



Report to the Secretary of State for Environment, Food and Rural Affairs

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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 Proposals

Regarding East Head to Shoreham by Sea

Site visit made on 30 October 2019

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

- 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 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-S005 to EHS-3-S017. [REDACTED] property is landward of EHS-3-S007.
- 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.

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 recommendation.

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 Aldwick Bay Estate. 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. The representations made by [REDACTED] on behalf of the Sussex Wildlife Trust (R24) and by [REDACTED] on behalf of the Craigweil and Environs Conservation Area Association (R28) raises 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 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 3 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

13. The trail, subject to Chapter 3 of the CA Report, runs from Ardwick 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 objection (EHS-3-S005 to EHS-3-S017) runs over that part of the shingle beach at Ardwick Bay above mean high water.

The case for the objector

15. NE are encouraging walkers to take a route along the boundary walls and fences of seafront properties which will impinge upon the privacy of the owners of those properties. The reasons given for the route being located in this position is said to be because there are existing worn routes over the shingle already in place and that NE wishes to deter walkers from damaging those parts of the shingle which are vegetated.
16. It is contended that the 'walked lines' in the shingle are only used by a limited number of residents for short excursions with their dogs and that such a walk rarely exceeds 200 metres. The route chosen by NE only offers glimpses of the sea above the rising beach crest; users of the coastal path who wish to be close to the sea will logically choose to walk this stretch of coast at low tide and walk on the compacted sand/shingle exposed by the sea at low tide.
17. It is contended that at other states of the tide walkers will chose to walk on the crest of the shingle despite any signage which requests that users avoid the vegetated shingle. The plants in the shingle are more robust than many people give them credit for being harvested by some as free vegetables.
18. The depiction of the path alongside property boundaries is unnecessary, irritates residents and has the potential to impact property prices as the coast path would be shown in any land searches.
19. It is suggested that the path should be shown following the low mean tide margin with explanatory notes to say that at other states of the tide walkers should follow the beach crest. Alternatively, the path could be shown as running midway between the house boundaries and the beach crest. A further possible alternative would be to route the path inland along public roads to link up with Aldwick Street and avoid this section of beach altogether; such a diversion would solve concerns about damage to the protected vegetation of the beach.

Representation R24

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20. 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

21. 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

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 are the principles of the Scheme regarding the convenience of the trail (section 4.3) in that the proposed route would be close to the sea (section 4.5) and offer sea views (section 4.6.1). In addition, users should be able to follow the trail during all states of the tide (section 4.4.2). The route may be aligned on a beach if it was considered that this would best meet the criteria of the Scheme (section 6.4.3).
23. 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 beaches and spits will normally qualify as spreading room whether seaward or landward of the trail unless they are excepted land or there are local long-term exclusions. Where there is a clear walked line along the coast, that line will be adopted as the line of the trail if it is safe and practicable to do so.
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 objection 34

25. The shingle beach at Aldwick Bay between EHS-3-S005 and EHS-3-S017 is owned by the Aldwick Bay Company Limited ('the Company') except for sections EHS-3-S009 & EHS-3-S010 which are in other private ownership. No objection to the proposals were received from any of these parties.
26. The proposed route follows an existing worn trail along the compacted shingle at the top of the beach. The beach is in an urban area which is very well accessed by locals and visitors. Given the extensive current use of the beach, it is considered that beach frontagers will be accustomed to beach users passing close to their properties and that the trail will not add significantly to any privacy or security issues which may already exist.

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27. Section 4.8.8 of the Scheme explains that beaches are included automatically as coastal margin where they fall landward of the trail and section 7.12.6 provides that shingle beaches would qualify as spreading room unless they are excepted land. It is considered that if the trail were diverted inland as the objector suggests, those currently using the beach would continue to do so, and those seeking to follow the trail would continue over the beach following the existing desire line routes already present.
28. The Company were very clear that it did not want the trail routing over the roads leading through the private housing estate. Although the Company had some reservations about routing the trail along the beach, it understood that in practice, walkers would choose to walk where they currently do. It has been agreed that advisory signage would be erected at either end of the beach informing users that the easiest route would be at the bottom of the beach at low tide; however a low tide alignment was not possible as it would not be available at all states of the tide. A beach crest route as suggested by the objector was not considered as the crest is where most of the vegetated shingle is to be found. The Company has not objected to the proposal.

Comments on R24

29. 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 R28

30. 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.
31. 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.
32. 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.
33. 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

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34. NE has given consideration to the alternative routes suggested by the objector [19]. 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 a number of 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.
35. The alternative low tide route proposed by the objector would not satisfy these criteria as it would not be available other than at low tide. The beach crest route suggested is likely to harm the features of special interest as it is on the beach crest where there is the greatest concentration of vegetated shingle. An inland route would not satisfy the criteria as it would not provide views of the sea or be close to the sea.
36. The proposed inland alternative would not, in any case, achieve the outcome desired by the objector as the beach would remain as spreading room over which the public could exercise coastal access rights. I consider that if the trail were to be routed as the objector proposes, it is highly likely that the public would continue to access the beach along the existing desire line which the proposed route would follow. It is to be noted that none of the owners of the section of the beach to which this objection refers have objected to the proposed route of the trail.
37. The objector suggests further that the trail should follow the beach crest and that the plants within the vegetated shingle are resilient to the current level of access [17]. However, most of the vegetated shingle is to be found on the beach crest and aligning the trail along the crest is likely to give rise to harm to the special interest. In contrast, the desire line currently in use by the public does not appear to have any significant detrimental impact upon the vegetated shingle.
38. The objector also contends that the designation of the trail at the top of the beach adjacent to the boundary wall would be a source of irritation to residents and may affect the value of property. There is no evidence before me to suggest that the designation of the trail would have any adverse effect on the value of adjacent property.
39. 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 those properties which abut the beach are therefore likely to be aware that members of the public will be passing in close proximity to 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

40. Having regard to all the above, the proposal is likely to have some adverse impact upon the objector, 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 objector draws attention to the trail being located near

to his boundary, given that the trail will follow the existing path, I do not consider that any impacts of the proposal will be significant.

41. 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 properties abutting the beach 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) 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