



---

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

by Alison Lea MA (Cantab) Solicitor

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 [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Burnham-on-Crouch to Maldon

Site visit made on 19 April 2018

File Ref: MCA/BCM0373/02

---

## **Objection Reference: MCA/BCM0373/02**

### **Northey Island**

- 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 1 September 2017 to chapter 6 of the Report, Burnham-on-Crouch to Maldon, has been made by [REDACTED]. The land in the Report to which the objection relates is Northey Island (Map 6f).
- The objection is made under paragraph 3(3)(e) 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 and Preliminary 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/BCM0373/02. The other objection is considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.
3. NE expressed concern about the admissibility of the objection in so far as it relates to the impact on Northey House. Northey House is the only property on the island apart from a cottage occupied by a National Trust Warden. NE suggests that although it is accepted that the objector has an interest in Northey Island, he does not have an interest in Northey House itself.
4. I am informed that the objector's family gifted Northey Island, including Northey House, to the National Trust in 1978 but since that date occupied Northey House as a holiday home with consent to let the property to others. No documentation relating to the objector's family interest has been made available to me. However, [REDACTED] states in his objection that he is a tenant of the land to which the objection relates and on that basis I determined the objection to be admissible. No information has been provided to me that would lead me to conclude otherwise.
5. I carried out a site inspection of Northey Island, including Northey House, on 19 April 2018 when I was accompanied by [REDACTED], a representative from Natural England, and a representative from Essex County Council. Northey Island is accessible from the mainland by means of a tidal causeway

---

and my site visit was carefully timed to ensure safe access and egress across the causeway.

6. Since carrying out the site visit, 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 has not resulted in any change being required to the submitted proposals.
7. I have also been informed by NE that, since the date of my site visit, the holiday let business on the island has been shut down and that the National Trust has no plans to re-open the facility although they may consider "holiday pods" on the island. As a result of this communication I asked for clarification from both the National Trust and the objector.
8. The National Trust confirmed that the tenancies on both the house and cottage on Northey Island have ended. However, [REDACTED] stated that his family are in discussions with the National Trust about a further possible lease of the house which would mean that the holiday letting business would be reinstated. The National Trust has subsequently confirmed that a possible future lease of one, or both, of the buildings on the island is under discussion but that, at the moment, the basis of any such lease has not been either proposed or agreed.

### **Main Issues**

9. 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.
10. 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.
11. 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.

- 
12. 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.
  13. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland or from another island across the foreshore or by means of a bridge, tunnel or causeway. An island is accessible even if it is possible to walk to it only at certain times or during certain periods.
  14. 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.
  15. NE's Approved Scheme 2013<sup>1</sup> ("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. Section 7.16 of the Scheme concerns islands and states at 7.16.4 that the trail "need not include the coast of a very small island, but the island will normally become spreading room provided it is possible to walk to it on a bridge or tidal causeway".
  16. 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**

17. Northey Island is located in the River Blackwater Estuary and connected to the mainland by a tidal causeway. 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. The trail, as shown on Maps 6(d) and 6(e), follows an existing right of way on the mainland and does not cross the causeway. However, this has the effect that Northey Island, being accessible by a tidal causeway, is within the coastal margin.
18. Certain categories of land are excepted from coastal access rights under Schedule 1 to the Countryside and Rights of Way Act 2000 (the 2000 Act). This includes land covered by buildings and the curtilage of such land and land used as a garden. Northey House and its garden are therefore excepted land.
19. The land around Northey Island is intertidal mudflats and saltmarsh and it is proposed that access would be excluded all year round to these areas under Section 25A of the 2000 Act as the land is unsuitable for public access. It is also proposed that access be excluded between October and April to the grazing marsh and meadows on Northey Island, and to the causeway, to prevent impact through disturbance of dark-bellied brent goose roosting and feeding sites<sup>2</sup>.
20. At the date of my site visit access to Northey Island was possible via a permit system. Information boards located near the causeway showed a

---

<sup>1</sup> Approved by the Secretary of State on 9 July 2013

<sup>2</sup> Under Section 26 of the 2000 Act

---

circular permissive route round the island and advised that a permit could be obtained from the National Trust warden who lived in the cottage on Northey Island. 24 hours' notice was required to be given and a charge of £2 was made to those who were not members of the National Trust. Similar information was also available on-line and fingerpost signs in Promenade Park in Maldon pointed to the island.

21. I have now been informed that access to Northey Island is free for all visitors but that the National Trust still requests visitors to telephone them in advance to let them know that they intend to access the island.

### **The Objection**

22. Northey House is let out by the objector's family. The objector states that customers are drawn by the peace and solitude of the island and believes that if there is open access to the island, customers would be lost, resulting in a significant loss of income. In his view it is probable that the business would no longer be viable. He requests that Northey Island be removed from the spreading room throughout the year for commercial reasons as has been done with the neighbouring island, Osea Island.
23. The objection is supported by a letter from a firm of Chartered Surveyors, Auctioneers and Valuers. It points out that under the proposals the public would have a right of access to the island during May to September and that although Northey House is available to rent all year round, the majority of bookings are during the summer months. The letter refers to the letting websites which highlight the remote island location and describe Northey Island as a "unique and magical place". A financial summary is included. Although the letter states that it is difficult to predict to what extent bookings would be reduced if public access to the island was allowed, it goes on to suggest that, as the income is modest, even a 25% reduction would mean that the business would run at a loss and become unviable.
24. The letter also refers to NEs proposals for Osea Island and notes that a long-term access exclusion is proposed across the whole island (Maldon to Salcott, Chapter 2 map E). It states that there are several holiday lets on the island and that the restriction is to protect the commercial activities on the island.
25. The objection also includes copies of 7 letters and an e-mail. These are from people who have stayed at Northey House. Descriptions of Northey Island include an "oasis on such a busy coastline", "the romance of it being it so isolated", "a place of peace and isolation....incredible undisturbed tranquillity". They all express concern about the impact the proposals would have and some, in particular regular visitors, state that they would not want to rebook if privacy and solitude were lost.
26. Some of the letters also express concern about the impact on breeding birds in the spring and summer and on public safety. The latter is due to the need to cross a tidal causeway and the presence of areas of deep estuarine mud.

### **Representations**

27. Representations from the RSPB and the CLA have been provided in full in accordance with Schedule 1A to the 1949 Act. The RSPB states that

---

saltmarsh and intertidal mud should be excluded on nature conservation grounds as well as on safety grounds as this would add an extra tier of protection. The CLA state that the letting property on Northey Island offers a unique circumstance – the ability to stay in an isolated property and experience being completely “away from it all”. It states that the new proposals would override the existing permit system and would affect the letting business during the peak holiday period. The CLA also states that no safety assessment has been done with regard to unrestricted access along the causeway.

28. Of the 16 other representations made, 12 relate to Northey Island. Some are from authors of the letters included with the objection. Many are from longstanding visitors to Northey Island and express concern about the loss of isolation and privacy and the impact this would have on the holiday house business. Other matters raised include the safety of the tidal causeway, the impact of increased footfall on the sea walls and causeway and the costs of maintenance of those areas and the impact on wildlife.

### **Natural England’s comments on the objection**

29. There is existing public access to Northey Island. NE expects an increase in visits to the adjacent mainland due to raised awareness and profile and predicts that Northey Island will have a corresponding, albeit smaller, increase in access. It is suggested that Northey Island will not receive the profile it would have had should the trail have been proposed to follow the coast of the island. NE also states that numbers able to access the island will be naturally limited by its tidal nature and how the pattern of low tides falls within the day. It is suggested that with no visitor facilities on the island, and in particular no toilets, only a minority of visitors would plan to stay on the island during high tide.
30. Northey House itself is excepted from coastal access rights and this protects the privacy of paying guests. NE envisages that the vast majority of visitors will continue to follow the current promoted route which generally follows the sea walls. Where the existing path runs close to the excepted land the boundaries are well defined and there is substantial screening.
31. As set out in Section 5.4 of the Scheme NE will give a land management direction only when satisfied that access would significantly affect the operation of a business and that there is no less restrictive option. In meetings before publication of the Report, no evidence was forthcoming to suggest that there would be a commercial impact. NE did consider taking the trail around the periphery of Northey Island. However, as the causeway is not available at all states of the tide and as the terrestrial footprint of the island is so small it was concluded that the proposed route along the mainland struck the best balance.

## **Discussion**

### **Impact on business**

32. Section 5.3.3 of the Scheme states that NE “will aim to prevent coastal businesses suffering significant loss of income from the introduction of coastal access rights. If, on the basis of the evidence available at the time,

---

we are persuaded that significant loss of income is likely, we will include specific proposals to prevent it”.

33. Section 8.18 of the Scheme contains advice with regard to holiday accommodation and recognises that there may be exceptional cases where land has previously been reserved for the exclusive enjoyment of people staying in holiday accommodation and that intervention may be necessary to prevent any significant loss of income to the business concerned.
34. Prior to publication of the Report in July 2017, information with regard to the potential impact on the letting of Northey House had not been made available to NE. Indeed, the letters submitted with the objection are all dated August 2017. I accept therefore that it would have been difficult to justify making a land management direction at that time. However, at the time of my site visit, it was apparent that many people chose to stay at Northey House because of the isolation of the island and that some may not return if there was an obvious increase in the number of visitors to the island.
35. I agree that many visitors are likely to stay to the route of the current permissive path, as that forms an obvious path around the island. However, I note that that route passes close to Northey House, in particular to its attractive garden and pond, where there could be a significant loss of privacy. Furthermore, the views from Northey House are extensive and it is clear that visitors walking on parts of the permissive route would be visible to the occupants of the house.
36. NE acknowledged that the coastal access rights were likely to result in an increase in the number of visitors to the island. Although access to Northey Island was possible by means of a permit and those staying in Northey House did not have exclusive enjoyment of the island, the coastal access rights are very different from the permit arrangements, which required contacting the National Trust warden and giving 24 hours’ notice. The coastal access rights are also very different from a requirement that visitors inform the National Trust in advance of their visit. In my view the increase in visitors as a result of the coastal access proposals could well be substantial.
37. I agree with the descriptions of Northey Island included in many of the letters and accept that people were drawn to stay on Northey Island as a result of its seclusion. It was clear from my site visit that a substantial increase in visitors would reduce the special qualities of Northey Island considerably. If Northey House was still being let to holiday makers I consider that the proposals would have a significant impact on the business.
38. However, although it appears that it may be proposed that Northey House be let out in the future, and also that other kinds of holiday lets may be considered on the island, there is no current business which is likely to suffer a significant loss of income from the coastal access proposals. The fact that there would be public access to the island in the future is a matter which can be taken into account in any new lease of the property.



---

## **Safety**

39. Section 4.2.1 of the Scheme states that the "key principle is that visitors should take primary responsibility for their own safety when visiting the coast" and Section 4.2.5 states that NE will "adopt a principle of minimal intervention, assuming that people will avoid dangers that are well known...provided that they are readily apparent".
40. The causeway to Northey Island is short and straight and is raised above the surrounding mudflat. I agree with NE that there are clear views in both directions. In addition, NE proposes that a sign be erected warning of tidal issues and advising people to check the tide before crossing.
41. I fully accept that not all visitors will check tide times and that it is possible that visitors could cross to Northey Island and be cut off on the island for many hours. However due to the short length of the causeway it is unlikely that visitors would be caught out by the tide whilst crossing and the danger of attempting to cross at such times should be readily apparent. The situation is therefore more likely to be inconvenient than dangerous. Similarly, although accessing the intertidal mudflats could well be dangerous, this area is proposed for exclusion from access rights at all times.

## **Impact on birds**

42. Although the intertidal mudflats are excluded from coastal access rights on safety grounds, concern has been expressed by the RSPB about the use of these areas, particularly in the spring and autumn, by birds passing through on migration. It is stated that, during these times, birds are more sensitive to disturbance than wintering populations.
43. NE point out that a direction has the legal effect of cancelling out coastal access rights. Although that there may be more than one reason why such rights need to be restricted, it is NEs practice to make a direction according to the need that is most restrictive. In this case access is excluded all year round due to public safety concerns and it is not therefore necessary to exclude during certain times of the year for nature conservation reasons. NE states that if in the future any of the excluded area became suitable for public access and it was proposed that the public safety exclusion be removed, consideration would be given to whether it was necessary to restrict coastal access rights for any other reason, such as nature conservation.
44. Given the exclusion proposed I accept that a further exclusion on nature conservation grounds is unnecessary. With regard to areas of the island to which access would not be excluded, there is no evidence before me to suggest that the impact on wildlife during May to September would be significant.

## **Impact on sea walls**

45. It has been suggested in some of the representations that an increase in footfall may affect the integrity of the sea walls. The permissive right of way around Northey Island in large part follows the sea walls. Although the coastal access rights would be likely to result in an increase of use, I note that Essex County Council as access authority, has not identified any



---

problems with the use of the sea walls and neither has the Environment Agency.

### **Conclusions**

46. Due to the existence of the tidal causeway, Northey Island is not an excluded island under Section 300 of the 2009 Act and falls within the coastal margin. It is accepted that visitor numbers to the island would increase and from the evidence provided to me and from my own observations on my site visit, I conclude that this would have a significant impact on the character of the island. If Northey House was continuing to be let as a holiday business I consider that this may well result in a reduction in the number of visitors to Northey House and result in a significant loss of income to a coastal business, contrary to Section 5.3.3 of the Scheme.
47. However, given that the coastal business is no longer operational and that coastal access rights can be taken into account in the negotiation of any new lease, there is no business reason at this time to exclude access to Northey Island. None of the other matters raised would lead me to the conclusion that access should be restricted otherwise than as proposed in the report.

### **Recommendation**

48. 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**