



---

# 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] and by [REDACTED]

Regarding Coastal Access Proposals by Natural England

Regarding East Head to Shoreham by Sea

Site visit made on 30 October 2019

---

## Table of Contents

Section	Page number(s)	Paragraph(s)
Case details	1	
Procedural and Preliminary Matters	1 – 2	1 – 5
Main Issues	2 – 3	6 – 12
The Coastal Route	3	13 – 14
The case for the objectors	3 – 4	15 – 25
Representations	4 – 5	26 – 27
The response by Natural England	5 – 7	28 – 46
Conclusions	7 – 9	47 – 54
Recommendation	8 – 9	55

### File Ref: MCA/East Head to Shoreham by Sea/32 Land at Aldwick Bay, Aldwick

- On 27 September 2017, Natural England ('NE') submitted a Coastal Access Report (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 3 of the CA Report, Aldwick Bay to Elmer, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-3-S031.
- The objection is made under paragraph 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.

---

### File Ref: MCA/East Head to Shoreham by Sea/33 Land at Aldwick Bay, Aldwick

- 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 to chapter 3 of the CA Report, Aldwick Bay to Elmer, has been made by [REDACTED]. The land in the CA Report to which the objection relates is route section EHS-3-S020 to EHS-3-S037. [REDACTED] legal interest applies to EHS-3-S025.
- The objection is made under paragraph 3(3) (a), (c), (d), (e) and (rf) 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, 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 at Aldwick Bay being part of the shingle beach above mean high water seaward of the Craigweil Estate. 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. The representations made by [REDACTED] on behalf of the Craigweil and Environs Conservation Area Association (R28) and by Sarah Ward on behalf of Sussex Wildlife Trust (R24) raise issues in relation 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 Wednesday 30 October 2019. During this inspection I was accompanied by 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 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 3 of the CA Report considered in this report has been made under paragraph 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 3 of the CA Report, runs from Aldwick Bay (Grid reference 489553 97573) to Elmer (grid reference 499448 100300) as shown on maps 3a to 3f (points EHS-3-S001 to EHS-3-S103). The trail follows existing walked routes, including public rights of way along most of this length and mainly follows the coastline quite closely and maintains good views of the sea. The proposals include three sections of new path upon the shingle beaches at Aldwick, Middleton on Sea and Elmer.
14. The section of the trail subject to the objections runs over that part of the shingle beach above mean high water in the ownership of the objectors.

### **The case for the objectors**

#### ***Objector 32***

15. The only way to ensure the protection of Aldwick Bay SSSI beach is to exclude the public. The beach should not be developed as a coastal path as it would be eroded at a greater rate than is already occurring due to the number of dog walkers already using the shingle beach. The plans show the coastal path hard up to the southern boundary fence and walls of the property; it is feared that a vast amount of the beach will be destroyed during the construction phase of the path before anyone walks on it.
16. The path should be located below mean high water so that users walk on the sand and not the shingle beach – the coast path would be available at low tide but not at other times.
17. An alternative route inland has not been proposed for the section of the route shown on map 3a, but it is noted that an inland route is proposed on that section at Bognor Regis (map 3b) where the path will run inland on Craigweil Lane and Fish Lane. It is suggested that this diversion should continue along Craigweil Lane to Barrack Lane and then re-join the beach at EHS-3-S016. Aldwick Beach SSSI is noted for its pyritised fossil insects; any path created along the beach will crush and destroy these unique deposits at Aldwick Beach SSSI.

- 
18. An access exclusion has not been proposed at this location; the absence of such an exclusion will result in the gradual or even speedy destruction of Aldwick Beach. The harm caused to the SSSI greatly outweighs the benefit which will accrue to a few people who will choose to walk the coast path. The inland diversion along Barrack Lane should be adopted for the common good and there should be complete exclusion of access to preserve the shingle beach at Aldwick.
  19. The public bodies responsible for coastal protection have spent millions of pounds preventing the erosion of the shingle beach at Aldwick where there are exceptionally high tides and storms which annually devastate one area or another. The intrusion of walkers over the privately-owned beach is not welcomed; routing the coast path next to the garden wall and fences is likely to encourage anti-social or criminal activity. The route of the path should be diverted elsewhere.
  20. The beach is home to rare and unique species of plants and frontagers are warned not to damage or uproot plants found on the beach; creating a path along the beach will do just that.

### **Objector 33**

21. It is contended that as the objector's property is a grade II listed property the proposed development would be within the curtilage of the property and listed building consent would be required from the planning authority before the development can be carried out. It is further contended that as the beach above mean high water lies within the Craigweil House Conservation Area, the appropriate consent will be required; it is contended that the development will harm the conservation area.
22. The beach is designated as an Area of Special Character by Arun District Council; it is contended that the proposed path will not make a positive contribution to the area but will cause damage to it.
23. The shingle beach forms part of the Bognor Reef SSSI and the vegetated shingle for which the site has been designated must be protected; the coastal path should be diverted from EHS-3-S016 along Barrack Lane to re-join the beach at EHS-3-S041. The Aldwick Bay Company are not interested in the preservation of the shingle beach; they are only concerned with avoiding having people walking along The Fairway. NE should exercise its discretion and divert the path inland.
24. The vegetated shingle is home to Yellow-horned Poppy (*Glucium flavum*) the population of which would be decimated by the construction of a footpath even before the first users arrive. The houses on the seaward side of The Drive command a premium in price over those houses on the landward side; placing the coastal path close to the garden wall will disrupt the privacy of beachfront owners and interrupt their enjoyment of the beach which they own. Planning consent will be required before any development can take place on privately owned land.
25. Creating the coast path along the shingle beach will exacerbate the problems already experienced with anti-social and criminal elements.

### **Representation R24**

- 
26. Where the trail is to be routed in areas of vegetated shingle appropriate signage should be erected in key locations to advise path users of the importance of the site. It is suggested that the assessment of Bognor Reef SSSI is outdated and the habitats should be reassessed.

### ***Representation R28***

27. Concerns were expressed over the trail running over private land and the impact upon the privacy of those residents who occupied beachfront properties. Concerns were also expressed as to the damage that would be caused to the special features of the Bognor Reef SSSI by the laying of a pathway over the shingle beach and the intrusive impact that proposed signage would have on the area.

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

#### ***General Comments***

28. 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 normally 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 that the route will be aligned over a beach if that best meets the Scheme criteria (section 6.4.3). Beaches will normally qualify as spreading room whether landward or seaward of the trail unless they are excepted land or subject to long-term exclusions (section 7.11.5); where there is a clear walked line along the coast that route will be adopted so long as it is safe and practicable for the public to use it and it can be used at all times (section 4.7.1)
29. 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 32***

30. No development is proposed on the beach; the trail will follow the existing walked route over the compacted shingle. No surfacing works or infrastructure works are proposed on any part of the beach proposed to be crossed by the trail. As regards the impact of the proposals upon sea defences, neither the Environment Agency nor local authorities raised any concern that the trail would adversely affect the sea defences at Aldwick Bay.
31. NE submits that the trail would follow a well-worn path along the top of the compacted shingle at the top of the beach and the route chosen fits with the statutory criteria of the path being close to the sea, offers sea views and would be available at all states of the tide. It is evident that the public already uses the beach including the route proposed for the trail and those with beachfront properties will be accustomed to beach users passing close to their boundary walls and fences.

- 
32. It is not considered that any existing problems with anti-social behaviour or criminality will be exacerbated by the creation of coastal access rights. The garden area of the objector's property is clearly marked by walls and fences and such land is excepted from coastal access rights.
  33. Although the objectors propose a diversion inland, the Scheme designates shingle beaches as spreading room such that even if the trail was to be routed inland, the beach would still be subject to coastal access rights. It is considered that most walkers would 'vote with their feet' and continue to walk along the existing desire line at the top of the beach.
  34. Each section of the coast path is unique and the options for alignment at each location are carefully considered. There are no constraints on accessibility at this location from high tides, development or environmental reasons. The route was determined following discussions with the Aldwick Bay Company and other landowners with the chosen route striking the best balance between competing interests.
  35. The chosen route avoids the most sensitive and well-established areas of vegetated shingle and the NE SSSI officer responsible has advised that the proposal would not have a detrimental effect upon the features for which the SSSI was notified. The concerns raised about the impact the trail would have upon the SSSI were considered as part of the Access and Sensitive Features Appraisal and the existing route being used by the public and residents was assessed as not damaging the special interest.
  36. Other possible, more seaward alignments were likely to impact large areas of vegetated shingle that may be sensitive to trampling or would require engineering works to provide structures, such as a boardwalk, to be viable. Such works would be expensive to construct and maintain and given the likely adverse impact upon the special features of the beach, are unlikely to receive the necessary consents.
  37. There is no evidence to suggest that a direction to exclude access was necessary for the protection of the special features of the beach; the public currently enjoy informal access over the beach and informal management of that access is likely to be the most appropriate way of protecting the features of special interest by encouraging use of the bottom of the beach at low tide and by following the worn desire line at the top of the beach at high tide.

### ***Comments on objection 33***

38. No development is proposed on the beach. At all times during the extensive consultation with residents it has been stressed that the trail will follow the existing walked route along the compacted shingle at the top of the beach; no infrastructure or surfacing works are being proposed. Arun District Council have raised no concerns in regard of the proposals. There are no proposals for any development on the objector's property. Necessary consents will be sought for the signage proposed at either end of the beach.
39. The entire SSSI was assessed as part of the Access and Sensitive Features Appraisal which was published alongside the proposals for the coastal path. The proposed route is currently in use by both the public and residents. The



---

Appraisal found that the coast path would not have an adverse impact on the features for which the SSSI was notified including the vegetated shingle which the objectors are concerned about.

40. The preference of the Aldwick Bay Company was that the path should run along the beach rather than through the private estate. The company represents the 400 or so properties that comprise the Estate and raised no objections to the proposals. The proposed alignment follows a worn route over the consolidated shingle at the top of the beach which avoids the vegetation growing on the beach; no diversion inland is necessary as a beach alignment can be made without having a detrimental impact upon the vegetated shingle.
41. Houses and gardens are excepted land under the scheme and no access rights will be created which would permit the public to roam through the garden space of residential properties. The unenclosed shingle beach however is not excepted land and would become coastal margin even if the path was routed inland. Existing access patterns over the beach are unlikely to change and although residents may consider the trail should be marked as running 10 – 15 metres from property boundaries, it is considered unlikely that this would have any impact upon current patterns of use of the landward edge of the beach at high tide or at the water's edge at low tide.

#### ***Comments on Representation R24***

42. Interpretation panels are proposed for the vegetated shingle areas of Bognor Reef SSSI. Land Management Advisors carry out regular assessments of the SSSI and one such assessment was carried out in July 2017. The proposed route has been determined following consultation with many parties including the NE officers responsible for the site, utilising their experience and knowledge of the site.

#### ***Comments on Representation R28***

43. No development is proposed on the beach. At all times during the extensive consultation with residents it has been stressed that the trail will follow the existing walked route along the compacted shingle at the top of the beach; no infrastructure or surfacing works are being proposed.
44. The trail will follow the currently worn path at the top of the beach; this route is the best fit with the statutory criteria of the coast path. The public is already using the beach including the proposed line of the trail and the proposal should not create any issues as regards privacy as residents will be accustomed to the public passing their boundary walls and fences.
45. The Scheme designates shingle beaches as spreading room such that even if the trail was to be routed inland, the beach would still be subject to coastal access rights. Even if the trail were routed inland, the public would be legally entitled to access the 'spreading room' at the top of the beach along the existing desire line.
46. The concerns raised about the impact the trail would have upon the SSSI were considered as part of the Access and Sensitive Features Appraisal and the existing route being used by the public and residents was assessed as not damaging to the special interest. There is no evidence to suggest that a



---

direction to exclude access was necessary for the protection of the special features of the beach.

## Conclusions

47. I saw from my site visit that there was a clear worn path over the compacted shingle at the top of the beach which is likely to have been created by the public walking over it. It was possible to follow this worn route along the beach and avoid those areas of vegetation which give rise to the beach's designation. The trail will follow the existing desire line which the public currently have access to and would not appear to pose any direct threat to the matters of special interest.
48. There are no proposed construction works associated with the proposal. Where the consent of the relevant authorities will be required (such as for the erection of informative signage), it will fall to NE to obtain those consents.
49. NE has considered the alternative route suggested by the objectors which would leave the trail at EHS-3-S016 and travel north-west then south-east along Barrack Lane and Craigweil Lane. 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 informal desire line already used by the public, is reasonably close to the sea and offers views of the sea and would be available at all states of the tide. The proposed route therefore satisfies the Scheme criteria set out in sections 4.4, 4.5 and 4.6.
50. The alternative route proposed by the objectors [17, 23] would not satisfy these criteria as it is not close to the sea and does not offer views of the sea. The proposed alternative would not, in any case, achieve the outcome desired by the objectors as the beach would remain as coastal margin over which the public could exercise coastal access rights [41]. Given that the existing desire line used by the public does not appear to have any detrimental impact upon the features of special interest [35, 39], there are no grounds for a direction to be given for the exclusion of the public from that coastal margin. I consider that if the trail were to be routed as the objectors propose, then the public would indeed 'vote with their feet' [33] and continue to access the beach along the existing desire line route.
51. The objectors also contend that the designation of the trail at the top of the beach adjacent to their boundary walls and fences would exacerbate incidents of anti-social and criminal activity [19, 25]. It is regrettable if such incidents have taken place in the past, but it is unlikely that the designation of the existing route already in use by the public as the trail will have a significant impact on the number or frequency of such incidents as those intent on such activity are not currently prevented from accessing the beach.
52. The route over which the trail will run is currently well-used by the public as part of a walk along the beach. The owners of beachfront property are therefore likely to be aware that members of the public will be passing near the garden boundaries. There may be an increase in the numbers passing over the beach as current levels of use may be augmented by those

---

following the trail, however, in view of the existing level of use of the beach, I do not consider that any adverse effect on privacy will be significant.

### **Whether the proposals strike a fair balance**

53. 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 the existing worn path along the beach. Although the objectors draw attention to the trail being located against their boundary walls and fences, given that the trail will follow the existing path which already runs alongside those features, I do not consider that any impacts of the proposal will be significant.
54. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations [8] and satisfies the Scheme criteria. I do not consider that the minor adverse effects that the trail would have upon the occupiers of the beachfront properties 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**

55. 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