



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

by Mark Yates BA(Hons)MIPROW

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 Jaywick to Harwich

Objection Reference: MCA/JWH/1

Land to the north of Beaumont Quay

- On 16 August 2017 Natural England ("NE") submitted a Coastal Access Report ("the 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"), pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009 ("the 2009 Act").
- An objection dated 30 September 2017 to Chapter 5 of the Report, Beaumont Quay to Dovercourt, has been made by [REDACTED]. The land in the Report to which the objection relates is route section JWH-5-SO01 to JWH-5-SO19.
- The objection is made under paragraphs 3(3)(a) and (c) of Schedule 1A of 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: I recommend that the Secretary of State makes a determination that the proposals in the 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 an objection made to a Coastal Access Report. This report includes the gist of the submissions made by the objector, the response of NE and my conclusions and recommendation. I address two additional matters that have subsequently arisen in an addendum to this report. Numbers in square brackets refer to paragraphs contained in this report.

Objection considered in this report

2. On 16 August 2017 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Essex Coast between Jaywick and Harwich. The period for making formal representations and objections to the Report closed on 11 October 2017.
3. One objection was received to the Report, which I deemed to be admissible. The objection considered in this report relates to route section JWH-5-SO01 to JWH-5-SO19.
4. In addition to the objection, five representations were made in relation to the Report and I have had regard to them in making my recommendation.

Site visit

5. I carried out a site inspection on the afternoon of 16 April 2018 when I was accompanied by [REDACTED] (NE) and [REDACTED] (Essex County Council). I was able to view those sections of the proposed trail which correspond to existing highways. In terms of the other parts covered by the objection, I had to view these from suitable vantage points. I also gained an insight into the locations of the other routes suggested by the objector.

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 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.
8. In discharging the coastal access duty there must be 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 2013¹ 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. 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 objection has been made under paragraphs 3(3)(a) and (c) of Schedule 1A to the 1949 Act.
12. My role is to consider whether or not 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 relevant section of the proposed trail is shown on maps 5a and 5b. Route section JWH-5-S001 to JWH-5-S005 generally corresponds to an existing public footpath. The JWH-5-S006 to JWH-5-S014 section follows the edge of arable fields and continues through a small copse. Section JWH-5-S015 to JWH-5-S016 crosses over highway land in front of Moze Cross Cottage and it proceeds briefly adjacent to a public road. The trail then runs along the edge of a field (JWH-5-S017) to link with an existing public footpath (JWH-5-S018 to JWH-5-S019).

¹ Approved by the Secretary of State on 9 July 2013

The Case for the Objector

14. In respect of JWH-5-S005, the footpath crosses an untouched marsh which is a wildlife sanctuary containing many rare plants and nesting birds. It is waterlogged in winter and local people choose to walk around it. Animals have been killed in the past by dogs.
15. The route chosen has many problems and it has upset and angered a number of people. It involves a new path through arable fields and there will be damage to crops and livestock from dogs not under control. There is also a potential conflict with farm traffic.
16. The route will pass close to the rear of houses and this will impact on the privacy of the owners of these properties. It will also devalue the properties and cause disturbance to their dogs.
17. The route will be expensive, and works are required to provide two kissing gates and four footbridges with handrails. A ditch also needs to be piped at Moze Cross and a path cleared through a copse. The route is around one mile from the coast and people will continue to walk along the seawall as they have always done. In addition, it meets with a dangerous corner at Moze Cross and crosses two shoots.
18. It is suggested that consideration should be given to two alternative routes, which are shown on the plan attached to the objection. The first (red route) has the advantages of following a direct and level route on good farm tracks. It will require minimal works and only a short section of new path (100 yards) and there are no houses near to this route. The only problems are the conflict with a shoot and farm traffic and the potential issues with uncontrolled dogs.
19. A second alternative (green route) is the most obvious route along the sea wall and provides an easy route for the public to walk. It provides views of the wildlife and is the route people would expect. In addition, there are no costs involved with this route. The disadvantages of this route are that it passes a wildlife reserve and potentially the Exchem works. It would also require dogs to be kept on leads.

Response from NE

20. The objector only owns land crossed by section JWH-5-S005. He has no legal interest over route sections JWH-5-S001 to JWH-5-S004 and JWH-5-S006 to JWH-5-S019, which are included in his objection. The owners of these sections have not made an objection or representation to the proposed route of the trail.
21. Section JWH-5-S005 corresponds to an existing public footpath. This site is not designated and there are no known nature conservation interests in this location. The land is not functionally linked to the SPA² (Hamford Water) bird assemblage and no concerns have been raised by the Royal Society for the Protection of Birds ("RSPB") regarding this section.
22. It is acknowledged that a pasture field (within JWH-5-S005) can be wet at times, but not to the extent to make it impassable. It is not unreasonable to expect walkers to anticipate that a route may be wet at times. Land seaward of the trail

² Special Protection Area

at this location would form part of the coastal margin, and walkers would have the right to use this area in order to follow a dryer route if necessary. If any surfacing issues arise in the future as a result of coastal access rights, measures would be taken to improve the long-term sustainability of the path.

23. Observations of the site revealed that an enclosure crossed by section JWH-5-S005 was used as a pony paddock. There is an existing public footpath through the enclosure and the situation will not change in that dogs are viewed as a 'natural accompaniment' and owners should ensure that dogs are kept under close control. The Dogs (Protection of Livestock) Act 1953 makes it an offence for a dog to be at large in a field containing livestock. In respect of the new areas of spreading room, dogs are required to be under effective control, which includes being on a short lead in the vicinity of livestock.
24. In terms of the arable fields, there is provision for the trail to pass along an access strip and this will apply in this case. An agreement has been reached with the landowners for the provision of a 4 metres wide grass strip for the trail around the fields concerned. It is anticipated that walkers will use this line rather than the ploughed/cropped land. The owners of these fields have not objected or raised any concerns regarding the potential for crops to be damaged by walkers.
25. The cost of this section of the trail is comparable to the likely cost of establishing the trail on the other alignment options explored in this location. Cost was not a significant deciding factor in the final choice of the trail.
26. A roadside assessment was carried out by Essex County Council on 18 October 2016 at Moze Cross. It was concluded that the risk to pedestrians at this point was low and that visibility to southbound vehicles (the direction from which it is thought traffic posed the most likely risk to walkers) is good.
27. The issue of privacy was considered carefully when developing the proposals and they worked closely with the occupants of Moze Cross Cottage to propose an alignment that had the least impact upon them. The route in front of the property is considered to be the least intrusive option. In respect of Mozegate Cottage and Postbox Cottage, it is felt that the screening provided by existing hedges and vegetation, together with the topography of the land, is sufficient to ensure that the extent to which the houses and gardens are overlooked is minimal. The trail would proceed outside of the boundaries of these properties.
28. The proposed alignment of this section of the trail lies inland from the sea wall for two main reasons. Firstly, Bramble Island is an industrial area which is currently inaccessible as it is excepted land. In addition, significant areas of the coastal margin at and around Bramble Island are covered by the Explosive Regulations Act 2014, which contain a requirement for the prevention of public access for health and safety reasons.
29. Secondly, there are nature conservation concerns regarding the area at and close to the sea wall between Beaumont Quay and Bramble Island. Much of the land close to the sea wall is either part of the Hamford Water SPA or is functionally linked to it. There are also significant areas designated as SAC³ or SSSI⁴.

³ Special Area of Conservation

⁴ Site of Special Scientific Interest

30. The objector acknowledges that the elevated nature of the trail at this point means that walkers will have good views of the coast and backwaters.
31. It is not felt that the proposed route will impact on shoots in the area, which are understood to be held on land near to the sea wall and well away from the trail. They are not aware of any rearing pens near to the proposed route. No objections have been raised by neighbouring shoot managers.
32. This is a relatively remote section and there are no major visitor attractions in the area. The area will not be promoted as a start or finish destination. Therefore, it is not felt that the introduction of coastal access rights will result in parking problems.
33. In respect of the ground of objection in paragraph 3(3)(c), NE may make proposals to the Secretary of State for an alternative route when the ordinary route is closed by direction for a period of time or it is unsuitable at times because of flooding, tidal action, coastal erosion or other geomorphological processes. As these factors do not arise in this case, it is not believed that there is a requirement for an alternative route.
34. In terms of the suggested modified route to place a section of the trail along the sea wall, much of the sea wall and the land adjacent to it are functionally linked to the Hamford Water SPA. It is of high all year-round nature conservation importance. Parts of the sea wall and folding are designated as a SAC. Further, a route onto the sea wall is blocked by parcels of excepted land at Cut Farm and New Moze Hall. The Longmarsh reserve is actively managed by wildfowling as a wildlife refuge.
35. The suggested modified route over farm tracks passes through nine fields and the excepted land at Old Moze Hall (its buildings and curtilage). Nor can a route be proposed through the excepted land at Bramble Island. There is at least one game rearing pen which this route directly passes and there could be a potential for increased interaction between walkers and farm vehicles. The route is low lying and once walkers leave Beaumont Quay it is not possible to see the coast.

Conclusions

36. It is apparent that the objector only has an interest in land crossed by route section JWH-5-S005 [20]. This section crosses in part a paddock, which was boggy in places at the time of my visit.
37. I accept that people may well deviate from the current public footpath at times [14]. However, the placing of the trail around the field would not extinguish the public rights that already exist in connection with the footpath. The proposed route of the trail corresponds with the existing right of way and provides a direct route across the field. I concur with NE that walkers in the countryside can expect to find wet conditions following spells of inclement weather [22]. The land itself has no particular recognised wildlife value [21]. There is also an expectation that dogs will be under close control [23].
38. It is apparent that the paragraph 3(3)(c) ground of objection is not applicable in this case [33]. Nonetheless, the objector has put forward two suggested modified routes [18-19]. NE has provided reasons why these routes should not be pursued [34-35]. The fact that some of the land is excepted land and the potential impact on wildlife sites means the suggested alternative routes are

unlikely to have any potential merit. It is also the case that cost was not a factor that led to a particular alignment being chosen [25]. The views of the coast and backwaters [30] were evident to some extent during my visit to the site.

39. It appears to me that the remaining points raised by the objector relate to matters of concern over land he has no legal interest. Bearing in mind my comments below [43], the Secretary of State may take the view that these matters do not warrant further consideration. However, for completeness, I briefly address them below.
40. NE has reached agreement with the landowners for the trail to follow the edge of particular arable fields [24]. No shoots have been identified in the immediate locality of the trail [31]. In respect of the properties located immediately to the north of the trail, the topography of the land and the cover provided by vegetation was evident to some extent from my observations during the site visit [27]. These factors should provide a degree of privacy for the occupiers of the properties. There is no evidence to show that the value of the properties would depreciate as a result of the trail proceeding over the proposed alignment [16]. Further, it is unlikely that disturbance to dogs would be a significant factor.
41. The trail would proceed over highway land to the front of Moze Cross Cottage rather than to the rear of this property. It then continues adjacent to a road that is subject to fast moving traffic. However, it is a relatively short section and regard should be given to the view of the highway authority on the issue of safety [26]. There is nothing to suggest that the trail will lead to any additional parking issues given the circumstances in this case [32].

Other Matters

42. The representations from [REDACTED] and Beaumont Parish Council mainly cover grounds addressed in relation to the objection. Further issues are raised in respect of the potential risk to the security of particular properties and the possible impact on insurance premiums. The representation by the RSPB is stated to relate to the whole of the report. In particular, reference is made to the exclusion of the saltmarshes and mudflats only on public safety grounds, how spreading room is shown on Ordnance Survey maps and the need for appropriate signage.
43. Whilst the Secretary of State may wish to note the contents of the representations, he will be aware that the issue to be determined is whether the proposals strike a fair balance between the interests of the public in having rights of access on foot over land and the interests of any person with a relevant interest in the land. The issues raised are not matters for consideration by the Secretary of State in respect of the determination.

Addendum to the Report

44. Since carrying out a site visit and writing my report two additional matters have arisen that warrant consideration. Firstly, NE has reviewed its Habitats Regulations Assessment (HRA) in relation to the proposed trail between Jaywick and Harwich. A record of the assessment, approved by NE on 13 January 2021, 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.

45. Secondly, Essex County Council has confirmed an order, made under Section 119 of the Highways Act 1980, to divert the section of public footpath which previously crossed a field owned by the objector. This section of footpath corresponded to part of the proposed route section JWH-5-S005. The order has diverted the footpath around the field and NE considers that the relevant section of the trail should now be realigned to follow the new line of the footpath. The proposed modified section is shown on an additional map provided by NE as route section JWH-5-S005a. However, I note that this plan still shows a public footpath proceeding across the field.
46. I had regard to the original position of the public footpath [37] when making my initial recommendation. It seems to me that it would be appropriate for this section of the trail to correspond with the footpath. The proposed change involving route section JWH-5-S005 would address the concerns of the objector in relation to this section and should provide a convenient route for the public. NE also states it is confident that this change to the route would not affect the conclusions in the HRA.
47. Although my overall recommendation remains the same, it appears to me that the relevant section of the trail should now correspond with route section JWH-5-S005a. However, this is subject to NE undertaking any further action required in relation to the proposed modification to the alignment of the relevant section of the trail.

Recommendation

48. 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 objection. I therefore recommend that the Secretary of State makes a determination to this effect.

Mark Yates

APPOINTED PERSON