



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

Objection by [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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File Ref: MCA/East Head to Shoreham by Sea/27 Land at West Sands

- 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]. The land in the CA Report to which the objection relates is route section EHS-2-S028 and EHS-2-S029.
- The objection is made under paragraph 3(3) (a) (b) 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.

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 West Sands Caravan Park and West Street. The objection relates to an area of shingle beach over which the English Coast Path ('the trail') would pass which is in the ownership of the objector. 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 objection considered in this report on Tuesday 29 October 2019. 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'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 objection to Chapter 2 of the CA Report considered in this report has been made under paragraph 3 (3) (a), (b) 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 section of the trail subject to the objection runs over that part of the shingle beach at West Sands which is in the ownership of the objector. The objector's property is one of several properties situated on an access road known as Medmerry which lies within the West Sands Caravan Park.

The case for the objector

15. The objector contends that at certain times of the year the trail would be covered by high tides and that the trail should be routed along the surfaced road and footway which runs through the caravan park site.

The response by Natural England

General comments

16. 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). In addition, concerns may arise at the prospect of aligning the trail through permanent commercial camping or caravanning sites where there is currently no public access (section 8.19.4). In such situations, the ideal alignment for the trail will normally to pass it on the seaward side, where space allows, and this is achievable (section 8.19.7)
17. 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 the objection

18. NE maintains that the trail and its associated margin are seaward of [REDACTED] property and that he does not own the beach in question. Ordnance Survey mapping shows that the mean high tide line to be approximately 30 metres from the proposed line of the trail. The trail will run on compacted shingle above the mean high-water mark; there are elements of vegetation within the shingle which suggests very infrequent overtopping by the sea of the proposed route for the trail. It is NE's view that only exceptional storm events would result in the trail being inundated and unavailable for use; users of the trail would be aware that the coast can be a dangerous environment and would take particular care for their

own safety when accessing the trail. Undertaking a walk in a storm event would be a risk borne by the individual, but there are many places along this section of the trail where users could find refuge if an unexpectedly high tide were to occur.

19. This section of the beach has also been protected by sea defences which have been erected by the owners of West Sands Caravan Park; these works have created a larger shingle bank to protect the properties along Medmerry and within the caravan park. The trail at this point would be on higher ground and unlikely to flood.
20. Discussions and negotiations with the caravan park owners revealed that they did not want the trail to be routed through the caravan park or over any of its access roads. The alignment of the route as proposed conforms with the principles of the Scheme set out in section 8.19.7; a route on the landward side of the caravan park would not be as good a fit with the alignment principles of the Scheme. The proposed route is on compacted shingle which is relatively firm underfoot. NE remain of the view that the trail is correctly aligned at this location and is not at risk of flooding.

Conclusions

21. Although NE contend that the shingle beach over which the trail would run is not owned by the objector, no evidence in the form of title deeds or Land Registry records have been submitted [18]. The trail would run on the seaward side of boundary fence which marks out [REDACTED] residential curtilage although it is accepted that the ownership boundary may run to the mean high-water mark.
22. I saw from my site visit that the shingle beach at this location was relatively firm underfoot which may be the result of the extensive sea defence work undertaken by the owners of the caravan park. Walking along this section of shingle should not pose significant problems in terms of fatigue for users of the trail.
23. The available mapping shows that the mean high-water mark to be some distance from the route proposed for the trail and although the objector contends that the trail would be inundated during certain high tides, it is likely that the trail would only be inundated during a severe storm event. Routing the trail through the caravan site or over the access roads and footways would be contrary to section 8.19.7 of the Scheme given that a route exists on the seaward side of the caravan park over which the trail could run. The proposed route would ensure that the trail remained accessible in all but the most exceptional storm and tide events.

Whether the proposal strikes a fair balance

24. Having regard to all of the above, the proposed route of the trail will have some limited impact upon the residential property of the objector and those in adjacent properties in that there may be an increase in footfall along the beach arising from the use of the trail over and above that which appears to currently occur. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations [8]. Although there may be some minor disturbance to the objector from users of the

trail passing over the beach beyond his boundary fence, I do not consider this to be of such substance to 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

25. 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