



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 2009

Objections by [REDACTED], [REDACTED], [REDACTED], [REDACTED] &
[REDACTED] and [REDACTED]

Regarding Coastal Access Proposal by Natural England

Regarding East Head to Shoreham by Sea

Site visit made on 31 October 2019

Table of Contents

Section	Page number(s)	Paragraph(s)
Case details	1 - 2	
Procedural and Preliminary Matters	2 - 3	1 - 5
Main Issues	3 - 4	6 - 12
The Coastal Route	4	13 - 14
The cases for the objectors	4 - 6	15 - 27
Representation	6	28
The response by Natural England	6 - 9	29 - 52
Conclusions	10 - 11	53 - 62
Recommendations	11	63

Objection ref: MCA/East Head to Shoreham by Sea/43 Land at East Preston

- 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 23 October 2017 to Chapter 5 of the Report, Littlehampton to Ferring, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-5-S045 to EHS-5-S054.
- 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 do not fail to strike a fair balance.

Objection ref: MCA/East Head to Shoreham by Sea/44 Land at East Preston

- 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 5 of the Report, Littlehampton to Ferring, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-5-S045 to EHS-5-S054.
- 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/45 Land at East Preston

- 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 21 November 2017 to Chapter 5 of the Report, Littlehampton to Ferring, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-5-S055 to EHS-5-S057.
- 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/46
Land at East Preston

- 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 21 November 2017 to Chapter 5 of the Report, Littlehampton to Ferring, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-5-S055 to EHS-5-S057.
- 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 do not fail to strike a fair balance.

Objection ref: MCA/East Head to Shoreham by Sea/47
Land at East Preston

- 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 5 of the Report, Littlehampton to Ferring, has been made by [REDACTED]. The land in this Report to which the objection relates is route section EHS-5-S055.
- The objection is made under paragraphs 3(3) (a) and (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.

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. Numbers in square brackets refer to paragraphs within this report.

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 five objections considered in this report relate to land between Littlehampton and Ferring (Chapter 5 of the CA Report) and specifically to land at East Preston (map 5c EHS-5-S045 to EHS-5_S055, map 5d EHS-5-S056 and EHS-5-S057). The objections relate to contiguous areas of land and raise similar issues and the circumstances make it expedient to consider these objections together in this 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. The representation made by [REDACTED] (R3) relates to EHS-5-S052 and it is expedient to consider this representation alongside the objections made to adjacent parcels of land.

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 objections on Thursday 31 October 2019 in the company of the objectors or their representatives and in the company of the 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 5 of the CA Report considered below have been made under paragraphs 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 5 of the CA Report, runs from Littlehampton Harbour footbridge (grid reference 502187 102132) to the junction of Patterson's Walk and Sea Lane, Ferring (grid reference 510007 101554) as shown on maps 5a and 5e (points EHS-5-S001FP to EHS-5-S087). The trail follows existing walked routes, including public rights of way along most of its length and follows the coastline quite closely and maintains good views of the sea. The trail includes three sections of new path at Rustington, East Preston and Ferring as shown of maps 5b, 5c and 5e.
14. The section of the trail subject to the objections is located at East Preston where it is proposed to route the trail along the beach which is owned to mean high water by the objectors.

The cases for the objectors

Objection 43

15. The beach is privately owned to the high-water mark and objection is taken to it being included as a public footpath as it would intrude into privacy and interfere with sports activities. Although the beach is known and used by locals, creating a public footpath will encourage many more people to the beach. The property was bought for peace and tranquillity and the opportunity to undertake kite surfing, sailing and other water sports activities for families was one of the attractions of the property.
16. The proposals are unreasonable, and a strong objection is made to the intrusion into privacy.

Objection 44

17. The owners of Seafield Road consider the proposed route over the private beach belonging to the frontagers is ludicrous and totally inconsiderate to the landowners. The beach is privately owned to the high-water mark and is used for private purposes. The route is shown to be at the top of the shingle beach close to the garden boundaries.

Objection 45

18. The beach to the high-water line forms part of the property, is within the curtilage of the property and is privately owned. The beach is used as a launch point for boats and a winch is used to bring boats back up the beach from the sea and boats are stored at the top of the beach. These activities and the unavailability of the proposed route during seasonal high tides and the proposed alternative route (EHS-5-A001 and EHS-5-A002) means that a fair balance would be struck if the trail were to be routed along South Strand.

Objection 46

19. The beach is privately owned and is used for boat launching and kite surfing often with winches. The beach is often inaccessible at high tide and the shingle banks steeply making walking difficult. The section EHS-5-S039 to EHS-5-S044 is compacted and provides a good foothold; continuing on the beach from EHS-5-S044 is over less stable ground.

20. The original proposal under consideration was to route the path along South Strand. This would be of benefit to the public as the road is surfaced and access would be available irrespective of the tide. South Strand provides a walking surface more consistent with earlier stretches.

Objection 47

21. The beach is private land and the objector's business has direct access to it, using the top of the beach for the storage of boats, kayaks and windsurfers. There are signs along the beach indicating that it is private land.

22. The objector's family has owned the beach property for 50 years; historically there were fences extending from the properties down to the sea which indicated the private boundaries. Although those fences have deteriorated over time and have not been replaced, signage has been maintained to demonstrate that the beach is private property.

23. Prior to 2016, the property had been leased to a sailing club with the top of the beach being used for the storage of boats. Mats were run out over the shingle to assist with the launching and landing of boats. A caravan park and water sports club are now operated from the property and the beach is used for kitesurfing, windsurfing, sailing, kayaking and social functions. The business is dependent upon the use of the beach.

24. There are anchor points for the launch of kite surfers with the kite lines being approximately 24 metres in length. The lines pose a risk to anyone passing along the beach and there are notices present to warn the public about launching and landing. As private land, the public can be asked to pause and wait whilst kite surfers take off or land; if a formal trail crossed the private beach it would have many health and safety implications.

25. The beach is used for social functions associated with the water sports club, and the beach café puts tables and chairs out on the beach. Consideration is being given to obtaining permission for the erection of beach huts as part of the expansion of the business.

-
26. Although the public currently have access across the beach it is not unobstructed. Objection is made to the control of private land being taken away and to the increased liability that will arise if the coast path runs over the private beach.
27. The initial proposal appeared to be that the path would be set out along South Strand and avoid the private beach entirely. The path should not run over private land where the landowner objects; such proposals only encourage landowners to fortify their boundaries.

Representation R3

28. The beach at EHS-5-S052 is owned to the high-water mark as part of the property. It is acknowledged that the public already has access over this section of beach, however a request is made that no structures are constructed on the beach at East Preston.

The response by Natural England

General Comments

29. 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 (a) the trail should normally be close to the sea (section 4.5); (b) people should be able to use the trail at all states of the tide (section 4.4.2); (c) the trail should normally offer views of the sea because they are a key part of many people's enjoyment of the coast (section 4.6.1); (d) the Order provides for certain specific coastal land types to be included automatically in the coastal margin (section 4.8.8) ; (e) where there is a clear walked line along the coast the trail will follow that line if it safe and practicable for the public to use; (f) people at work are usually expected to check for the presence of others and to stop activity temporarily if they enter an area of risk (section 8.25.15); (g) the trail will be aligned on a beach if it is considered to best meet the criteria of the Scheme (section 6.4.3);
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 43

31. NE submits that the trail would only use a beach route where that route is the best or only viable option. At East Preston the trail follows an existing worn route in the compacted shingle at the top of the beach and fits with the statutory criteria of being close to the sea and offering sea views.
32. The beach is close to an urban area and is already very well accessed by residents and visitors alike; the owners of properties with gardens adjacent to the beach will be accustomed to beach users close to their boundary; the proposal would not therefore create any new privacy issues.

-
33. Although it is claimed that the trail will interfere with kitesurfing, kayaking and other activities which take place on the beach, these activities already take place alongside public use of the beach and it is believed that there is no reason why this would not continue if the line of the trail were approved. The operators of such activities should be able to spot approaching path users and ask them to wait until the operations are complete or temporarily suspend operations whilst they pass in much the same way that currently occurs.
34. NE chose not to route the trail along the private roads as the beach route was the best fit with the statutory criteria. Concerns had been raised in regard of the impact the trail might have upon the private roads. It is considered that the short stretch of shingle at this location is the best fit with the statutory criteria. In addition, the proposed route reduces the extent of coastal margin that would be created by a more landward route. Any route inland along the private roads would have resulted in the beach falling into the coastal margin as spreading room which is likely to mean that walkers would chose to continue a journey at this section over the compacted shingle at the top of the beach.

Comments on objection 44

35. NE does not agree that coastal access should not be introduced to land in private ownership. The enabling legislation provides for beaches to become available to the public as part of the coastal margin unless that land is in one of the excepted land categories or if there is a genuine reason to exclude access. Beaches become coastal margin automatically where they occur landward of the trail and connect with either the trail or another part of the coastal margin.
36. At East Preston the trail follows an existing worn route in the compacted shingle at the top of the beach and fits with the statutory criteria of being close to the sea and offering sea views.
37. The beach is close to an urban area and is already very well accessed by residents and visitors alike; the owners of properties with gardens adjacent to the beach will be accustomed to beach users close to their boundary; the proposal would not therefore create any new privacy issues. It is not believed that the beach is used solely by the owners of beachfront properties; there is a long-standing pattern of public use of the beach at East Preston.
38. NE chose not to route the trail along the private roads as the beach route was the best fit with the statutory criteria. Concerns had been raised in regard of the impact the trail might have upon the private roads. It is considered that the short stretch of shingle at this location is the best fit with the statutory criteria. In addition, the proposed route reduces the extent of coastal margin that would be created by a more landward route. Any route inland along the private roads would have resulted in the beach falling into the coastal margin as spreading room which is likely to mean that walkers would choose to continue a journey at this section over the compacted shingle at the top of the beach.

-
39. An optional alternative route would be provided to avoid that part of the trail on the beach which may be cut off at high tide. This is located between EHS-5-S056 and EHD-5-S057. Given that the objector's land interest is in section EHS-5-S047, it is not known to what deviation inland the objector refers, as the report makes clear that the section at EHS-5-S047 runs along the shingle beach.

Comments on objection 45

40. The published guidance about recognising excepted land does not define 'curtilage', but it generally means a small area forming part and parcel of the house or building to which it is attached. In most cases the curtilage will be clear; typically, the land enclosed around a dwelling containing a garden, garage or other outbuildings. We are of the view that the beach cannot be described as within the curtilage of the objector's property and therefore be excepted land as it is not enclosed in any way and has the characteristics of an open shingle beach.
41. The objector does not want the trail aligned on the beach at this location. However, the Scheme provides for the trail to run on a beach if this provides the best fit with the statutory criteria given the potential impacts on other private interests if it were to be routed elsewhere. The whole of the beach at East Preston is adjacent to urban areas and is well accessed by visitors and locals alike. The objector is likely to be used to managing her boat use alongside the existing public use of the beach and it is expected that the public will be able to use this section of the beach without causing significant additional disruption to the launching or retrieval of boats. These activities already take place alongside public use of the beach and it is believed that there is no reason why this would not continue if the line of the trail were approved. The operators of such activities should be able to spot approaching path users and ask them to wait until the operations are complete or temporarily suspend operations whilst they pass in much the same way that currently occurs.
42. NE chose not to route the trail along South Strand as the beach route was the best fit with the statutory criteria. Concerns had been raised in regard of the impact the trail might have upon the private roads. It is considered that the short stretch of shingle at this location is the best fit with the statutory criteria. In addition, the proposed route reduces the extent of coastal margin that would be created by a more landward route. Any route inland along the private roads would have resulted in the beach falling into the coastal margin as spreading room which is likely to mean that walkers would choose to continue a journey at this section over the compacted shingle at the top of the beach.

Comments on objection 46

43. The Scheme provides for the trail to run on a beach if this provides the best fit with the statutory criteria given the potential impacts on other private interests if it were to be routed elsewhere. The whole of the beach at East Preston is adjacent to urban areas and is well accessed by visitors and local alike and would follow a well-worn trail along the compacted shingle at the top of the beach.

-
44. The optional alternative route shown on map 5d provides an inland diversion to avoid the only area of the beach which is cut off at high tide. This optional route is to the east of the objector's land. There is a popular café on the beach, a water sports centre and the beach is accessed from private roads and from other sections of the beach. Boat users and kite surfers will be already aware of use of the beach by the public and it is expected that public use of the beach will continue without causing disruption to these activities.
 45. Although it is claimed that the trail will interfere with kitesurfing, kayaking and other activities which take place on the beach, these activities already take place alongside public use of the beach and it is believed that there is no reason why this would not continue if the line of the trail were approved. The operators of such activities should be able to spot approaching path users and ask them to wait until the operations are complete or temporarily suspend operations whilst they pass in much the same way that currently occurs.
 46. NE chose not to route the trail along South Strand as the beach route was the best fit with the statutory criteria. Concerns had been raised in regard of the impact the trail might have upon the private roads. It is considered that the short stretch of shingle at this location is the best fit with the statutory criteria. In addition, the proposed route reduces the extent of coastal margin that would be created by a more landward route. Any route inland along the private roads would have resulted in the beach falling into the coastal margin as spreading room which is likely to mean that walkers would choose to continue a journey at this section over the compacted shingle at the top of the beach.

Comments on objection 47

47. The Scheme provides for the trail to run on a beach if this provides the best fit with the statutory criteria given the potential impacts on other private interests if it were to be routed elsewhere. The beach route at East Preston is considered to be the best or only viable option for the trail.
48. The trail follows the current desire line along the compacted shingle at the top of the beach and fits with the statutory criteria of the trail being close to the sea, offering sea views and is convenient and safe for the public to use. The whole of the beach at East Preston is adjacent to urban areas and is well accessed by visitors and local alike and would not create new privacy issues. The public have access to the beach from other parts of the beach, from the private roads and frequent the beach café operated by the objector.
49. It is considered that the objector will be used to managing her water sports activities on the beach alongside the current public use of the beach, and given the wide expanse of beach at East Preston it is expected that the public will, as now, be able to use the beach without causing disruption to the commercial activities taking place on it. The operators of such activities should be able to spot approaching path users and ask them to wait until the operations are complete or temporarily suspend operations whilst they pass in much the same way that currently occurs.

-
50. NE chose not to route the trail along the private roads as the beach route was the best fit with the statutory criteria. Concerns had been raised in regard of the impact the trail might have upon the private roads. It is considered that the short stretch of shingle at this location is the best fit with the statutory criteria. In addition, the proposed route reduces the extent of coastal margin that would be created by a more landward route. Any route inland along the private roads would have resulted in the beach falling into the coastal margin as spreading room which is likely to mean that walkers would choose to continue a journey at this section over the compacted shingle at the top of the beach.
51. The optional alternative route shown on map 5d provides an inland diversion to avoid the only area of the beach which is cut off at high tide. This optional route is to the east of the objector's land.

Comments on Representation R3

52. It is not proposed to provide any structures (such as a boardwalk) along any part of the trail at East Preston.

Conclusions

53. The objectors refer to the fact that the land over which the trail will pass is in private ownership. The fact that the land is in private ownership does not preclude the establishment of any coastal access rights. It is also not necessary for there to be existing public rights over the land for it to serve as the coast path. However, the effect on that private land needs to be balanced against the aims of the 2009 Act to improve public access and enjoyment of the English coastline. In considering that balance the Secretary of State should have regard to those factors I have identified in paragraph 8 above.
54. In discharging the coastal access duty there must be regard to the convenience of the trail and the desirability of that route adhering to the periphery of the coast and providing views of the sea.
55. The objectors suggest that the trail should be routed along the private estate roads such as Seafield Road and South Strand to avoid the beach at East Preston. Whilst this would provide a link between the greensward at Sea Lane and the footpath at West Kingston it would not provide direct views of the sea, nor would it adhere to the periphery of the coast.
56. A further consideration in respect of the inland alternative suggested by the objectors is that the default coastal margin and associated seaward spreading room would include the beach. As such the public would have access up to the physical boundaries of those properties which have a beach frontage and across those parts of the beach above high water which are in private ownership. Routing the trail along Seafield Road and South Strand would not therefore achieve the objective sought by the objectors as the beach would remain subject to coastal access rights.
57. There are no powers to make a direction to exclude access other than for those reasons set out in Chapter II of the Countryside and Rights of Way Act

2000 as amended¹ such as land management, public safety, fire prevention, nature conservation and heritage protection, defence and national security reasons; none of those reasons appear to apply in relation to the beach at East Preston. There are no provisions to make a direction to exclude access solely because the land is private.

58. Although the objectors consider that the proposals would encroach upon their privacy and impinge upon their private use, the buildings and land used as a garden are excepted from coastal access rights. The properties which abut the beach are clearly delineated from the beach by walls, hedges or fences and the proposed alignment of the trail avoids the houses and gardens which abut the beach. Furthermore, the beach appears to be well used by both residents and visitors to the area and there is a line in the shingle at the top of the beach which is more compacted than other areas which suggests regular use by pedestrians.
59. As highlighted in section 2.3.1 of the Scheme, the trail will normally follow existing walked lines on the ground. The beach at East Preston is currently used by walkers; those residents whose property includes the beach are therefore likely to be accustomed to that public use. The alignment of the trail along the beach is unlikely to give rise to an increase in issues such as privacy and security over and above those already present.
60. The beach is used by the objectors for the launching and recovery of boats and for activities such as kite surfing and sailboarding, both as commercial and private enterprises. Although it is contended that the alignment of the trail will compromise the launch or recovery of boats and kite surfers, these activities currently take place against a backdrop of public access along the beach, for which both those engaging in water sports or walking along the beach appear to make the appropriate allowances for the legitimate activities of the other party.
61. The Scheme recognises that such joint use is likely to occur and suggests that the current practices described by the objectors should be followed. The objectors acknowledge that the beach is used by the public at present and that such use is accommodated within their activities. In my view, the alignment of the trail along the trail would not introduce any new issues in this respect.

Whether the proposals strike a fair balance

62. Having regard to all the above, the proposed route will have some impact upon the privacy and amenity of those with properties which abut the beach at East Preston. However, given that the beach is currently accessed by the public I do not consider that any impacts of the proposal will be significant. 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

¹ The Access to the Countryside (Coastal Margin) (England) Order 2010 (Statutory Instrument 2010/558)

63. 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 determinations to this effect.

Alan Beckett

APPOINTED PERSON