



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] 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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File Ref: MCA/East Head to Shoreham by Sea/28 Land between Hillfield Drive, Selsey and Selsey Bill

- 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 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-S040 to EHS-2-S046.
- The objection is made under paragraph 3(3) (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.

File Ref: MCA/East Head to Shoreham by Sea/29 & 30 Land between Hillfield Drive, Selsey and Selsey Bill

- 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.
- Objections to chapter 2 of the CA Report, Bracklesham Bay to Pagham Harbour Estate, have been made by [REDACTED] and [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-2-S040 to EHS-2-S043.
- The objection is made under paragraph 3(3) (b), (c), (d), (e) and (f) 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

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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.

Objections and representations 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 Hillfield Drive, Selsey and Selsey Bill. The objections relate to an area of shingle beach over which the coastal path would pass which is in the ownership of the objectors. 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. Three of those representations relate 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. The Country Land and Business Association made a representation (R23) in relation to EHS-2-S040 to EHS-2-S043. [REDACTED] also made representations (R11 and R15) in addition to their objections; I have included the gist of their representations in the summary of their objections.

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 2019. During this inspection I was accompanied by representatives 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
 - (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 English Coast Path ('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.

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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) (b), (c), (d), (e) and (f) 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 objections runs over part of the shingle beach in the ownership of the objectors and follows the course of public footpath 125 which runs from Hillfield Road along the beach to the access track off Grafton Road at Selsey Bill.

The cases for the objectors

Objection 28

15. The objector contends that the land over which the trail would run is uneven and unconsolidated shingle which is unsuitable for those with reduced mobility. The coastline at this location is prone to erosion and there are frequent warnings of flooding at times of rough weather and high tides. The proposed route borders enclosed private gardens and the adjacent privately-owned beach.
16. The format of the report and tables was not easy to understand and there is no clarity as to when and where roll back would occur as the adjacent gardens are enclosed and are used by the owners for recreation. No

alternative route has been set out to meet future needs should roll-back be necessary.

Objections 29 and 30 and Representations R11 and R15

17. The domestic property extends to the mean high-water line beyond the low fence at the end of the cultivated section of garden. Concerns are expressed that without an alternative path being set in place, that users will be inclined to walk off the line of footpath 125 and higher up the beach along the line of the existing boundary fence. This is likely to re-introduce the problems of disturbance and intrusion which arose from West Sussex County Council's unlawful surfacing of the private beach to provide an alternative route for footpath 125. The unlawful surface laid by the County Council was removed in September 2016; acts of burglary, theft, vandalism and anti-social activities have been eliminated.
18. In the light of previous experience, it is not considered unreasonable for an alternative route to be identified at the outset of this project; an alternative route should footpath 125 become unavailable would reduce stress and uncertainty. The Coastal Defence Authority ('CDA') will only replenish the beach while funding allows and while that is the adopted policy. Should the beach be adversely affected by high tides, it may be many months before the CDA undertakes remedial works. In such circumstances, users of the trail would cross the beach closer to the garden boundary.
19. The proposed landward coastal margin which would extend to the garden boundary will be a source of insecurity and stress to the owners. If the landward coastal margin was set at the boundary fence, then the public may sit against the fence, picnic against it and result in a return of the problems experienced when West Sussex set out an unlawful alternative to footpath 125. These problems caused the garden table to be relocated some 25 metres from the boundary fence when the family had previously enjoyed proximity to the beach.
20. Although it has been suggested that a higher fence would mitigate the impact of the landward coastal margin, increasing the fence height and close boarding it would appear to be contrary to the requirements of Chichester Borough Council with fencing or planting being proposed as part of development along this section of coast should remain as informal as possible.
21. A practical alternative route for the trail to follow when footpath 125 is inaccessible exists along footpath 125 to either footpath 125/1 or 125/2 and then along Seal Road to Byways or Grafton Road and then to the Oval Field. These routes would fulfil the requirement of the Scheme in that they would be 'close to' and provide 'views of' the sea. Footpaths 125/1 and 125/2 are not currently signposted by WSCC but this could be undertaken as part of the signposting of the trail.
22. NE should exercise its discretion in the alignment of the coastal margin to align the landward extend of the coastal margin to between the two public footpath signposts located on the beach. This would remove the private

beach landward of the posts from the coastal margin and reduce the likely recurrence of the problems experienced when WSCC unlawfully constructed an alternative path on the private beach. The footpath marker posts have proved sufficient to guide the public since the unlawful path was removed.

23. NE also have powers to make a direction to exclude access from or restrict access to any part of the coastal margin for land management or environmental reasons. A direction could also be made to restrict access to the coastal margin with dogs or require that dogs are kept on leads. Whilst less satisfactory than removing the beach landward of the signposts, such a direction would balance the needs of the public against those of the landowner.
24. The provision of coastal access to the beach landward of the footpath signposts would adversely affect security and privacy and adversely affect the value of the property; all these matters mean that a fair balance is not struck.

Representation R23

25. Initial discussions with the landowners indicated that the landward boundary of the coastal margin on this section would be the edge of the path; however the CA Report sets out that the coastal margin would be in accordance with Article 3 of the Access to the Countryside (Coastal Margin) (England) Order 2010.
26. However, NE has an ability to align the landward boundary of the coastal margin in order to achieve a fair balance and in such a way as to exclude coastal land from the coastal margin. Footpath 125 which is clearly marked on the ground is a physical feature within the meaning of the legislation. A footpath is deemed as a visible feature for cross compliance purposes and it would be inconsistent for footpaths to be visible for one purpose but invisible for another.
27. The landowners experienced anti-social behaviour and damage to property when the County Council incorrectly positioned the footpath adjacent to the garden boundary fence. The stress thus created has been alleviated by returning the footpath to its correct position. Whilst it is intended that the public should follow footpath 125 when walking the trail, coastal access rights will be created over the beach up to the garden boundary and it is expected that the anti-social behaviour previously experienced will return. The failure to exercise the discretion to align the boundary with a physical feature means that a fair balance is not struck.
28. The provision of an alternative route inland for when the beach route is unavailable would not be costly to implement and would alleviate concerns about the impact on householders.

The response by Natural England

General Comments

29. 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 that people should normally be able to use the trail at all states of the tide (section 4.4.2). In addition, the trail should offer views of the sea, as such views are a key part of many people's enjoyment of the coast (section 4.6.1) and certain specific coastal land types are automatically included in the landward coastal margin (section 4.8.8). Furthermore, most people understand that the coast can be a dangerous environment and will take responsibility for their own safety when visiting the coast (section 4.2.1); guidance on making the trail as easy to use by less able people is found in the publication "By All Reasonable Means", however it is accepted that opportunities will be constrained by practical limitations, such as the rugged nature of the terrain (section 4.3.8).

30. 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 Objection 28

31. NE seek to make the trail as easy to use by those with reduced mobility, but it is accepted that opportunities will be constrained by practical limitations such as the rugged terrain of the land over which the trail passes and the availability of visitor and transport facilities. The section of the trail at issue is approximately 90 metres in length but provides sea views and is the best fit with the statutory criteria for the trail at this point.
32. The proposed route will be available at all states of the tide, except possibly in extreme storm events; Consequently, an optional alternative route ('OAR') is not required at this location. The objection is concerned with a short 90 metre section of beach and walkers will continue to use this route as they do now. No surfacing of the beach is proposed, and users will follow the current 'desire line' aided by marker posts. As the entirety of the shingle beach will become default coastal margin, walkers will have coastal access rights over the whole of the beach irrespective of the position of the trail.
33. The trail at this point follows a clearly defined public right of way and it is considered that the introduction of coastal access rights will have little impact upon the current pattern of use of the beach or upon privacy of the owners of the beach above mean high water.
34. There are no roll back provisions proposed for this section of the trail. This section of the coast is heavily defended with sea walls in place to protect the town of Selsey. Should the trail as proposed be lost to erosion then NE would prepare a variation report in consultation with affected landowners to agree a suitable alternative route. Any new route would not go through the private homes or garden spaces as these are categories of land excepted from coastal access rights.

Comments on Objections 29 & 30 and Representation R11 and R15

35. NE does not consider that the routing of the trail along footpath 125 or the inclusion of the shingle beach up to the objector's fence as coastal margin

will lead to an increase in criminality or criminal behaviour. It is hoped that the presence of responsible trail users on the beach will help deter such activity.

36. An OAR is not required at this location as the trail will be available at all states of the tide, except possibly during extreme storm events. An alternative route is not being made available as there would be no reason for the NE to close the trail on grounds of public safety or the requirements of land management. Direction posts will be erected to guide walkers and although the whole beach will be coastal margin by default, it is expected that walkers will continue to follow footpath 125 as they do now.
37. NE does not have a coastal defence remit so there is no provision within the proposals for the periodic recharging of the beach. The ability of the CDA to recharge the beach is not relevant to the proposal to establish the trail.
38. The shingle beach landward of the footpath marker posts is automatically included in the coastal margin as it is one of the default coastal landforms specified in section 4.8.8 of the Scheme. It is accepted that the legislation allows NE to use its discretion in setting the boundary of the coastal margin. Section 4.8.11 of the Scheme provides that the NE has a discretion to propose that the landward boundary of the coastal margin should coincide with a recognisable physical feature and the discretion can be used when to do so would (a) make the extent of access rights clearer or more cohesive on the ground or (b) secure or enhance enjoyment of the coast.
39. The suggested limiting of the landward coastal margin to a line between the marker posts for footpath 125 would not comply with section 4.8.11 of the Scheme as the coastal margin would be contracted from a clear physical boundary to the landward edge of a footpath that has no physical properties to identify with; this would make the extent of the access right less clear. Limiting the extent of the margin would not have any practical impact on how the public choose to use the beach as they would continue to use it as they do now.
40. The Scheme intends that the discretion available to NE should only be used to provide greater clarity as to the extent of coastal access rights. The trail at this point would follow an established public right of way and it is expected that very little will change in terms of public use of the beach. This part of the coast is very popular, and the trail utilises a well-used public right of way across an open beach that already experiences high levels of public use. It is not considered that there will be a significant impact upon the privacy or security of adjacent properties.
41. NE disagrees with the suggested alternative route via footpaths 125/1 or 125/2 and Seal Road; the proposed route for the trail follows an established public right of way which is accessible at all states of the tide. NE considers there are no grounds for a direction to be made to restrict access to the coastal margin at this location either on land management or nature conservation grounds.

Comments of Representation R23

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42. It is believed that the majority of trail users will behave responsibly and does not consider that the presence of users will lead to an increase in criminal or anti-social behaviour.
 43. An alternative route is unnecessary at this location as the proposed route will be available at all states of the tide, except possibly during extreme storm events. The trail will run over compacted shingle and users will continue to use footpath 125 in the way they do now. There is no surfacing proposed, but signposts will direct walkers; as the entire beach will become coastal margin by default walkers will have rights of access over the beach regardless of the position of the trail.
 44. The shingle beach is automatically included in the landward margin due to it being one of the default coastal landforms; to contract the landward margin in the way suggested would not comply with section 4.8.11 of the Scheme as the boundary would be contracted from a clear physical boundary to the edge of a public right of way which has no physical properties which the trail could be identified with.
 45. The trail would follow a long-established public right of way over an open beach which experiences a high level of public use. It is expected that very little will change in terms of patterns of use as the majority of walkers will continue to use the beach in the same way that they have always done; the inclusion of the beach as coastal margin is unlikely to have a significant impact on how the public choose to use the beach.

Conclusions

46. The objectors draw attention to the problems which they experienced arising from the creation of a surfaced route by WSCC as an alternative to the definitive line of footpath 125 [17, 27]. The objectors are concerned that the inclusion of the beach landward of the posts which mark the alignment of footpath 125 will give rise to similar problems as that part of the beach will be subject to coastal access rights. The objectors suggest that the landward extent of the coastal margin should be in line with the landward edge of footpath 125 [22, 26].
47. With regard to the extent of the landward coastal margin, the Secretary of State may note that the beach landward of the trail at this point is one of the default coastal landforms specified in section 4.8.8 of the Scheme [38] and that although a discretion can be applied to define the extent of the coastal margin to a physical feature, that discretion should be exercised to make the extent of coastal access rights clear to the public.
48. The proposed coastal margin would extend to the fence which marks the physical boundary between the objectors' garden space and the section of beach is in their ownership. The boundary fence provides a physical feature which denotes the boundary between land of a type excepted from coastal access rights and land which is not. The alternative suggested by the objectors has no such physical boundary; all that would be present on the beach to indicate the landward extent of the coastal margin would be the two footpath marker posts indicating the position of footpath 125 [22, 39]. Restricting the landward extent of the coastal margin in the way suggested would not provide clarity to the public as to the landward extent of the

coastal margin, and this is not a situation in which the discretion provided under the Scheme can be exercised.

49. The objectors also raise concerns about the impact the proposals would have on privacy and the security and value of property [24]. It was evident from my site visit that the beach at this point was well frequented by the public and the creation of the trail should not lead to any significant change in the nature of the public use of the beach from that currently experienced. Furthermore, given that the trail will follow an established public right of way which is approximately 10 metres from the boundary fence at the seaward side of the objectors' gardens, I do not consider that any adverse impact upon privacy will be significant. No evidence has been provided from which it can be reasonably concluded that the proposals for coastal access would have an adverse impact upon the value of property.
50. The objectors consider that an alternative route should be provided either as a substitute for that proposed or as an alternative should the trail need to roll back [16, 21, 28]. The Secretary of State may note that the trail will run over the beach at a point above mean high water and except for times of extreme storm events would be available for the public at all states of the tide [32, 36]. It would only be necessary to provide an OAR if the proposed route was unavailable during the normal tide cycle. Similarly, there would be no need to provide an alternative to provide for roll back on a section of the coast which is protected by the sea defences which aim to provide protection to Selsey and its inhabitants. The suggested alternative route via footpath 125/1 or 125/2 and Seal Road would not provide a route which satisfied the requirements of the Scheme in providing views of the sea or being close to the sea; such matters are however satisfied by the proposed route for the trail.

Whether the proposals strike a fair balance

51. Having regard to all the above, the proposal is likely to have some adverse impact upon the property of the objectors, but that impact is unlikely to be any greater than that currently arising from walkers using footpath 125 along the beach. Although the objectors draw attention to the problems experienced during that period when WSCC created an alternative route for footpath 125 which ran adjacent to the garden boundary fence, the trail will follow the definitive line of footpath 125 which is approximately 10 metres from that boundary.
52. The beach is also freely accessed by the public and I do not consider that any impacts of the proposal will be significant or that the proposals would have an adverse effect upon the value of property. I do not consider that the adverse effect on the properties outweighs 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

53. 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) (b), (c), (d), (e) and (f)

of the 1949 Act I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON