



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] on behalf of the Middleton on Sea Association

Regarding Coastal Access Proposals 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/36 Old Point, Elmer

- 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 14 November 2017 to Chapter 3 of the Report, Aldwick Bay to Elmer, has been made by [REDACTED] on behalf of the Middleton on Sea Association. The land in this Report to which the objection relates is route section EHS-3-S077 to EHS-3-S078. The Middleton on Sea Association is the freehold owner of the road at Old Point together with its verges and the twittens leading to the coast.
- The objection is made under paragraphs 3(3)(a), (c) and (d) 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 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 Aldwick Bay and Elmer (Chapter 3 of the CA Report) and specifically to land between Hannah's Groyne and Elmer (map 3e) EHS-3-

S077 and EHS-3-S078. The objection relates to contiguous areas of affected land which forms part of a privately maintained road known as Old Point and a twitten at the eastern end of Old Point which leads to the beach above mean high water. 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. Of these representations, the one made on behalf of the Country Land and Business Association (R23) raised issues which relate to the section of the English Coast Path 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. I undertook an inspection of the land subject to the objection on Wednesday 30 October 2019 and was accompanied by representatives of the objector and 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.
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 objections to Chapter 3 of the CA Report have been made under paragraphs 3 (3) (a), (c) and (d) of Schedule 1A to the 1949 Act.

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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 a point on the shingle beach at Aldwick Bay (grid reference 489553 97573) to Elmer (grid reference 499448 100300) as shown on maps 3a to 3f (points EHS-3-SO01 to EHS-3-S103). The trail follows existing walked routes, including public rights of way along most of its length and in the main follows the coastline quite closely and maintains good views of the sea. The trail includes three sections of new path upon the shingle beach at Aldwick, Middleton on Sea and at Elmer. At some locations it is proposed to route the trail inland to take the trail past sea defence structures between Aldwick and Bognor Regis (sections EHS-3-S042 to EHS-3-S052) and at Middleton on Sea (sections EHS-3-S075 to EHS-3-S078) which are currently inaccessible at high tide.
14. The section of the trail subject to the objection is the section of the proposed trail at Middleton on Sea where it is proposed to route the trail inland to avoid the existing sea defences. The route proposed would route the trail over Old Point, a privately owned and maintained road which serves to provide access to residential properties.

The case for the objector

15. The proposal to route the trail along Old Point would place the houses on the seaward side of the trail in the coastal margin. It is recognised that the houses and gardens will be excepted land, but residents have concerns regarding the effect of the trail on the value of property and insurance.
16. The Middleton on Sea association is the freehold owner of the road and verges at Old Point and the twittens leading to the beach; objection is made to the twittens and verges being included in the coastal margin as these would not be excepted land as it does not meet the criteria for exception. The twittens and verges are privately maintained with a duty of care being owed to users of the land and adjacent property owners.
17. There are safety and security concerns regarding the wide grass twitten between 10 and 12 Old Point; to secure property from occasional vandalism and theft the police recommended that this twitten be gated; this twitten should not be included in the coastal margin.
18. The table which accompanies map 3e contains errors: Old Point is not a public highway nor is the east twitten a public footpath (FP). There are notices at either end of the twitten stating that the twitten is not a public right of way.
19. It is submitted that Old Point should remain as an alternative route for use at times of high tides and not be part of the designated trail. Historically the public have chosen to walk along the beach and have walked along Old Point when conditions on the beach are unsuitable, such as at high tide. Signage could inform users of the most appropriate route to use at any

given state of the tide. That the status quo would remain appears to have been recognised by NE in emails from them to the Association.

20. Clear signage should be erected at The Greensward giving walkers a choice of using the beach when conditions are favourable or taking an alternative route along Old Point when they are not; similar signage would be required at the seaward end of the Old Point twitten to advise walkers approaching from Elmer.
21. It is considered that the decision to bypass Middleton Point at all states of the tide and the refusal to designate Old Point as an alternative route does not strike a fair balance.

Representation R23

22. The Report states that Old Point is a public highway and existing walked route. This is not the case as Old Point is a private road and the twittens are not public rights of way. By designating Old Point as the trail, the twittens will become coastal margin and increase the safety and security concerns of the owners.
23. It is noted that Old Point is proposed because a path along the beach is subject to tidal inundation. The duration of the period when the beach would be unavailable for walkers has been underestimated by NE. The correct balance would be struck if the trail was designated along the beach with an alternative route along Old Point during high tide.

The response by Natural England

General Comments

24. 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 safety and convenience of those using the route (section 4.2) and that users should be able to follow the trail during all states of the tide (section 4.4.2). For the route to be considered convenient, it should be reasonably direct and pleasant to walk along (section 4.3.1) and that interruptions to the route are kept to a minimum (section 4.1.1).
25. In addition, the Scheme sets out that 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 any land subject to coastal access rights carries the lowest level of occupier's liability under English law which applies to both natural and man-made features (section 4.2.2).
26. 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 36

27. The homes and gardens on land seaward of the coastal trail which would fall within the coastal margin would not be subject to coastal access rights

and are therefore unaffected by the proposals. NE is unaware of any case where the value of a house has decreased, or insurance premiums increased as a result of coastal access proposals. In terms of public liability over the twittens, areas of land subject to coastal access rights benefit from a lower level of occupiers' liability than that normally owed to a trespasser.

28. The decision to route the trail along Old Point and not along the beach is based on the beach route not being available during high tide and that at low tide there are a number of groynes to be negotiated by means of steps which are often slippery underfoot and which are in poor condition. The shingle beach at Middleton is quite dynamic and is loose underfoot making it difficult to walk on. The proposed route would be available at all states of the tide and would provide a firm surface year-round; however, the public would be at liberty to choose whether to walk along the less accessible beach route or the more convenient route along Old Point. The objector appears to acknowledge that informal use of Old Point and the twitten already occurs during high tide and that such use is tolerated by residents.
29. NE expects that most trail users will act in a responsible way, however the concerns of the objector regarding incidents of vandalism are noted. The police report submitted by the objector notes that many of these incidents have occurred when the tide has cut off access from the beach. An alternative high tide route, as proposed, would still result in users making their way along the twitten and over Old Point. It is hoped that a permanent route through the twittens and the presence of responsible trail users will alleviate such problems. NE notes that although the police recommended the erection of a gate at the twitten between no 10 and no 12 in 2001, the twitten remains open.
30. It is accepted that Old Point and the twitten was mapped incorrectly and incorrectly described in the table found in chapter 3 and NE apologises for that error. The mapping data has been changed, but it has not been possible to correct the information found in the proposals as submitted. Old Point and the twitten are not excepted land, and although initially mapped incorrectly, that error does not affect the proposal to route the trail along EHS-3-S077 or EHS-3-S078.
31. Land on the seaward side of the trail automatically becomes coastal margin under the Scheme. It is not possible to limit the extent of the coastal margin, but land covered by buildings or the curtilage of such land and land used as a garden is excepted from coastal access rights.
32. NE does not agree with the modification proposed by the objector; the route along the beach would be unavailable at all states of the tide, whereas the proposed route would be so available and would keep interruptions to the route along the coast to the minimum.

Comments on representation R23

33. It is acknowledged that Old Point and the twittens were mapped incorrectly and an apology has been given to the affected landowner. However, the road and twittens are not excepted land categories. The beach is

unavailable at high tide and the groyne at the beach are difficult to negotiate. In addition, the shingle is very dynamic at this location.

34. Previous incidents of anti-social behaviour are noted, and the concerns of residents are acknowledged. Such incidents appear to have occurred during high tide when the beach is unavailable; the suggested modification may not have any impact upon such activities. It is hoped that the presence of responsible trail users may go so far to alleviate such issues.

Conclusions

35. NE has given consideration to the alternative proposal put forward [19, 21, 23] but does not consider that the route proposed for the trail should be amended to run along the beach below the sea defences at Middleton with an optional alternative route ('OAR') along Old Point being described.
36. From the objector's standpoint, the inclusion of an OAR would mean that the twittens and Old Point would not become coastal margin and would not be subject to coastal access rights. It appears to be accepted by the objector that although Old Point is a private road and the eastern twitten does not have any recorded public status, the road and the twitten are accessed by the public when the tide is high and when it is not possible for access to be made along the beach. This is what is referred to as the 'status quo' [19]. The objector also has concerns that the broad twitten between nos. 10 and 12 Old Point would be subject to coastal access rights in addition to the eastern twitten over which the trail would run.
37. From a physical inspection undertaken on site, the broad twitten does not appear to form part of the curtilage or garden areas of the houses either side of it and would not be excepted land excluded from the automatic coastal margin seaward of the trail. Given the provisions of the scheme, it is not possible for NE to limit the coastal margin which would automatically include the road verges and the twittens leading to the beach.
38. In discharging the coastal access duty regard should be given to the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum and to the route adhering to the coast and providing views of the sea [8]. The Scheme also states that the public should expect continuity at all states of the tide [24]. Although the proposed route would not provide sea views due to the presence of houses on the seaward side of Old Point, the proposed route along Old Point would be available at all states of the tide. In my view positioning the trail along the beach below mean high-water with Old Point acting as an alternative route as suggested by the objector will not meet the objectives of the coastal access duty in that access along the trail will be interrupted by the tide.
39. The depiction of the trail as running over Old Point and the eastern twitten is unlikely to alter the pattern of use which is currently experienced at Middleton. The route along the beach at low tide would remain available for those who considered that route to be negotiable as the default coastal margin and spreading room would include the beach. The proposed route along Old Point and the eastern twitten would become the route of the trail however, it is likely that future use would be similar to that which currently

occurs, in that Old Point and the twittens would be used at times of high tide.

Whether the proposals strike a fair balance

40. Having regard to all the above, the proposed route will have an adverse effect upon the road and twittens at Old Point as they will be subject to coastal access rights. However, given that Old Point and the twittens are currently accessed by the public at times of high tide to negotiate a journey along the coast, I do not consider that any impacts of the proposal will be significant or that patterns of use will alter significantly from those currently experienced. Although the issue is finely balanced, I do not consider that the adverse effect on the objector's land interests 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

41. 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 (d) 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