Club Limited. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026 and EHS-1-S027.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/08
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 22 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S025, EHS-1-S026.
- The objection is made under paragraphs 3(3)(a) and (c) 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: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/09
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 12 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026 and EHS-1-S027.
- The objection is made under paragraphs 3(3)(a) (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/10
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 21 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025 and EHS-1-S026.
- The objection is made under paragraphs 3(3)(a) and (c) 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: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/11
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 19 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025 and EHS-1-S026.
- The objection is made under paragraph 3(3)(a) 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: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/East Head to Shoreham by Sea/12
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 21 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED] on behalf of the Bracklesham Bay Residents Association. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026 and EHS-1-S027.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

**Objection Reference: MCA/ East Head to Shoreham by Sea/13
Private Road known as East Bracklesham Drive**

- On 27 September 2017, NE submitted the CA Report to the Secretary of State under section 51 of the 1949 Act setting out the proposals for improved access to the coast between East Head and Shoreham by Sea pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 20 November 2017 to chapter 1 of the Report, East Head to Bracklesham, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-1-S023, EHS-1-S024, EHS-1-S025, EHS-1-S026, EHS-1-S027 and EHS-1-S028.
- The objection is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

Summary of Recommendation: That the proposals set out in the CA Report do not fail to strike a fair balance.

Procedural and Preliminary Matters

1. I have been appointed to report to the Secretary of State on objections made to the CA Report. This report includes the gist of submissions made by the objectors and those making representations, the gist of the responses made by NE and my conclusions and recommendations.

Objections considered in this report

2. On 27 September 2017 NE submitted the CA Report to the Secretary of State, setting out the proposals for improved access the Sussex Coast between East Head and Shoreham by Sea. The period for making formal representations or objections to the CA Report closed on 22 November 2017.
3. Forty-four objections were received to the CA Report which I deemed to be admissible. The thirteen objections considered in this report relate to

land between East Head and Bracklesham EHS-1-S020 to EHS-1-S028. The objections relate to contiguous areas of affected land which forms part of a privately maintained road known as East Bracklesham Drive and to one area of land which provides access to the beach from Charlmead which is a privately maintained road over which a public footpath runs. As the objections relate to contiguous areas of land it is expedient to consider these objections together in one report. The extant objections to other Chapters of the CA Report will be considered in separate reports.

4. In addition to the objections, a total of thirty representations were made in relation to the CA Report. The representations made by West Sussex County Council (R27) and [REDACTED] (R21) make specific reference to the section of the English Coast Path ('the trail') subject to this report and I have had regard to these representations in making my recommendation.

Site visit

5. I carried out thirteen separate site inspections in relation to the objections raised to the CA Report over three days from Tuesday 29 October 2019 to Thursday 31 October 2019. Two site inspections were carried out in relation to the objections raised to Chapter 1 of the CA Report. During these inspections I was accompanied by the respective objectors or their representatives and representatives of NE.

Main Issues

6. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:
 - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
7. The second objective is that, in association with the 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 trail or otherwise.
8. In discharging the coastal access duty there must be a regard to;
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.

9. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin. It forms the basis of the proposals of NE within the CA Report.
10. NE and the Secretary of State must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
11. The objections to Chapter 1 of the CA Report have been made under paragraphs 3 (3) (a), (c) and (e) of Schedule 1A to the 1949 Act.
12. My role is to consider whether a fair balance has been struck by NE between the interest of the public in having rights of access over land and the interests of any person with a relevant interest in the land. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

13. The trail, subject to Chapter 1 of the CA Report, runs from the entrance to the West Wittering car park (grid reference:477198 978312) to East Bracklesham Bay (Grid reference 481636 956028) as shown on maps 1a to 1c (points EHS-1-S001 to EHS-1-S029). The trail follows existing walked routes, including public rights of way and suburban roads and in the main follows the coastline quite closely and maintains good views of the sea. The trail is aligned on the beach or foreshore in two locations at West Wittering along an existing public right of way (sections EHS-1-S001 to EHS-1-S002 and EHS-1-S019) and on the shingle beach at East Bracklesham Bay (EHS-1-S028 to EHS-1-S029).
14. The section of the trail subject to the majority of the objections is in the main along a privately maintained road. The sections EHS-1-S020 and EHS-1-S021 follow the public footpath which runs between Seafield Way and the beach running over the privately maintained road known as Charlmead and along a twitten between Charlmead and the beach.

The cases for the objectors

Objection 01

15. The objector submits that Charlmead is a private road and not a public thoroughfare. There is signage to that effect along the road and it has been privately maintained for at least 70 years. The road was resurfaced in 2014 at resident's expense and residents are concerned for the upkeep of the road and its use.
16. The proposed route is unnecessary as the original beach route is serviceable and has been used for many years; the proposed route will send users along tarmac roads with no sea views at all. Shingle has accumulated above high-water mark which makes for a broader walkway between Bracklesham and East Wittering. The trail should be marked along the beach at this point.
17. The objectors raise concerns about the condition of the twitten for public use during or after heavy rainfall and the presence of steps at its southern end. General concerns as to liabilities for injuries that may

occur from walkers using the twitten and the private road were also raised.

Objection 02

18. There is no public right of access over East Bracklesham Drive ('EBD') and there are no views of the sea available from it. The absence of footways along the road makes it potentially dangerous for pedestrians. The majority of walkers currently follow the beach and are likely to ignore NE signage along EBD; the shingle is firm and flat and walkable apart from during spring high tides and storm surges. The trail should run along the shingle from the car park to Medmerry inlet; if NE are worried about health and safety of walkers, then appropriate notices should be posted along the trail.
19. Concerns are also raised that routing the trail along EBD would encourage the public to drive along the road to pick up the trail at the eastern end of the road thus causing a problem with parking.

Objections 03, 04, 06 & 09

20. EBD is a private road, not a public road as stated in the proposal. The assertion by EN that there is tolerated public access along EBD is not accepted – the road has been closed on an occasional basis annually to enforce that this is not the case. The road is privately owned and maintained at the expense of EBD residents; the residents do not want to encourage unauthorised use of the road nor do they want any additional liability arising from accidents which may occur to trail users. The owners of the road wish to retain the ability to require undesirables to leave the property; the property owners have no intention of dedicating a formal public right of way.
21. The existing route along the beach is entirely serviceable and has been used for many years by those who seek to walk along the coast in this area. During high tides or storm surges, those wishing to walk along the beach should be provided with an alternative which uses existing land to which the public has access, and which leads them back to the beach at appoint which is safe. The current proposal does not do this; the current proposal would lead to trail to a point which is difficult to walk on and which would be difficult for the emergency services to reach.
22. The proposal is likely to encourage trail users to park at the eastern end of EBD near the entrance to the caravan and boat club; parking and access is already an issue in this area without the promotion of the trail.
23. The coastline has remained unchanged for many years and is enjoyed by locals and visitors both at high and low tides. There is no fair reason why the trail should not be waymarked along its existing physical route. The routing of the trail along EBD is unreasonable; the path along the top of the beach is perfectly usable and the route along the road does not join up with a better-quality path.
24. NE has failed to contact all the affected private road owners and only contacted those with property on the south side of EBD. This action has

failed to strike a fair balance across the physical property owners and those responsible for the private road.

Objections 05 & 13

25. EBD is a private road with no public right of way; there is no intention of dedicating the road as a public footpath. There are two existing footpaths in the area and there is no need to add another one along the private road. The first of these paths is the beach, the second being the path that runs parallel to EBD and through the caravan park.
26. Whereas NE seek to route the trail along EBD due to the unconsolidated nature of the shingle bank at this location, the route along EBD will lead users to an area of unconsolidated shingle between EBD and the Medmerry reserve.
27. Concerns were also expressed around the security of dwellings along EBD and increased maintenance of the road due to increased footfall. There are no footways along EBD and trail users may seek to park along the road to use the trail. The road is narrow, vehicles are likely to use private driveways to manoeuvre or turn.
28. The beach has been used and enjoyed by the public for many years; conditions on the beach have changed little in the past 20 years. An alternative route would be along Farm Road and the footpath which runs through the caravan park; this however would bring users out on to the same unconsolidated shingle as NE propose. A third alternative would be to use the footpath from Farm Road which runs outside the Sussex Beach Holiday Village and which provides access to the beach at EHS-2-S002 and the path system at Medmerry.

Objection 07

29. EBD is a private road not a public road as stated in the proposal materials. The Bracklesham Caravan and Boat Club is privately owned by the 280 shareholders with no letting or renting permitted. The caravan club is open between 1 March and 31 October; for the remainder of the year the maintenance work force is present on site.
30. If the trail is routed along EBD, the parking of motor vehicles will obstruct the movement of transporters bringing caravans to and from the club. The proposal to route the trail along EBD to the most easterly twitten is ill-advised as the trail will return to the beach at a point which is difficult to walk at high tide and with no access for emergency services.
31. The existing route along the beach is entirely serviceable and has been used for many years by those who seek to walk along the coast in this area. During high tides or storm surges, those wishing to walk along the beach should be provided with an alternative which uses existing land to which the public has access, and which leads them back to the beach at a point which is safe. The current proposal does not do this; the current proposal would lead the trail to a point which is difficult to walk on and which would be difficult for the emergency services to reach.

32. Directing trail users along EBD is ill-advised given the nature of the private road, the movement of transporters to and from the club site and the vehicle movements associated with the 280 members of the club and those of the 150 or so properties at EBD.
33. The coastline has remained unchanged for many years and is enjoyed by locals and visitors both at high and low tides. There is no fair reason why the trail should not be waymarked along its existing physical route. The routing of the trail along EBD is unreasonable; the path along the top of the beach is perfectly usable and the route along the road does not join up with a better-quality path.

Objection 08

34. EBD is a private road, maintained at the owner's cost and would not provide trail users with views of the sea. Concerns are expressed about liability for injuries occurring to users of the trail when on the private road. The road is not all tarmac; there are areas where the surface is of concrete slabs.
35. Farm Road should be used for the trail instead of EBD; it runs parallel to EBD and has footways and street lighting.

Objection 10

36. EBD is a private, gated road that is maintained at the expense of the owners who use it to access their properties.
37. It is unfair that a private road should be promoted as a public footpath. Routing the trail along EBD will lead to a dramatic loss of privacy, security and increased maintenance costs for the road which will have to be met by the owners of the road.

Objection 11

38. EBD is a private road with no space for parking along it and very few access points to the beach. The trail should either run along the shingle beach which people currently use or it should be routed over existing public roads further inland. The lack of footways and the poor condition of the road does not make it suitable for increased pedestrian traffic.
39. The trail should be routed over Bracklesham Lane, Farm Road and the existing footpath which runs through the caravan site and links to the twitten leading to the beach.

Objection 12

40. EBD is a private road and not a public one as set out in the proposal documents. There is currently no informal access by the public along the road which is maintained at the expense of the owners and is used by residents to access their own properties.
41. The owners of the road are not responsible for injuries caused to those using the road illegally and do not want the additional liability the imposition of the trail will bring. The owners also require the ability to

remove undesirables from the private road and have done so in the past when necessary; the owners have no intention of dedicating a public right of way over EBD.

42. A footpath already exists around the caravan park which links to Farm Road and to the easternmost twitten; this would provide an alternative route to walking along the shingle beach if an alternative were needed.
43. The road is subject to heavy goods traffic travelling to and from the caravan site, along with use by vehicles of those resident in EBD. There are no footways along the road, and it does not have streetlights. There are 278 caravans on the site at the eastern end of the road, along with several blocks of flats.
44. Notification of changes to the 2009 Act have not been publicised. There has been little public consultation about the proposals; the Residents Association did not receive copies of the maps, reports or letters regarding consultation meetings.

Representation R21 – [REDACTED]

45. A request was made that the existing steps found at the end of the twitten linking EBD and the beach should be replaced in part by a ramp to enable use of the trail by those with reduced mobility.

Representation R27 – West Sussex County Council

46. The trail will follow a number of private roads and streets. As these routes are not recorded in the Council's List of Streets, there is no duty on the highway authority to maintain the surface of these routes. At a number of points the CA Report states that the trail follows 'existing public right of way or highway' an example of which is EBD. Ne is requested to review and revise the entire length of the EHS section of the trail to accurately record the route in relation to the Highway Authorities interests.

The response by Natural England

47. The objections made to this Chapter of the CA Report raised a number of common themes, such as possible alternative routes for the trail; the lack of intention to dedicate a public right of way over the road; the private nature of EBD; the liability which may arise from trail users walking along EBD; and issues of privacy and security. To avoid duplication, I have summarised the responses to these issues separately to other more specific concerns raised in the objections. In addition to commenting on individual objections, NE also made some general comments regarding the reasoning behind the promotion of this part of the trail.

General comments

48. NE submits that in relation to the proposed route of the trail it has followed the key principles of alignment and management as set out in the approved Scheme. Particularly relevant are the principles of the Scheme regarding the convenience of the trail (section 4.3) in that the

proposed route would be reasonably direct (Section 4.3.2), close to the sea (section 4.5) and offer sea views (section 4.6). In addition, users should be able to follow the trail during all states of the tide (section 4.4.2) and avoid having to traverse long lengths of shingle unless there is no viable route option available (section 7.12.4).

49. Land seaward of the trail would qualify automatically as coastal margin because of the positioning of the trail (section 4.8.5) and any land subject to coastal access rights carries the lowest level of occupier's liability under English law which applies to both natural and man-made features (section 4.2.2).
50. In discharging the coastal access duty, Section 297 of the 2009 Act requires the decision maker to aim to strike a fair balance between the occupier's interests and the public's interests in having access rights over the land. NE are of the view that the appropriate balance is struck by its proposals.
51. It is considered that an objective decision has been taken regarding the alignment of the trail along the shingle beach or along a private road. Consideration had been given to aligning the trail along the beach between the Charlmead twitten and the twitten at the eastern end of EBD, however, to do so would not meet the criteria for the trail set out in section 7.12.4 of the Scheme.
52. Shingle can be difficult to walk on for any distance and as the shingle beach at Bracklesham Bay extends for approximately 1.6Km and there is no existing public footpath adjacent to the coast, the trail was aligned over West and East Bracklesham Drives to provide a firm footing for the trail which can be used at all stages of the tide. As the shingle beach will be within the coastal margin, those walkers who are content to walk along long stretches of shingle can choose to use the beach if they wish to do so.

Alternative routes

The beach

53. Section 7.12.4 of the Scheme states that the trail will not normally be aligned on shingle because shingle can be difficult to walk on for any considerable distance, can be covered by tides or subject to breach or flooding during storm conditions. The trail would only be aligned on shingle for a short distance and then only where there were no other viable route options or of the shingle would offer the best 'fit' with the statutory criteria.
54. There is no formal path along the beach beyond EHS-1-S019 heading east. The alignment and signposting of the trail along the private roads therefore provides a route which otherwise would not exist and is consistent with section 7.12.4 of the Scheme. The beach at Bracklesham Bay is approximately 1.6Km in length and is a considerable distance to walk on unconsolidated shingle as part of a long-distance walk. Aligning the trail along the private road being the nearest available means of access along the coast will provide trail users with a choice; either to

walk along the shingle beach (as part of the coastal margin) or to follow a route which is firm underfoot which is reasonably close to the sea. It is anticipated that the current pattern of use of the beach by local people will continue.

Farm Road and public footpaths to the north and east and Drove Lane

55. The suggested route along Farm Road and the public footpath network to the north and east were considered but did not provide a satisfactory fit with the statutory criteria. The alternative routes suggested by the objectors are longer, less convenient and would create considerably more coastal margin than the proposal. If the trail did follow Farm Road and the existing public footpath network, EBD would be encompassed by the coastal margin and would be subject to coastal access rights.

Establishment of a public right of way – no intention to dedicate

56. NE does not consider that the establishment of the trail along EBD would or could lead to users of the trail claiming or establishing a public right of way. Section 12(3) of the Countryside and Rights of Way Act 2000¹ ('the 2000 Act') provides that for the purposes of prescriptive claims for public rights of way, use by the public of land pursuant to coastal access rights is to be disregarded.

Duty of care / liability

57. Section 4.2.2 of the Scheme addresses the concerns of objectors regarding liability for accidents. Land subject to coastal access rights benefits from the lowest level of occupier's liability known under English law – considerably lower than the duty of care owed to trespassers on private land – which applies to both natural and man-made features. Trail users will be aware of the need to be observant and to take care when using the trail. Trail users have a level duty of care, and any injuries or accidents that occur would continue to be treated as normal under English law.

58. Owners will continue to be able to ask people to leave their properties; homes and their curtilage and gardens being excepted land and no access rights will be created over them.

The status of EBD; future maintenance of EBD

59. NE accepts that EBD was incorrectly recorded in the CA Report as a public road. Whilst it was possible to update online documentation and printed maps, it was not possible to update the CA Report. Whilst NE apologises for this error, it points out that the status of the road has no bearing upon the decision as to where to align the trail as private roads are not an excepted category of land.

60. EBD is used by residents' vehicles as well as heavy goods vehicles transporting caravans to and from the site at the eastern end of the road; it is not anticipated that footfall from trail users will increase the

¹ As amended by the 2009 Act

wear and tear on the road over and above that caused by existing vehicle use.

Privacy / security

61. NE does not consider that security or privacy will be impacted by the proposals. The properties along EBD are set back from the road and many are screened by hedges or fences. Those property owners without fences will be accustomed to holiday makers from the caravan park, local walkers and trades people using the road; it is not considered there will be any adverse impact upon privacy or security. Given the current use of EBD as part of a local circular walk and its use by those visiting the caravan park, in practice there will be very little change in the use from that which currently occurs.
62. Owners will still be able to ask people to leave their property as homes, curtilage and gardens are excepted land categories and no access rights will be created over them.

Objection 01

63. Whilst the options for the trail were either along the shingle beach or over privately maintained roads it is considered that routing the trail over the private roads would provide a firm walking surface and add to the convenience of using the trail. In addition, Charlmead and the twitten carry a public footpath which provides access to and from the beach. It is not expected that use of the road by those following the trail would increase the wear and tear on the road over and above that caused by residents' vehicles.

Objection 02

64. NE considers EBD to be safe to walk along; it has a low marked speed limit and is only used by residents and their visitors. Should visitors wish to drive to this section of the trail to commence their walk, there is a public car park at the western end of EBD; there is ample signage along EBD prohibiting vehicular access by the public and such signage will remain.

Objections 03, 04, 06 & 09

65. The right of access was provided for in the 2009 Act which requires a fair balance to be struck between competing interests. In aligning the route along EBD, not only was the convenience of use of the trail taken into account, but also the current use of the road as part of a local circular walk.
66. Additional visitor facilities such as car parks, toilets or public transport do not form part of the proposals. Signage would be kept to a minimum with way markers and fingerposts to direct trail users.
67. NE considers EBD to be safe to walk along; it has a low marked speed limit and is only used by residents and their visitors. Should visitors wish to drive to this section of the trail to commence their walk, there is a public car park at the western end of EBD; there is ample signage along

EBD prohibiting vehicular access by the public and such signage will remain.

68. Consultation has taken place with landowners. Contact letters were sent in February 2016, drop in events held in March 2016, letters showing proposals and associated margins were sent out in February 2017. In addition, site visits were held with Bracklesham Bay Residents Association and other parties.

Objections 05 & 13

69. The right of access was provided for in the 2009 Act which requires a fair balance to be struck between competing interests. In aligning the route along EBD, not only was the convenience of use of the trail taken into account, but also the current use of the road as part of a local circular walk.
70. The proposals are for access on foot only. No vehicular rights are proposed, and it is not considered the proposals will create any new problems due to parked vehicles blocking lorries or limiting turning space. EBD is clearly marked as a private road with no access for the public's vehicles.

Objection 07

71. The right of access was provided for in the 2009 Act which requires a fair balance to be struck between competing interests. In aligning the route along EBD, not only was the convenience of use of the trail taken into account, but also the current use of the road as part of a local circular walk.
72. NE considers EBD to be safe to walk along; it has a low marked speed limit and is only used by residents and their visitors. Should visitors wish to drive to this section of the trail to commence their walk, there is a public car park at the western end of EBD; there is ample signage along EBD prohibiting vehicular access by the public and such signage will remain.
73. Walking on the beach would not present a hazard during normal conditions. Users of the trail are expected to take responsibility for their own care and make decisions on the suitability of the trail in extreme weather conditions. The routing of the trail along EBD provides a firm walking surface which would be available in all weather conditions.
74. The proposals are for access on foot only. No vehicular rights are proposed, and it is not considered the proposals will create any new problems due to parked vehicles blocking lorries or limiting turning space. EBD is clearly marked as a private road with no access for the public's vehicles.

Objection 08

75. Whilst it is accepted that some part of the land crossed by the trail is made up of slabs, the predominant surface type at this location is

described in the CA Report. The nature of the road surface had no bearing upon the proposed alignment.

76. There is currently extensive use of EBD by residents, holiday makers, tradespeople and walkers. EBD is also used by residents' vehicles as well as heavy goods vehicles transporting caravans to and from the site at the eastern end of the road; it is not anticipated that footfall from trail users will increase the wear and tear on the road over and above that caused by existing vehicle use. It is unlikely that owners and residents will experience any increase in maintenance costs as a result of the proposals.

Objection 10

77. The 2009 Act does not prevent the alignment of the trail over a private road if that is the best option in the circumstances and that it can be demonstrated that a fair balance has been struck.
78. The right of access was provided for in the 2009 Act which requires a fair balance to be struck between competing interests. In aligning the route along EBD, not only was the convenience of use of the trail taken into account, but also the current use of the road as part of a local circular walk.

Objection 11

79. NE considers EBD to be safe to walk along; it has a low marked speed limit and is only used by residents and their visitors. Whilst footways are limited, there are several verges onto which pedestrians can step to find refuge from vehicular traffic.
80. The status of EBD does not mean that it falls into one of the categories of excepted land; there would be nothing to prevent the Secretary of State from approving the alignment should it be felt that the proposal strikes a fair balance. The absence of parking provision for the public or the limited number of access points leading to the beach does not demonstrate that the coastal access duty has not been discharged.

Objection 12

81. NE considers EBD to be safe to walk along; it has a low marked speed limit and is only used by residents and their visitors. Whilst footways are limited, there are several verges onto which pedestrians can step to find refuge from vehicular traffic.
82. Additional visitor facilities such as car parks, toilets or public transport do not form part of the proposals. Signage would be kept to a minimum with way markers and fingerposts to direct trail users.
83. Consultation has taken place with landowners. Contact letters were sent in February 2016, drop in events held in March 2016, letters showing proposals and associated margins were sent out in February 2017. In addition, site visits were held with Bracklesham Bay Residents Association and other parties.

Representation R21

84. NE submits that it has followed the principles set out in the publication "By All Reasonable Means" to make the trail as easy to use as possible for as wide a group of users as possible, whilst accepting that topography or availability of visitor transport will constrain such opportunities. Where there is a choice of possible routes for the trail, preference is given to that which is accessible to the widest range of users or most easily adapted for that purpose.
85. NE is of the view that the steps on the twittens are fit for the purpose of a National Trail. NE submits that the possible replacement of the steps with a ramp was not raised by the Access Authority. As the ramp would lead to shingle, it was considered unlikely that wheelchair users would continue onwards, thus reducing the cost-benefit analysis of the required works.

Representation R27

86. NE recognises that there were mapping errors at several locations along this section of the trail and that the status of some routes were incorrectly recorded. Although the mapping data has been updated, it has not been possible to change the information set out in the CA Report and associated maps. Any subsequent mapping produced does however make use of the corrected data. Apologies have been made to affected parties. However, private streets and twittens are not excepted land categories and the ability to include these roads, streets and twittens in the proposals for the trail is unaffected.

Conclusions

87. As noted above there are a number of common themes found in the objections and representations, the principal concerns of the objectors being the routing of the trail along Charlmead and EBD as opposed to some other route, the status of EBD and it not carrying any public right of way, privacy, security and ongoing maintenance.

Alternative routes

88. NE has considered the alternative routes proposed by the objectors which would run along the beach or along Farm Road and the public footpath network through or to the north-east of the caravan site [28, 35, 39, 42, 55]. Having regard to these submissions the Secretary of State may wish to note that in discharging the coastal access duty regard must be given to a number of factors [8]. Whilst the proposed route along West and East Bracklesham Drives does not provide views of the sea, such views are available to users of the trail to the west of EHS-1-S020 and to the east of EHS-1-S027.
89. There is no evidence that the proposed route would be unsafe for pedestrians. Whilst EBD is not served by footways, I saw from my site visits that the road is of sufficient width for vehicles to pass walkers without risk of injury to pedestrians. Sightlines along both Charlmead

and EBD are good and where vehicle movements were observed, those vehicles travelled at low speed due to the characteristics of the roads.

90. There were no movements of heavy goods vehicles to or from the caravan site at the time of my site visits. Although HGVs would occupy significantly greater space than a passenger car, I did not gain the impression that pedestrians would be exposed to significant risk from such vehicles as there are verges and hard standing at the side of the road which would provide temporary refuge from the approach of such vehicles.
91. There is no suggestion that the proposed route is not convenient for people to use or that the route would be subject to interruptions.
92. Several objectors contend that the trail should follow the beach parallel to EBD and not be routed over the private road. Section 7.12.4 of the Scheme advises that the trail should not be set out over shingle [53]. I saw from my site visit that the beach at Bracklesham Bay is unconsolidated shingle and whilst it was not impossible to walk on, the nature of the shingle at this location made progress along it difficult and strenuous. The beach at Bracklesham Bay is approximately 1.6Km in length [52] and is likely to be draining on the physical resources of those who chose to walk along it as part of a long-distance journey on the trail. Locating the trail along the beach would therefore be contrary to the principles of the Scheme and as the proposed route via Charlmead and EBD provides a viable alternative to the unconsolidated shingle, routing the trail along the beach would not satisfy the requirements of the coastal access duty as it would not be the most convenient route for users of the trail. Routing the trail along Charlmead and EBD would also provide a route which was always available for use irrespective of the state of the tide.
93. Although I do not consider it appropriate to propose the modification of the trail route to run along the beach, such a route would be available to trail users should they be so minded to undertake a journey as the beach would fall to be part of the coastal margin seaward of the trail.
94. It was also suggested that from West Bracklesham Drive the trail should turn north to run over Farm Road and then either run along the footpath which passes through the caravan park [35, 42] or follow a footpath north then east to Drove Lane which would provide a link to EHS-2-S002 [28]. It was suggested that Farm Road would provide a safer route for trail users as it had footways and was lit [35]. Whilst Farm Road would provide separation of pedestrians from vehicle movements, use of that route would require a greater detour inland than the route along EBD (particularly the route involving Drove Lane) and would not therefore be as close to the sea as the route following EBD would be, nor would the suggested routes provide views of the sea.
95. In my view, the use of Farm Road and the public footpath network to the north and east of Farm Road would not satisfy the requirements of the coastal access duty.

96. Furthermore, the Secretary of State may also wish to note that the use of Farm Road, the footpath through the caravan park or Drove Lane would mean that all the seaward land, other than excepted land, would become subject to the coastal access provisions as coastal margin [55]. As EBD would not fall into the category of excepted land, it would remain subject to the coastal access provisions as it would if the trail ran over it; routing the trail to the north of EBD would not therefore achieve the exclusion of EBD from use by those following the trail.
97. Bearing in mind the above, the suggested alternatives along Farm Road, the public footpath network and Drove Lane would not satisfy the coastal access duty.

Status of EBD / lack of intention to dedicate public rights.

98. It is acknowledged by NE that EBD is a privately owned and privately maintain road and that it fell into error in designating the route as a public road in the CA Report [59, 86]. "Private Road" and "Private Road No Parking" notices are displayed at various points along EBD; to the east of the junction with First Avenue the word "PRIVATE" is painted in bold letters on the road surface. A private road such as EBD is not however excepted land [58] whereas the houses and gardens served by the road would be excepted land. As EBD would provide a viable alternative to the shingle beach and is on the periphery of the coast, its status would not be a bar to the trail running over it.
99. Several objectors' state that as owners of the private road they have no intention of dedicating the route as a public right of way. As noted by NE [56] section 12(3) of the 2000 Act provides that use by the public of a route pursuant to coastal access rights is to be discounted where it may be claimed that long use raises a presumption of dedication. Use of EBD as part of the trail would not therefore provide evidence to support the establishment of a public right of way.

Privacy, liabilities, maintenance

100. Several objectors contend that routing the trail along EBD will have an adverse effect upon their privacy. The majority of the dwelling houses situated along EBD are set back from the road and have some amenity land between the house and the road which limits the view of the houses to any passer-by. In addition, many of the houses have fences or hedges facing the road which would provide additional screening from anyone following the trail.
101. EBD is currently used by residents on foot and with their vehicles, together with those who own and use a caravan at the caravan site located at the eastern end of the road. In addition, several tradesmen were observed at the time of my site visit engaged in renovating or rebuilding of the properties served by the road. Heavy goods traffic periodically uses the road to access the caravan site. Those resident along EBD are likely therefore be accustomed to people passing along the road on foot, whether they are locals out for a walk or residents of the caravan park doing the same. In such circumstances, whilst privacy

will be impacted to some extent, I do not consider that the effects will be significant.

102. Objectors also expressed concerns about the cost of maintenance of EBD increasing due to footfall from users of the trail. Given the existing use of the road by domestic and heavy goods vehicles, I concur with NE [60] that it would be unlikely that pedestrian use of the road would increase wear and tear upon the road beyond what already occurs.
103. As noted by NE [57] land subject to coastal access rights benefits from the lowest level of occupiers' liability. This would make it extremely unlikely, in normal circumstances, that an occupier could be successfully sued in relation to any injury sustained whilst on land subject to coastal access rights.

Representation R21

104. There is currently a stepped access from the southernmost twitten on EBD to the beach. It is not considered that these steps are required to be replaced with a ramp either in whole or in part [85]. No evidence has been submitted to suggest that this section of the beach is used by wheelchairs or pushchairs and given the nature of the beach at Bracklesham Bay it is unlikely that such use occurs such that would justify the creation of a ramped access at this point.

Other matters

105. Several objectors raise concerns in respect of the consultation process undertaken by NE in developing the scheme [24, 44]. Whilst the Secretary of State may wish to note these concerns, he will be aware that the issue to be determined is whether the proposals 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. The issues raised regarding the consultation process are not matters for consideration by the Secretary of State in respect of the determination. In making my recommendation I have had regard to the objections and submissions from NE in respect of those objections.

Whether the proposal strikes a fair balance

106. Having regard to all the above, the proposed route of the trail will have some limited impact upon those whose residential properties are situated on Charlmead and EBD. Although there are alternative routes these are not viable or fail to discharge the coastal access duty in respect of the relevant considerations [8]. I do not consider that the minor adverse effects 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

107. 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 (e) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON