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# 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

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MARINE AND COASTAL ACCESS ACT 2009

Objection by [REDACTED] of Pagham Beach (Holdings) Limited

Regarding Coastal Access Proposal by Natural England

Regarding East Head to Shoreham by Sea

Site visit made on 30 October 2019

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### **Objection reference: MCA/East Head to Shoreham by Sea/26 Pagham Beach Estate**

- 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 28 September 2017 to chapter 2 of the CA Report, Bracklesham Bay to Pagham Harbour Estate, has been made by [REDACTED] of Pagham Beach (Holdings) Ltd. The land in the CA Report to which the objection relates is route section EHS-2-S173.
- 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.

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### **Procedural and Preliminary Matters**

1. I have been appointed to report to the Secretary of State on objections made to the CA Report. This report includes the gist of submissions made by the objector, 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 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 objection considered in this report relates to land between Bracklesham and East Beach Road, Pagham EHS-2-S173. The objection relates to an area of land through which the coastal path would pass which is the former car park located at the south-western end of Harbour Road. The extant objections to other Chapters of the CA Report will be considered in separate reports.

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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 Wednesday 30 October. During this inspection I was accompanied by the objector 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
  - (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' 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 objection to Chapter 2 of the CA Report considered in this report has been made under paragraph 3 (3) (a) 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**

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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 section of the trail subject to the objection runs through the former car park at the south-western end of Harbour Road. From there the trail runs north-east over Harbour Road, West Front Drive and East Front Drive which are privately maintained roads.

### **The case for the objector**

15. The description given to Chapter 2 of the CA Report is incorrect as is the title of map 2l. Chapter 2 should be described as 'Bracklesham Bay to Pagham Beach Estate' and map 2l should be 'Pagham Lagoon to East Front Road'. Corrections to these documents are requested.
16. The Company does not own all of the length of East Front Road with parts of the road being owned by the frontagers who contribute towards the maintenance of the private roads; notice of the proposals will need to be served on these frontagers.
17. The maps refer to a 'car park' at the end of Harbour Road which is incorrect. This car park has now been closed to the public and forms part of the Pagham Harbour Local Nature Reserve; references to the car park should be removed from the maps. The map refers to 2 gates being removed; the gates at the end of Harbour Road must be retained to prevent unauthorised vehicular access into the Local Nature Reserve.

### **The response by Natural England**

#### ***General comments***

18. 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); that people should normally be able to use the trail at all states of the tide (section 4.4.2); where there is a clear walked line along the coast, whatever its status, such a route would be proposed to be part of the Trail as long as it is safe and practicable for the public to use, can be used at all times and makes sense in terms of the other statutory criteria and principles of the Scheme (section 5.2.1).
19. In addition, the flexible alignment powers under the 2009 Act should in general ensure that coastal access rights will not interfere in any significant way with the operational needs of coastal businesses or organisations such as sporting clubs (section 5.2.1).
20. 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

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the land. NE are of the view that the appropriate balance is struck by its proposals.

### **Comments on the objection**

21. [REDACTED] confirmed in an email dated 13 October 2017 that "our comments are not to be taken in the form of any objection to the proposal. But to try and correct misleading information that NE has included". A response to that email was given to the objector and was repeated after the objection had been deemed admissible.
22. As regards consultation with frontagers, NE had purchased copies of Land Registry titles for the full extent of the East Head to Shoreham section of the Trail which had been used to identify land ownership, including the land at Pagham Beach Estate and those properties along East Front Road. This information enabled NE to contact affected parties and to hold necessary site visits and meetings.
23. Ordnance Survey maps are used as the base mapping to produce the report maps and it is not possible to make changes to the base maps. The maps in the report are designed at a scale to enable interested parties to determine the route of the Trail and any associated infrastructure and margin. The maps are not intended to be used as a walker's guide to the trail. The OS Explorer series will show the route of the Trail (once approved); the current sheet for Pagham (OL8) does not refer to the land at the west end of Harbour Road as being a car park.
24. It is not proposed to remove any gates at the former car park. The reference on map 2k 'existing gateway with no gate to be retained' refers to the gap between the large vehicle gate and adjacent fencing through which users of the Trail can pass. The existing vehicle gate at the former car park will be unaffected by the proposals.

### **Conclusions**

25. Although the objector contends that notice of the proposals would need to be served on those frontagers who own part of East Front Road [16], no evidence has been submitted to show that such notice has not been served. NE submits that in relation to this matter, details of ownership were obtained from Land Registry for consultation to be carried out [22]. It is to be noted that there were no objections or representations made to the proposal from anyone with a land interest in East Front Road.
26. I saw from my site visit that vehicular access to the former car park at the south-western end of Harbour Road was prevented by a locked gate. I also saw that there was a gap between the gatepost and the fencing which marked the extent of the car park through which pedestrians could pass. It is this gap which NE refer in plan 2k as an 'existing gateway with no gate to be retained'. This form of wording seems an extraordinarily cumbersome way of describing a gap and it is understandable why the objector considered that this description referred to the removal of the vehicular gate [17].
27. The proposal would route the trail inland from the beach and along West Front and East Front Roads of the Pagham Beach Estate. The proposed

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route would ensure that the trail would be available at this point year-round irrespective of the state of the tide. I saw from my site visit that part of the beach at this location had been eroded and that works were being undertaken to protect the beachfront houses.

### **Whether the proposal strikes a fair balance**

28. Having regard to all of the above, the proposed route of the trail will have some limited impact upon those whose residential properties are situated on West Front Road and East Front Road in that there may be an increase in footfall from those following the trail over and above what appears to currently occur. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations [8]. There does not appear to be any objection to the trail utilising these privately maintained roads. I do not consider that the minor adverse effects that the trail would have upon the occupiers of the properties on West Front Road and East Front 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**

29. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objection within paragraphs 3(3)(a) 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