



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]and [REDACTED]

Regarding coastal access Proposal by Natural England

Regarding East Head to Shoreham by Sea

Site visit made on 29 October 2019

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Objection Reference: Ref: MCA/East Head to Shoreham by Sea/14 Land at Little Ham Cottages and Great Ham Farm

- 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 21 November 2017 to chapter 2 of the CA Report, Bracklesham to Pagham, East Beach Road, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S015RD, EHS-2-S016RD, EHS-2-S017RD, EHS-2-S018FP, EHS-2-S019, EHS-2-S020 & EHS-2-S021.
- 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/15 Land at Little Ham Cottages and Great Ham Farm

- On 27 September 2017, NE submitted a 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 2 of the CA Report, Bracklesham to Pagham, East Beach Road, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S015RD, EHS-2-S016RD, EHS-2-S017RD, EHS-2-S018FP, EHS-2-S019, EHS-2-S020 & EHS-2-S021.
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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/16 Land at Little Ham Cottages and Great Ham Farm

- On 27 September 2017, NE submitted a 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 Marine and Coastal Access Act 2009 ('the 2009 Act').

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- An objection dated 14 November 2017 to chapter 2 of the CA Report, Bracklesham to Pagham, East Beach Road, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S015RD, EHS-2-S016RD, EHS-2-S017RD, EHS-2-S018FP, EHS-2-S019, EHS-2-S020 & EHS-2-S021.
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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/17
Land at Little Ham Cottages and Great Ham Farm

- On 27 September 2017, NE submitted a 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 2 of the CA Report, Bracklesham to Pagham, East Beach Road, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S015RD, EHS-2-S016RD, EHS-2-S017RD, EHS-2-S018FP, EHS-2-S019, EHS-2-S020 & EHS-2-S021.
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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/18
Land at Little Ham Cottages and Great Ham Farm

- On 27 September 2017, NE submitted a 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 2009 Act.
- An objection dated 21 November 2017 to chapter 2 of the CA Report, Bracklesham to Pagham, East Beach Road, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S015RD, EHS-2-S016RD, EHS-2-S017RD, EHS-2-S018FP, EHS-2-S019, EHS-2-S020 & EHS-2-S021.
- 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/19
Land at Little ham Cottages and Great Ham Farm

- On 27 September 2017, NE submitted a 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 2 of the CA Report, Bracklesham to Pagham, East Beach Road, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S015RD, EHS-2-S016RD, EHS-2-S017RD, EHS-2-S018FP, EHS-2-S019, EHS-2-S020 & EHS-2-S021.

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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, the gist of the responses made by NE and my conclusions and recommendations. The six objections considered in this report were identical, and to prevent repetition, I have set out the gist of the objections and NE's response in composite form.

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 to 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 six objections considered in this report relate to land between Bracklesham and East Beach Road, Pagham EHS-2-S015RD to EHS-2-S021. The objections relate to contiguous areas of affected land which forms part of a privately maintained road (Ham Road) and public footpath. 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. None of those representations relates to the section of the English Coast Path ('the trail') subject to this report.

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. A site inspection was carried out in relation to the objections considered in this report on Tuesday 29 October. During this inspection I was accompanied by one of the objectors and by 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

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- (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 2 of the CA Report considered in this report have been made under paragraphs 3 (3) (a) and (c) 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 2 of the CA Report, runs from East Bracklesham Bay (Grid reference 481636 956028) to Pagham Harbour (grid reference 489553 97573) as shown on maps 2a to 2l (points EHS-2-S001 to EHS-2-S206RD). The trail follows existing walked routes, including public rights of way and permissive routes and in the main follows the coastline quite closely and maintains good views of the sea.
14. The trail is aligned on the top of the perimeter bank around Medmerry, except for an area on the eastern side where the trail is aligned to avoid an area of land set aside as a nature reserve to protect sensitive bird populations, and to ensure that environmental land management objectives can succeed. The trail is aligned on the beach or foreshore at Bracklesham Bay and at Pagham Harbour.
15. It is proposed to exclude access all year-round to the seaward areas of the coastal margin at Medmerry Nature Reserve under the provisions of section 26(3)(a) of the Countryside and Rights of Way Act 2000.

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16. The section of the trail subject to the objections is in the main along a privately maintained road over which a public footpath (FP70) runs. The sections EHS-2-S015RD to EHS-2-S021 follow the public footpath which runs from the end of the publicly maintainable Ham Road and its junction with footpath 75 to the south east of Great Ham Farm.

The cases for the objectors

Objections 14 – 19

17. The objectors contend that there are significant health and safety risks from locating the trail between EHS-2-S015RD to EHS-2-S021 due to the shared and frequent use of the narrow single-track road which serves the properties at the southern end of Ham Road. The road is used by domestic vehicles, commercial vehicles and large agricultural machinery. The safety and possibly the lives of the public would be put at risk by being directed along a narrow and restricted road which is frequently used by such vehicles.
18. The choice of the proposed route does not strike a fair balance between the interests of trail users and the residents of Ham Road, six of whose properties are immediately adjacent to the proposed route and whose right to the peaceful enjoyment of their property would be adversely affected by the trail. The proposal would lead to a substantial increase in pedestrian traffic, noise and disturbance. Residents are entitled to the same consideration as has been shown to the occupiers of Greenwood Farm.
19. The proposed route is needlessly circuitous and inconvenient as a viable alternative is already available and in use on the ground. The section between EHS-2-S019 to EHS-2-S021 will result in unnecessary disturbance to wildlife particularly in that part of the Medmerry Nature Reserve to the south of EHS-2-S020 and EHS-2-S021.
20. Those houses that would be most affected by the proposal are obscured on the proposal map by the placing of 'EHS-2-S015RD' over the top of them; those unfamiliar with the area may assume that there would be no disturbance to private residents. This appears to have been a deliberate attempt to mislead the public by hiding these houses; this is utterly shameful and detrimental to the rights of the residents of Ham Road.
21. A viable alternative route to that proposed for EHS-2-S015RD to EHS-2-S021 exists; the trail should be routed along the public and permissive footpaths that run east then south west from the southern end of EHS-2-S014 to re-join the proposed coastal path at the northern point of EHS-2-S021 on the Medmerry flood defence bank. This route would eliminate the safety risk of trail users sharing the narrow single track road; would fulfil the stated aims of the proposal in aligning the trail in the most suitable location taking account of available alternatives that are in use; avoid conflict and prejudice to the rights of residents on Ham Road to the quiet enjoyment of their properties; limit the disturbance to wildlife particularly on the land inside Medmerry nature Reserve adjacent to EHS-2-S020; provide a more direct route for the trail whilst still offering full public access along FP 70 to the viewing point at EHS-2-S019; would not require additional funding as the alternative has already been laid out as part of the nature reserve; and would route the trail through open fields as opposed to a residential area.

The response by Natural England

General comments

22. 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 in this case are the principles of the Scheme that the trail should be reasonably close to the sea (section 4.5) and should normally offer views of the sea as such views are a key part of the enjoyment of the coast (section 4.6).
23. In addition, land seaward of the trail would qualify automatically as coastal margin as a consequence of the positioning of the trail (section 4.8.5) and where there is an existing national trail or another clearly walked route along the coast that route would normally be the route for the trail (section 4.7.1). Furthermore, coastal access rights become available for the public to enjoy open-air recreation on some land which was previously only available for such enjoyment by a private owner or invitees. However, domestic buildings and curtilages and land used as a garden or park are excepted from coastal access rights, though existing public rights of way remain in force and the trail may make use of them (section 5.4.1).
24. 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.

Comments on objections 14 to 19

25. There was no deliberate attempt to mislead any party through the placement of section numbers on the maps. An apology has been given to those who raised this concern. However, all parties should be able to recognise that the trail is proposed to follow an existing public footpath along a road.
26. NE considers that the suggestion that the proposed route would be dangerous relates to those parts of Ham Road which coincide with section EHS-2-S015RD as other areas mentioned are on earth surfaced footpaths or over a gravel track. No concerns regarding safety were raised by the Access Authority over the use of this existing public right of way as part of the trail. Ham Road at this point has good sightlines allowing pedestrians and drivers to be aware of one another. This part of Ham Road is of an appropriate standard to form part of the National Trail.
27. The trail follows a route around the Medmerry flood compensation scheme. The consultation on that scheme resulted in the current access provisions and the trail follows the agreed access that resulted from the Medmerry scheme. The access provisions for Medmerry included the inland route following public rights of way avoiding the flood bund created close to Greenwood Farm.

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28. The new access provisions around Medmerry did not include using the bund to the west of Greenwood Farm for conservation and privacy reasons; a new access route along the bund would be metres away from the house and would provide views into it through windows adjacent to the bund. Medmerry is now a valuable wildlife refuge and access along the bund is likely to create significant disturbance for key bird species.
 29. Routing the trail along the bund at Greenwood Farm would have meant creating a new access whereas the route along Ham Road follows footpath 70. The owners of the Ham Road properties will be aware of public use of the road and the presence of the public. It is considered unlikely that there would be any loss of security as the trail would use an existing public route and as this section is some distance from any public car parks or public transport, users numbers are not expected to be of the magnitude that would arise if the trail at this point formed part of a circular route.
 30. The proposed route follows the current signposted public right of way and is close to the sea. A holiday rental property at the southern end of Ham Road is let most of the year, and the area is popular with locals and visitors alike; the proposal is unlikely to create any new issues of privacy.
 31. The proposed route along Ham Road would return the trail to the Medmerry bund along an existing public right of way and allow access to the viewpoint overlooking the nature reserve, the breach in the sea defence and the inter-tidal habitat which has been created. This route adheres to the coast and provides views of the sea and therefore meets the criteria of the Scheme.
 32. Although not the most direct route to the Medmerry bund, the proposed route would keep the extent of the seaward coastal margin to a minimum compared with that which would be created if the alternative route suggested by the objectors were proceeded with. Although the objectors state that access to the viewpoint and the southern section of the bund would still be available from footpath 70 if the trail followed the suggested alternative route, the route following footpath 70 is the one being proposed.

Conclusions

33. NE has considered the alternative route proposed by the objectors which would leave Ham Road at EHS-2-S014 and run east then south west to re-join the sea wall at EHS-2-S021 [32]. 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 several factors [8]. The route proposed by NE follows an existing public right of way, is reasonably close to the sea and offers views of the sea, particularly over the nature reserve and the intertidal wetland created by the Medmerry breach. The proposed route therefore satisfies the Scheme criteria set out in sections 4.5, 4.6 and 4.7.
34. The alternative route proposed by the objectors would also be close to the sea and offer sea views, would follow an existing public footpath and a permissive route created to improve access in the vicinity of the nature reserve. Aligning the trail upon this suggested alternative route would however lead to a greater area of land being subject to coastal access rights under section 4.8.5 of the Scheme than would be the case under

NE's proposals [32]. Whilst there will inevitably be some land which becomes automatically coastal margin, this should not be unnecessarily extended. The seaward coastal margin of the proposed alternative would include that section of Ham Road to which the objectors oppose being included in the trail. The objectors appear to recognise that this route would remain available to those following the trail [21].

35. The trail avoids the eastern bank of the Medmerry bund between Greenwood Farm and the viewpoint at EHS-2-S019 to minimise disturbance to bird species feeding and roosting in the intertidal lagoon [28]. Although the objectors state that use of section EHS-2-S020 would also create such disturbance [19], this section is already subject to public access (footpaths 70 and 75).
36. The principal concern of the objectors relates to safety along that part of Ham Road in the vicinity of Little Ham Cottages where the road is narrow, and which is subject to use by domestic, commercial and agricultural vehicles. Privacy for the residents along Ham Road is also of great concern [18, 20].
37. Taking the latter point first. Public Footpath 70 runs along Ham Road and passes adjacent to all the residential properties on this part of the road. Those resident at Ham Road must therefore be aware of, and accustomed to, members of the public passing in close proximity to their properties. Whilst there may be some increase in footfall as a result of the trail, such use would not expose the residents to intrusion to a greater degree than already experienced. Even routing the trail as suggested by the objectors would not preclude or prevent those following the trail from using Ham Road, either in exercise of the public footpath rights which exist over it or in exercise of the coastal rights which would arise from the road being included as coastal margin.
38. It is acknowledged that Ham Road is used by domestic, commercial and agricultural vehicles as it serves domestic and agricultural properties. Ham Road is also a public right of way; no evidence has been submitted to demonstrate that use on foot of Ham Road by the public has led to accidents or incidents in the past. The sections of Ham Road leading past the cottages and towards Great Ham Farm are relatively straight and provide good sightlines in either direction such that pedestrians can see vehicles approaching them. Although the road is of single carriageway width, there are verges either side of the tarmac onto which pedestrians can step to obtain refuge from any passing vehicles. The physical characteristics of the route observed on my site visit suggests that users of the trail would not be exposed to any greater degree of risk than those who currently choose to travel along footpath 70.
39. The consultation map 2c is labelled in such a way that EHD-2-S015RD overlays the properties at Little Ham Cottages and Little Ham Barn. In this respect, this map is different to the plan published as part of Chapter 2 of the report where EHS-2-S015RD is placed to the east of the cottages and does not obscure them. Although the buildings are partly obscured by the label on the consultation map, the names of the cottages printed on the Ordnance Survey map used as a base for map 2c is not. Consequently,

anyone studying the map, whether familiar with the area or not, would have been aware that several residential properties were to be found along Ham Road.

40. In any event, the depiction of the route on the maps and the positioning of any labels on those maps does not detract from the fact that Ham Road is a public right of way and that residents and users of the road would be aware of each other's presence.

Whether the proposal strikes a fair balance

41. 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 Ham Road. However, the residents currently experience a degree of disturbance to their privacy as Ham Road is subject to a public right of way on foot. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations [8]. I do not consider that the minor adverse effects that the trail would have upon the occupiers of the properties on Ham Road 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

42. 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) and (c) 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