



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], [REDACTED], [REDACTED], [REDACTED] and
[REDACTED]

Regarding Coastal Access Proposal by Natural England

Regarding East Head to Shoreham by Sea

Site visit made on 30 October 2019

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Objection Ref: MCA/East Head to Shoreham by Sea/37 Manor Way, Elmer

- 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 dated 16 November 2017 to Chapter 3 of the Report, Aldwick Bay to Elmer, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-3-S094FW.
- The objection is made under paragraphs 3(3) (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.

Objection Ref: MCA/East Head to Shoreham by Sea/38

- 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 dated 16 November 2017 to Chapter 3 of the Report, Aldwick Bay to Elmer, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-3-S101.
- The objection is made under paragraphs 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.

Objection Ref: MCA/East Head to Shoreham by Sea/39

- 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 dated 16 November 2017 to Chapter 3 of the Report, Aldwick Bay to Elmer, has been made by [REDACTED] on behalf of Elmer Sands Limited. The land in this Report to which the objection relates is route section EHS-3-S096.

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- The objection is made under paragraphs 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 together with the proposed modification accepted by Natural England do not fail to strike a fair balance.

Objection Ref: MCA/East Head to Shoreham by Sea/40

- 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 dated 8 November 2017 to Chapter 3 of the Report, Aldwick Bay to Elmer, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-3-S095 to EHS-3-S102.
- The objection is made under paragraphs 3(3) (b), (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.

Objection Ref: MCA/East Head to Shoreham by Sea/41

- 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 dated 17 November 2017 to Chapter 3 of the Report, Aldwick Bay to Elmer, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-3-S102.
- The objection is made under paragraphs 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 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 objections considered in this report relate to land between Aldwick Bay and Elmer (Chapter 3 of the CA Report) and specifically to land between Elmer and Poole Place (map 3f EHS-3-S089FP to EHS-3-S103). The objections relate to areas of affected land in the

vicinity of Manor Way and Sea Way, Elmer and it is expedient for these objections to be considered in a single report. 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. A representation was made by [REDACTED] (R16) who also made an objection to the proposals (OBJ37); I have included the gist of this representation in the summary of the objection.

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 objectors 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 considered below have been made under paragraphs 3 (3) (a), (b), (c) and (e) 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 interests 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 objections is the section of the proposed trail at Elmer Sands where it is proposed to route the trail over existing roadways and footways and along the sea defence works currently being enhanced by the Environment Agency.

The cases for the objectors

Objection 37

15. The proposed route through Elmer is not one which walkers will follow; it is contended that walkers will follow a route along the beach which may affect private rights of access to property. The objector also raises concerns about increased foot traffic giving rise to an encroachment on privacy and the impact foot traffic will have on the private residential road that is Manor Way.

Objection 38

16. The objector submits that he is the freehold owner of EHS-3-S101 over which NE proposes to route the trail. The objector submits that there is no public right of way on the top of the sea wall whereas there is an existing public right of way which is well-used, and which is located approximately 15 metres north of the high point of the shingle bank.
17. Concerns are expressed about the condition of the shingle bank which requires continual maintenance by the Environment Agency to prevent flooding of the properties in Elmer behind the sea wall. The routing of the trail along the top of the sea wall may lead to the Environment Agency ceasing to undertake this work. It is not considered that the top of the sea wall is a feasible option for the coast path due to its dangerous nature during and after extreme weather.
18. Concerns are also expressed regarding privacy. The objector's house is low-lying in comparison to the top of the sea wall and there is no screening at the top of the embankment to prevent users of the trail having a view of

the rear of the house and its garden; there would be no such issues if the trail followed the existing public footpath along the landward foot of the sea bank as the footpath is separated from the house and garden by a solid block wall. Although NE have 'sea views' as an objective of the trail, these are not an absolute requirement of the legislation.

19. It is submitted that the trail should follow the course of the public footpath at the landward foot of the sea wall as this would strike a fair balance between the needs of the public and the landowner; the route could be used at all states of the tide and there would be no privacy issue.

Objection 39

20. Attention is drawn to the minor error in the description of the proposed route in the maps and accompanying table as EHS-3-S091 to EHS-3-S094 is stated to be a public footway. These sections cross the privately maintained Manor Way where there is no footway at the side of the road; a public footpath (footpath 829) runs along Manor Way.
21. The proposal at EHS-3-S095 shows the trail running past a private garden up a slope through an area of private land which contains memorial bench seats donated by previous residents of Elmer Sands and which are available for the benefit of less able current residents to sit and view the sea and coast. The proposed route then turns east over an area of rock and shingle which is inaccurately described as 'concrete'; this is only partially true.
22. It is submitted that a minor adjustment of the alignment could be made at EHS-3-S095 to take the path diagonally up the slope on an existing concrete path and which will enable trail users to bypass the area which contains the memorial benches. This route would deposit trail users at the same destination, but which would allow the private seating area to be maintained for the use of residents. The seating area is regarded as being part of the garden land of the houses abutting albeit with a tarmac surface and seating being provided.

Objection 40

23. The objector raises concerns about the proposed route (EHS-3-S091FW to EHS-3-S095) running along Manor Way and contends that the natural route which walkers would take is along the beach and not through the housing estate. The greensward and shingle are in need of replacement by the Environment Agency and the use of a private roadway with its grass verge soakaways and pathways does not make sense and may increase the maintenance costs which residents have to bear.
24. The private ramp to the members sundeck area should not form part of the coastal path. The replenishment of the shingle beach has not been undertaken by the Environment Agency as was expected following the installation of the rock islands in the 1980s.

Objection 41

25. Concerns are raised regarding the invasion of privacy due to the elevated position of the trail on top of the sea wall; increased pedestrian traffic

along the sea wall is likely to bring an increase in intrusion. The trail would run over the sea wall which is subject to periodic erosion and the Environment Agency is not obliged to maintain the bank. NE have failed to assess public safety in all weathers.

26. The existing public footpath at the landward foot of the sea bank is approximately 15 metres from the top of the bank and is available for use at all times of the day and in all weathers; use of the footpath for the trail would not raise any privacy issues. Although the footpath has no sea views, such views are not an absolute requirement of the 2009 Act. The proposal using the sea wall does not strike a fair balance.

The response by Natural England

General Comments

27. NE maintains 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 that the trail should normally be close to the sea (section 4.5) and offer views of the sea (section 4.6.1) and that people should be able to use the trail at all states of the tide (section 4.4.2) and where there is an existing walked line along the coast that route should be adopted as the trail so long as it is safe and practicable to do so. Beaches and spits will normally qualify as spreading room whether landward or seaward of the trail unless they are excepted land or are subject to local exclusions.
28. In addition, where there is a policy of managed realignment of the coast or where defences are not actively maintained, careful consideration is given to determining the best line for the trail (section 4.10.20); the trail may be aligned on a beach if such a route is considered to best meet the criteria in part B of the Scheme (section 6.4.3)
29. Furthermore, 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).
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 37

31. The route has not been aligned on the beach between EHS-3-S089 and EHS-3-S095 as it was not considered that such a route would best meet the criteria of part B of the Scheme. In this case the beach route is not passable during high tides and the route therefore diverts inland along Manor Way and Sea Way before reaching the sea wall. The beach is, however, very popular at low tide and is well frequented by both visitors and locals alike with several access points available from Manor Way. It is

considered that the proposals would not give rise to any issues which that are not already occurring or have been experienced previously.

32. NE considers that users of the coast path are likely to follow the inland route at this point as it would provide a much firmer route underfoot and is of equal length to the beach route. The proposed route would also be available irrespective of the condition of the tide.
33. Although the legislation provides for land seaward of the trail to become coastal margin and spreading room for users of the trail, ownership of the land and its management remains with the freeholder.

Comments on objection 38

34. NE maintains that regarding flood defence the routing of the trail along the sea wall will have no bearing on the Environment Agency's commitment to 'holding the line' at this location. Extensive works are being undertaken to renew and improve the sea defences at Elmer and the trail will follow the top of the renewed sea defence. Neither the Environment Agency nor West Sussex County Council raised any concerns about the trail running along the top of the sea bank. Users of the trail will understand that the coast can be a dangerous environment and that they should take responsibility for their own safety.
35. The proposed route follows the existing worn path on top of the existing sea wall adjacent to the beach and satisfies the criteria that the trail should be close to the sea and offer sea views. It is considered that, given the popularity of the beach at Elmer, those with properties adjacent to the beach and sea wall will be accustomed to beach users being close to their boundaries. There is a well-worn path along the top of the sea wall and the trail at this point would be over 50 metres from the houses in question.
36. It is not proposed to use the footpath on the landward foot of the sea wall for the trail as it is not a good fit with the Scheme criteria; the footpath does not provide sea views, is no more convenient or practical for users and would create a larger area of coastal margin. If the trail followed the public footpath then all the land south of the footpath including the open and unfenced grassy fields to the south of the footpath would become coastal margin and subject to coastal access rights. Whereas these fields may be considered by the owners as garden land, they do not appear to be part of the curtilage of the properties or maintained as garden land. Routing the trail along the top of the sea wall prevents any future uncertainty over rights of access to these areas.

Comments on objection 39

37. The route along Manor Way was described as a public footway as this was considered the most appropriate description of the physical characteristics of the public footpath at this point. It is agreed that only part of EHS-3-S095 is concrete, but it forms the predominant surface type at this location.
38. It is not considered that the seating area or the access to that area forms part of a private garden as it is unenclosed with an unenclosed path leading to it. However, it is accepted that the minor re-alignment

suggested by the objector provides as direct a route to the top of the sea wall as that which was originally proposed and that users would still be able to access areas of land included as coastal margin. The minor realignment proposed¹ satisfies the key principles of the Scheme and NE will make the necessary changes to EHS-3-S095 and EHS-3-S096 on the alignment database.

Comments on objection 40

39. NE maintains that the proposed route follows the public highway and public footpath through the Elmer Sands Estate. This route, together with the existing route along the sea wall, is very popular with visitors to the area and with residents. The proposed route is one which can be used during all states of the tide whereas the suggested route along the beach would be unavailable at high tide. The beach at this location is comprised of mobile shingle which is difficult to walk on and there are several pinch points where the beach narrows towards those properties adjacent to the beach and which are impassable at high tide.
40. NE is not responsible for sea defence works and has no remit to undertake such works.

Comments on objection 41

41. The proposed route runs along the sea wall and the shingle embankment adjacent to the beach. Both features are extensively used by visitors and local people which is evidenced by the worn line at the top of the sea defence embankment. NE consider that those with properties adjacent to the beach and sea wall will be accustomed to the current public access in the area and it is to be noted that the properties at issue are over 50 metres from the sea wall. In such circumstances, it is considered unlikely that any new privacy issues will arise from the use of the trail.
42. The Environment Agency was consulted about the proposal and raised no concerns about aligning the trail on top of the sea defences. Users will be responsible for their own safety; however, the public footpath would remain available for use in times of extreme weather.
43. Consideration had been given to using the public footpath as the alignment of the trail, however, the existing used route along the sea defences provided a better fit against the statutory criteria and would result in less land being designated as coastal margin. Whereas the grassy fields to the south of the footpath may be considered by the owners as garden land, they do not appear to be part of the curtilage of the properties or maintained as garden land. Routing the trail along the top of the sea wall prevents any future uncertainty over rights of access to these areas.

Conclusions

44. Issues such as proposed alternative routes and privacy are common to the objections made against NE's proposals. NE has given consideration to the

¹ See appendix 1

alternative routes which have been proposed but with the exception of the minor alteration proposed by objector 39, NE does not consider that the proposed route should be amended as the alternatives would not satisfy the criteria set out in the Scheme.

45. 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; to the safety and convenience of those using the trail, and the desirability of the route adhering to the coast and providing views of the sea. The Scheme also states that the public should expect continuity at all states of the tide [27]. Whilst it is considered trail users will walk along the beach as opposed to using Manor Way [15], that route would not be available at all states of the tide [31]. Manor Way is in part a public carriageway and in part a public footpath; the public therefore already has a right of way on foot over the proposed route such that use of the proposed route should not adversely affect privacy over and above that already experienced. The suggested route along the beach [23] would not meet the objectives of the coastal access duty in that access will be interrupted by the tide [39].
46. Concerns were expressed regarding the impact on privacy of the proposed route along the top of the sea defences to the east of Sea Way [18, 26]. The alternative route suggested along the public footpath at the landward foot of the sea defences would not meet the objectives of the coastal access duty in that the route would not be on the periphery of the coast nor would it provide the user with views of the sea. In addition, if the trail was routed along the public footpath, the grass fields to the south of the footpath would become coastal margin as would the top of the sea defences. The route proposed by NE would limit the extent of land subject to coastal access rights.
47. The top of the sea defences appears to be a popular place to walk; the occupiers of properties on Sea Way will therefore be accustomed to members of the public passing along the sea wall. Furthermore, as the dwellings on Sea Way are at least 50 metres from the sea wall, it is unlikely that the impact upon privacy will be significant.

Whether the proposals strike a fair balance

48. Having regard to all the above, the proposed route of the trail will have some limited impact upon those whose residential properties are situated on Manor Way and Sea Way as the number of people walking that route may increase. However, the residents currently experience a degree of disturbance to their privacy as Manor Way and Sea Way are subject to a public right of way on foot and the sea defences are currently well-used by residents and visitors alike. The route proposed by NE would discharge the coastal access duty in respect of the relevant considerations [8]. I do not consider that the minor adverse effects that the trail would have upon the occupiers of the nearby 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.

Recommendations

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49. NE have accepted the suggested minor realignment of the route at EHS-3-S095 and EHS-3-S096 [38]; trail users will still be able to access the sea defences and beach as a result of this minor route change which is not contrary to the principles of the Scheme and will satisfy the objectives of the coastal access duty. I recommend that the Secretary of State amends the line of the trail at EHS-5-S095 and EHS-3-S096 in accordance with the plan appended to this report.
50. Having regard to these and all other matters raised, I conclude that the amended 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) (b), (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

APPENDIX 1

Proposed alternative route for EHS-3-S095

