



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 26 February 2021

Marine and Coastal Access Act 2009

Objection by Maylandsea Bay Sailing Club

Regarding Coastal Access Proposals by Natural England

Relating to Burnham-on-Crouch to Maldon

Site visit made on 19 April 2018

File Ref: MCA/BCM0252/04

Objection Reference: MCA/BCM0252/04

Maylandsea Bay Sailing Club

- On 19 July 2017 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 6 September 2017 to chapter 5 of the Report, Burnham-on-Crouch to Maldon, has been made by the Maylandsea Bay Sailing Club. The land in the Report to which the objection relates is Nipsells Farm (West) to Maylandsea (Map 5c, route sections ref BCM-5-S026 to BCM-5-S031 and Map B2 in the overview).
- The objection is made under paragraphs 3(3)(e) and (f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.

Procedural Matters

1. On 19 July 2017 Natural England (NE) submitted the Coastal Access Burnham-on-Crouch to Maldon Report (the Report) to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved access to the coast between Burnham-on-Crouch and Maldon.
2. The period for making formal representations and objections to the Report closed on 14 September 2017 and 3 objections were received within the specified timescale. 2 of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference MCA/BCM0252/04. The other objection is considered separately. In addition to the objections, a total of 18 representations were received but none of these are specific to route sections S026 to S031.
3. I carried out a site inspection on 19 April 2018 when I was accompanied by a representative from each of the Maylandsea Bay Sailing Club, Natural England, and Essex County Council.

Main Issues

4. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (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.

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5. The second objective is that, in association with the English coastal route (“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 coastal route or otherwise. This is referred to as the coastal margin.
 6. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have 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.
 7. They must also 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.
 8. Section 301 of the 2009 Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.
 9. NE’s Approved Scheme 2013¹ (“the Scheme”) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
 10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

11. Maylandsea Bay Sailing Club (the Sailing Club) is located on Mundon Creek, a continuation of Lawling Creek, in the Blackwater Estuary. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Blackwater as far as Promenade Park in Maldon. This includes Mundon Creek. The trail uses an existing public right of way between route sections S026 and S031 and is situated seaward of the Sailing Club buildings. The foreshore, which is crossed by 2 slipways falls within the coastal margin. Paragraph 5.1.11 of the Report states that at sections S029 and S031 public access may be interrupted from time to time for short periods to allow vehicles to pass and/or boats to be launched/recovered.
12. At sections S026 and S027 NE proposes to exercise its discretion to map the landward extent of the coastal margin to an adjacent physical boundary, in this case the sea wall. This is in order to provide clarity.
13. A direction excluding access all year round is proposed to all areas of intertidal mudflats and salt marsh adjacent to route sections S001 to S035. This is proposed under S25A of the Countryside and Rights of Way Act 2000 on the basis that the land is unsuitable for public access. Map R in the Overview shows the extent of the excluded areas and appears to show the shading extending up to the trail between S026 and S031. However, at the site visit it was apparent

¹ Approved by the Secretary of State on 9 July 2013

that both the Sailing Club and NE understand that some of the land seaward of the trail would not fall within the exclusion and that all discussions have taken place on that basis.

14. The exclusion can only be proposed on land that is saltmarsh or flat and only if NE is satisfied that the saltmarsh or flat is unsafe for public access. It was apparent at my site visit that the area to which the objection relates is not saltmarsh or flat and I agree with NE that it would not be possible for the exclusion to apply to this area. I also note that Map B2 in the Overview, albeit prepared for a different purpose, does not show this area as falling within the exclusion.
15. NE suggests that Map R may be misleading due to its scale. I also note that colouring on the map which denotes other matters may be causing confusion. Although the misleading nature of the map is unfortunate, I accept that the exclusion does not, and cannot, apply to the area of coastal margin subject to this objection.
16. Map B2 of the Overview shows an area of registered common land at Maylandsea. It is shown seaward of the trail and extends as far seaward as the area of unsuitable salt marsh and mudflat. It would form part of the coastal margin.

The Objection

17. The area of common land shown on Map B2 of the Overview is incorrect and does not correspond with the Commons Registration Map. The area registered is to the north-east of that shown on Map B2 and the eastern boundary is adjacent to the steps at S025. NE has recognised that the area shown on Map B2 is the correct size but shifted to the south west. Map B2 should be corrected.
18. The right to interrupt access referred to in paragraph 5.1.11 of the Report should extend to the scrubbing and washing of boats and minor maintenance of boats, which operations are typically carried out on the ramps to boats temporarily retrieved from their moorings. It should also extend to cleaning and maintenance of the ramps.
19. There should also be a right to interrupt public access to the foreshore seaward of the route between S026 and S031 during scheduled racing times, when the foreshore is used for landing and mooring small sailing boats. Landing manoeuvres would be impeded by and would endanger members of the public using the foreshore. If the public use the foreshore to access the water for swimming while the club is operational for sailing, members of the public will inevitably be endangered.
20. The foreshore only provides firm standing because, many years ago, the Sailing Club deposited many tons of gravel on it at its own expense. Otherwise it would be mud and equally as hazardous as the area to the west of the Sailing Club at S032 which is excluded for public safety reasons.
21. Section 6(e) of the Overview mentions wildfowling clubs and the impact on their activities, but fails to mention sailing or other watersports clubs and the impact on their activities. Sailing and watersports clubs exist for the recreational use of their members (in a relatively confined area) and they should be given at least as

much freedom of operation as is accorded to members of the public whose access rights will extend to the coastal path throughout the country.

22. The stabilising and maintenance of the foreshore in front of the Sailing Club and the shoring up of the sea wall constitute land management which should be the subject of an exclusion under S24 of the 2000 Act similar to that given to Stone and Marconi Sailing Clubs.

The response by Natural England

The extent of the common land

23. Section 2.3.9 of the Scheme states that coastal access rights replace other access rights provided under Part 1 of the 2000 Act on land which forms part of the coastal margin. This includes access rights over registered common land.
24. Due to the way NE mapped Registered Common Land, distortions on small urban areas of common are unfortunately inevitable. NE appreciate that due to the extremely small size of the common land at Maylandsea, the distortion between where the land is and where it appears on the map looks to be quite big. This is due to the way the coastal access report maps are created and displayed and the changes in scales and mapping tools used to survey/ create the original map in 1968 to modern OS surveying and display maps now which are more accurate. This gives the impression that the common land is about 10metres southwest (along the public right of way/seawall) to its actual location (on the foreshore).
25. The position of the common land on the maps and on the ground is outside the influence of the Coastal Access Scheme.

The right to interrupt public access on the ramps for short periods

26. NE considers it unlikely that, based on the predicted patterns and levels of access, that an issue will arise once coastal access rights are introduced. Informal management is often an effective way to minimise any conflicts between public access and land management or other objectives. If it ever proves necessary, simply asking the public to keep off the ramps when needed, or the use of a simple sign explaining this, should first be used.
27. NE is willing to reassess the situation if further information comes to light, or if experience of the operation of the coastal access rights on the ground indicates that intervention may be necessary. A land management direction will be given only when NE is satisfied that access would significantly disrupt or otherwise significantly affect the operation of a business. If boats are stored on the ramp, there is no right of public access to these features, and as with farmed land, management could be carried out to both the boats and the ramp.

The right to interrupt public access to the gravel foreshore

28. Part of the gravel foreshore is existing Registered Common Land which currently has a right of access. This right does not appear to be causing any management problems for the Sailing Club. NE does not consider that there is a problem that needs addressing nor, based on the predicted patterns and levels of access, any expectation that an issue will arise once coastal access rights are introduced.
29. The right of access does not create a right of access to swim. Most people already understand that the coast can be a potentially dangerous environment

and are aware of many of the inherent risks. Section 4.2.1 of the Scheme states that it is a key principle that visitors should take primary responsibility for their own safety when visiting the coast. NEs approach to risk management is light-touch, aiming to minimise any safety measures which would be restrictive on public access or enjoyment.

30. Informal management techniques can be used if there is any conflict and NE will reassess the situation if experience of the operation of the coastal access rights on the ground indicates that intervention may be necessary.

Priority should not be given to one recreational use over another

31. The interests of wildfowling clubs are recognised under the heading Rural Coasts in section 6(e) of the Overview whereas the interests of sailing clubs are recognised under the heading Coastal settlements along the Blackwater.

Land management exclusion under S24 of the 2000 Act

32. NE cannot restrict for something that might happen in the future. If in the future the Sailing Club carries out stabilisation and maintenance works, the potential impacts on the trail and the coastal margin would be considered at that time.

Further information

33. Following my site visit I requested clarification with regard to Map B2 in the Overview and the extent and position of the Registered Common Land. NE states that it is appreciated that the extent of the land shown on map B2 may not be correct. Only the record from the Register can definitively identify the location of the common and the Commons Registration Map in isolation may be difficult to interpret. That map, it is stated, is 50 years old and lacks reference points. Furthermore, the coastline is likely to have changed during that period.
34. NE asked Essex County Council if they were able to identify the common land location in relation to modern maps. An interpretation was obtained by overlaying historic maps onto the modern OS base. The objector does not agree with the interpretation and has provided a copy of the Registration Map which shows a wider area than that provided by Essex County Council. This does appear to throw doubt on the interpretation provide by Essex County Council.

Discussion

Common Land

35. It appears to be accepted that Map B2 in the Overview is incorrect and I consider that this is regrettable. However, the area shown as coastal margin is larger than the area of common land and the rights of access under the 2009 Act will apply to the area shown as coastal margin. Where land is both coastal margin and Registered Common Land, the coastal access rights will replace the common land access rights.
36. There may well be circumstances where it is extremely important to ascertain the extent of the Registered Common Land on the ground. However, I am satisfied that for the purposes of my report and recommendation it is sufficient to note that Map B2 is incorrect and that, although further research has been undertaken, NE and the objector do not agree about the extent or location of the Registered Common Land.

The right to interrupt public access on the ramps for short periods and to interrupt public access to the foreshore during scheduled racing times

37. I note the various activities which are carried out on the ramps and recognise that it is of great importance to the Sailing Club that these activities can be carried on without interruption. The objector also requests that access to the gravel foreshore should be restricted during scheduled racing times and expresses concerns about the public using the foreshore to access the water for swimming when sailing is taking place.
38. I agree with NE that any conflicts which did arise are likely to be able to be dealt with by informal management techniques. I also note that NE would reassess the situation if experience of the operation of coastal access rights on the ground indicated that intervention may be necessary. I have given careful consideration to the operations of the Sailing Club described to me and conclude that informal management and later intervention, should it prove necessary, is the right approach in this case.
39. I also recognise the concerns about swimming but note that the right of access does not create a right of access to swim. I agree with NE that this is a situation where visitors should take primary responsibility for their own safety.

Other matters

40. I do not accept that priority has been given to other recreational uses, such as wildfowling clubs, over sailing clubs.
41. I also agree with NE that if the Sailing Club carried out stabilisation and maintenance works in the future, that would be the time to consider the impact of the works on the coastal access rights and whether an exclusion under S24 of the 2000 Act was necessary.

Conclusions

42. It is accepted that Map B2 which shows the extent of the Registered Common Land is incorrect and this is regrettable. It is also regrettable that Map R which shows the extent of the direction excluding access to areas of intertidal mudflats and salt marsh is unclear and misleading in the area adjacent to route sections S026 and S031. However, neither matter affects my conclusions.
43. I have no reason to believe that the operation of the Sailing Club and the exercise of the right of public access are likely to lead to significant conflict. It appears to me that it is likely that any conflict which may arise should be able to be dealt with by informal management techniques. However, should this prove unsatisfactory and further intervention is considered necessary, the situation can be reviewed in the future.

Recommendation

44. Having regard to these and to 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 the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

Alison Lea

APPOINTED PERSON

Addendum

Since carrying out my site visit and writing this report, NE has reviewed its Habitats Regulations Assessment (HRA) in respect of its coastal access proposals relating to Burnham-on-Crouch to Maldon. A record of the assessment dated December 2020 has been produced and replaces the HRA element of the previously published Access and Sensitive Features Appraisal. The review did not result in any change being required to the submitted proposals.