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

by K R Saward Solicitor

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Date:

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Marine and Coastal Access Act 2009

Objection MDL Marinas Group Ltd

Regarding Coastal Access Proposals by Natural England

Relating to Shotley Gate to Felixstowe Ferry

Site visit made on 31 March 2021

File Ref: MCA/SGF 1-2

## **Objection Reference: MCA/SGF1/0/1**

### **Bristol Hill to embankment west of Orwell Bridge**

- On 15 January 2020 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 9 March 2020 to Report SGF1: Bristol Hill to embankment west of Orwell Bridge, has been made by MDL Marinas Group Ltd. The land in the Report to which the objection relates is route sections ref. SGF-1-S045 to SGF-1-S054.
- The objection is made under paragraph 3(3)(a),(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 in the report do not fail to strike a fair balance.**

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### **Procedural Matters**

1. On 15 January 2020 Natural England ('NE') submitted a compendium of five reports 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 Shotley Gate to Felixstowe Ferry. Whilst linked, each report in the series is legally separate and contains free-standing statutory proposals for a particular part of the stretch of coast. A single Overview document applies to the whole stretch explaining common principles and background.
2. The period for making formal representations and objections to the reports closed on 11 March 2020. Two objections were received within the specified timescale but against different reports. Both were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. My report relates to the objection made by MDL Marinas Group Ltd ('MDL') under reference MCA/SGF1/0/1 ('SGF1'). The objection reference MCA/SGF3/0/1 is the subject of a separate report.
3. Various representations were also received and I address these below where they refer to the specific section of trail before me.
4. I conducted a site inspection on 31 March 2021 when I was accompanied by representatives of MDL, NE and Suffolk County Council.

### **Main Issues**

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ('the Act') and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
6. The first objective is 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

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- (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

This is referred to in the Act as the English coastal route, but for ease of reference is referred to as 'the trail' or 'the England Coast Path' in this report.

7. The second objective is that, in association with 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'.
8. Section 297 of the 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.
9. 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.
10. The stretch from Shotley Gate to Felixstowe Ferry includes the estuarial waters of the River Orwell (and part of the estuary of the River Stour). Where it is proposed that the trail extends along a river estuary, section 301 of the Act applies. It states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing. Section 301(4) of the Act sets out additional statutory criteria ('the Estuary Criteria') which must be taken into account when deciding whether, and if so how, to exercise the discretion to extend the trail along an estuary.
11. The Estuary Criteria are:
  - (a) the nature of the land which would become part of the coast;
  - (b) the topography of the shoreline adjacent to those waters;
  - (c) the width of the river upstream to that limit;
  - (d) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters;
  - (e) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land;
  - (f) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint; and
  - (g) the existence of a ferry by which the public may cross the river.

12. NE's Approved Scheme 2013<sup>1</sup> ('the Approved Scheme') sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
13. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State on the objected Report accordingly.

### **The Coastal Route**

14. The objection concerns part of the proposed trail extending beside the Orwell Estuary lying within the Suffolk Coast and Heaths Area of Outstanding Natural Beauty ('AONB'). The estuary is a haven for wildlife. The Overview report describes the Orwell as a broad shallow estuary with wide sweeping vistas and large expanses of mudflat exposed between the tides which fully fill the estuary when high.
15. The Approved Scheme explains how there is no requirement under the Act for the trail to extend up any river estuary further than the seaward limit of the estuarial waters. There is a discretion to extend beyond the seaward limit. Careful consideration will always be given to the option of extending the trail as far as the first bridge or tunnel as this is in keeping with the duty to have regard to the desirability of ensuring, so far as reasonably practicable, that interruptions to the trail are kept to a minimum and the requirement to consider any other recreational benefits that would accrue. However, in all circumstances, NE will fully take into account whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.
16. The Approved Scheme also notes<sup>2</sup> that several of the Estuary Criteria relate to its overall character. When considering an estuary in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.
17. The part of the trail subject to Report SGF1 runs between Bristol Hill and the embankment west of the Orwell Bridge. This length of coast is affected by the Stour and Orwell Estuaries Special Protection Area, the Orwell Estuary SSSI and the Stour and Orwell Estuaries Ramsar. The objection by MDL is expressed to relate to SGF-1-S045 to SGF-1-S054 albeit MDL's land ownership does not appear to include the inland section from SGF-1-S053 to S054. MDL owns Woolverstone Marina and it is the stretch of proposed path through the Marina which is the focus of its concerns. For brevity, I shall hereafter refer to the S0 number only.
18. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Orwell, extending upstream from the open coast.
19. In terms of roll-back, the proposal provides that if it is no longer possible to find a viable route seaward of the Yacht Club (e.g. buildings, curtilage, gardens etc) between S044-S052 then NE will choose a route landward of it, following discussions with owners and occupiers.

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

<sup>2</sup> At section 10.4

## **The Objection – SGF 1**

20. Whilst supporting the ambition of the legislation to deliver a continuous walking route around England's coastline, MDL raises generic concerns over inconsistency in routes being proposed around the country. A request is directed towards NE to explain how the purposes of the Act are to be fulfilled.
21. A specific question is posed on why marinas should not follow a similar classification to that of aerodromes and racecourses as excepted land. MDL suggests that areas with machinery, cranes, yachts, private possessions and timber log props used to support boats should similarly be 'excepted'. Where appropriate, MDL is content (as has been the case historically) to confer permissive rights upon the public subject to strict health and safety controls.
22. Public safety concerns and associated increased liability risks to the owner are raised with regard to Woolverstone Marina given the high risk nature of activities taking place on a daily basis. Some areas are subject to strict health and safety control and unsupervised and uncontrolled access throughout these areas is not acceptable and would be dangerous.
23. Not all routes within the Marina are public rights of way. There are various businesses/services operating within the Marina who would be adversely affected. For instance, part is a luxury lodge park designed to offer escape and seclusion. The Marina is a private facility for which people pay money to use. Inclusion of this land within the coastal margin would create confusion and risk the economic success of the facility if members of the public can freely access this private land. It would diminish its value and adversely impact on its viability.
24. MDL opposes the proposed section from Pin Mill to St Michaels Church where it may wish to close the area for safety reasons or events.
25. MDL raises the importance of considering the effect of increased activity from use of the coastal margin on the setting of the Marina and its surroundings within an AONB, amongst other national and international protected designations and which include various different land types. Details are requested from NE on the exercise of powers within section 25A of the Countryside and Rights of Way Act 2000 ('CROWA') along the shoreline of this stretch to restrict or exclude salt marsh or flat, if the land or any part of the land is deemed unsuitable for public access<sup>3</sup>.
26. Whilst there are no current development plans, MDL fears that the coastal path would present an opportunity for members of the public to object to it carrying out events at the Marina and to challenge any planning application.
27. The effect of the proposal would be to constrain MDL's actions and opportunities to run the area successfully.
28. In summary, MDL proposes that Woolverstone Marina becomes excepted land with permissive rights continuing through the estate as currently exists.

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<sup>3</sup> These details are included within the proposals.

## Representations

29. Suffolk County Council welcomes use of the estuary discretion. The Suffolk Local Access Forum is happy with the route around the Orwell Estuary. However, the Country Land and Business Association ('CLA') expresses concerns on behalf of affected landowners over the use of the estuary discretion which it considers is misplaced as the Act does not say that the route must be continuous. By using the discretion, substantial burden is placed on affected owners and occupiers. A fair balance could have been better achieved by utilising the ferry crossing between Felixstowe, Harwich and Shotley combined with an alternative route around the estuary as identified in the Reports.
30. The Suffolk Area Ramblers commends the proposed route. The Disabled Ramblers group highlights generally how NE should ensure that, unless the natural terrain itself prevents access, any existing or new infrastructure does not present a barrier to the ability of disabled ramblers progressing along the Coast Path.
31. Orwell Park ask that the Report SGF1 not be approved until their objections to Report SGF3 have first been determined.

## Natural England's Response to the Objection

32. The general comments do not specifically relate to the alignment of this stretch. Each stretch and section of the England Coast path alignment is considered on its own merits, local circumstances and having regard to the flexibility offered through the Approved Scheme.
33. As the Marina is seaward of the trail alignment it would automatically be within the coastal margin. Marinas are not expressly identified within the categories of excepted land nor are many other coastal business uses. Typically, marinas have buildings and surrounding curtilage on a reasonably compact footprint and fenced perimeters. Aerodromes and racecourses are specific land use types of expansive areas, often grassed, with few buildings. It is for the landowner to determine if their land is within one of the excepted land categories in Schedule 1 to CROWA.
34. When a site visit took place in February 2018 with NE and a representative of MDL, no issues or concerns were apparently raised over the Marina being included in the coastal margin. NE's file note of the meeting records that the "*site is well managed and H&S measures are in place to keep walkers away from certain areas (E.g the hoists) using temporary Harris [sic] fencing*" and signs are in place showing the Marina is private.
35. Coastal access rights do not prevent any land from being developed or re-developed in future. Any developed land is likely to become excepted land by virtue of paragraph 9 of Schedule 1A to CROWA and out-with the coastal access rights. In that event, NE would submit a variation report to the Secretary of State recommending a change to the trail or landward boundary of spreading room. The approach of NE is to work constructively with planners and developers with the aim of ensuring that development plans and planning proposals take account of its coastal access objectives and make provision for them where appropriate.
36. Public access would be excluded all year-round for safety reasons by direction under Section 25A of CROWA from the coastal margin consisting of saltmarsh or

flat along this section as detailed on Map E<sup>4</sup> of the Overview report.

37. Whilst objection has been raised against 'the position of any part of the proposed route' under paragraph 3(3)(a), no specific objection appears to have been raised regarding the trail alignment. No detailed objection appears to have been made under paragraph 3(3)(a) in relation to the exercise of NE's discretion to propose the continuation of the Shotley Gate to Felixstowe Ferry stretch alignment around the estuary to the first crossing point at the Orwell Bridge.
38. NE does not determine whether land falls within any excepted land category and it is not possible to make an amendment. No request to modify the alignment of the trail itself has been identified.
39. The objector's belief that the land should be classed as excepted land is not a qualified reason for applying an exclusion or restriction under paragraph 3(3)(e).

### **Natural England's Comments on the Representations**

40. CLA take issue with the status of the route. NE proposes that the ordinary route should serve the estuary while calling at the ferry points to enable path users to take the ferry if they wish at times when it is running. Whenever the ferry is running, CLA presumably plan for the estuary path to be unavailable (subject to any existing public rights of way or access rights).
41. NE considered the potential use of the ferry as the main route but this was rejected for several reasons which are given in relation to the whole compendium of Reports. I note that not all reasons given by NE apply directly to this particular stretch where a public path exists already. Nonetheless, NE points out that the ferry service is seasonal and in 2020 it only ran between Shotley Gate and Felixstowe five or six times per day. In addition, the proposal utilises large sections of existing access having limited impact on the owners and occupiers of such land.
42. The compendium of reports between them set out the proposals for the entire stretch of coast. Each report is legally free-standing in its own right and capable of independent determination by the Secretary of State.

### **Analysis**

43. Whilst noting the general concerns raised in objection including arguments over consistency, each and every case differs and my recommendation must be based on the particular circumstances arising in this case.
44. As proposed, the trail largely follows the alignment of an existing public footpath. Where there is an existing trail or walked line, whatever its status, then NE normally propose to adopt it as the line for the England Coast Path. That is so long as it is safe and practicable for the public to use, it can be used at all times and the alignment makes sense in terms of the other statutory criteria and principles set out in the Approved Scheme (section 4.7.1).
45. The objected stretch commences inland at S054 and passes by St Michael's

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<sup>4</sup> There was an error in the description of section 25A CROWA in the legend of Map E which referred to an exclusion on the grounds of nature conservation rather than it being 'unsuitable for public access'. It has since been corrected.



Church before proceeding through woodland<sup>5</sup> to the north of Ipswich High School to reach Woolverstone Marina. Once through the woodland, the path proceeds around the Royal Harwich Yacht Club building and gardens from where there are views of the estuary. It continues through a further wooded area running parallel with the coastline past S045.

46. It was noted during my site visit that parts of the trodden path through the woodland and along the signed route through the Marina do not wholly correspond with the line shown in the definitive map. The proposed trail has been drawn to reflect the route actually used by the public when seeking to follow the definitive line. This accords with section 4.7.2 of the Approved Scheme which states that where the definitive line of a public right of way differs from the line already walked on the ground, it is the walked line which is normally proposed.
47. The line of the proposed trail itself is some considerable distance from the berths and working areas of the Marina where maintenance, cranes and hoists are in operation, among other activities. However, public access would not be confined to that line. Subject to certain exceptions, the coastal margin includes land adjacent to and within 2m either side of that line and land lying seaward of the line between the 2m strip and the seaward extremity of the foreshore.
48. 'Spreading room' is the term used to describe any land, other than the trail itself, which forms part of the coastal margin and which has public rights of access.
49. As the seaward area between the trail and coast would be spreading room, this encompasses the main Marina and other areas such as the lodge park, unless one of the descriptions of excepted land applies.
50. Certain categories of land are excepted from coastal access rights under Schedule 1 to the CROWA, as amended. It is a closed list. Unless the land falls within one of the specified categories, then an exception cannot apply. Land used for the purposes of a golf course, racecourse or aerodrome is excepted (under paragraph 7 of Schedule 1), but a marina is none of these things. Whilst MDL seeks to draw comparisons, there is no discretion to interpret the paragraph more widely to introduce other land uses within its scope. I conclude that no part is excepted land by reason of it being a marina.
51. No other specific category of excepted land has been identified by the objector. There are some buildings within the Marina which were pointed out by NE during my site visit. One exception within Schedule 1, paragraph 2 of CROWA is land covered by buildings or the curtilage of such land. A "building" includes any structure or erection and any part of a building. Therefore, the buildings (and any curtilage) would be excepted land to which public access rights do not apply. The extent of any curtilage is unclear but in practical terms the main Marina is not close to the line of the trail. As proposed, the alignment follows the edge of the access road before looping round to head away from the main Marina where vessels are moored and activities take place.
52. There is no information before me on whether the lodges could fall within the exception under Schedule 1, paragraph 13A for land which is coastal margin and is, or forms part of, a regulated caravan site or if the lodges are 'buildings' within

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<sup>5</sup> At S052 where MDL's ownership is shown to commence on the HM Land Registry title plan supplied



- paragraph 2. However, I noted that the lodges are situated beyond the woodland through which the line of the trail runs. Their presence is not obviously apparent and would be less so when the trees are in leaf. Walkers would need to wander off the line for some way through the trees and across the access road to reach the lodges. The likelihood of this happening in practice appears quite slim. That is particularly so as the trail takes a clear and easy to follow trodden line from which people would have no reason to deviate.
53. The safety and convenience of those using the trail is a relevant consideration, as set out within section 297 of the Act.
  54. Even if no objection was initially raised by MDL, it does not automatically follow that there can be no legitimate health and safety concerns. During my site visit I saw the section of access road along which the trail would pass between S050-S048 as it exits the woodland and heads towards the water. The Estate Manager emphasised how it is this section which gives rise to particular concern for MDL due to the potential conflict with traffic entering and leaving the Marina.
  55. Traffic flow is not limited to berth holders but includes machinery and very large vehicles transporting boats or being towed by tractor. There is a sharp bend along this section of road limiting visibility for vehicles and pedestrians alike. The road is not especially wide bearing in mind the type of traffic using it. However, there is a pedestrian safety demarcation lane clearly available at the outer edge of the road. This directs walkers to keep to the lane when following the existing footpath. In places, there is also a strip of grass enabling pedestrians to step aside and wait for traffic to pass.
  56. Apart from the final 10m or so furthest away from the bend, the section of proposed trail along the access road corresponds with the existing footpath. The correct alignment of the definitive path veers off across an enclosed area of grass next to the Club building. As it is, numerous temporary signs point walkers to continue along the pedestrian lane beside the road. Thus, if the definitive line was reinstated a section of hedgerow would need removal for the public path to cross the grass where seating is laid out. If the trail could follow the same line it would shorten the length of road walking for pedestrians and potential exposure to traffic, but it is unlikely to be as convenient for the Club.
  57. In practical terms, there is no difference between the route currently walked by the public and that proposed for the coastal path along this stretch. Regardless of the trail, public rights of way will continue to exist. There is no indication that the existing walked line has presented dangers to the public. Potentially, there may be increased footfall once the trail opens. That does not mean the level or nature of public use would introduce new or more safety risks beyond those already present or that there would be adverse effects upon the AONB or protected habitats. With permanent signage, safety risks can be controlled by directing the public to keep to the path.
  58. Notwithstanding any wider public access rights, the prospect of pedestrians continuing along the access road towards the main Marina and going past the turning point for the trail would be minimised by suitable waymarking. The natural inclination anyway is to take the clearly laid path nearer to the water rather than proceeding into the busy car park area where there is no obvious path to follow.

59. Given that the trail would follow the same path already in use by the public, there is no reason to suppose that the exclusivity of the Marina or its business activities would be adversely affected. A public path could not be closed off for activities in any event, even temporarily, without the requisite authority of the local highway authority and so MDL would not lose a currently available option.
60. If the trail was a permissive route as suggested by MDL then permission could be revoked at any time and this would not achieve the objectives of the Act.
61. Many of the reasons given by NE against utilising the proposed route as an alternative to the ferry service do not apply to this stretch because there is already a public footpath which could be used at all times regardless of the proposal. This is not a scenario where the public could only access the route as an alternative when the ferry was unavailable. The route is already visible and available for public use as part of the actual walked line. There is no question of confusion arising over whether the route is available for use.
62. The England Coast Path can consist of a route by ferry and the existence of a ferry service must be taken into account in the exercise of the discretion to extend the trail along the estuary. For the purposes of the coastal access duty, a person is regarded as enabled to make a journey by ferry even if that journey can be made at certain times, or during certain times of day only (section 296(7)).
63. However, in discharging the coastal access duty regard must be had to the desirability of ensuring that so far as reasonably practicable interruptions to the route are kept to a minimum (Section 297(2)). That would not be fulfilled in this instance when the ferry service is seasonal and crossings are few. Chapter 10 of the Approved Scheme reinforces that in interpreting the estuary criteria regular, year round services better meet the requirement for a convenient crossing point than occasional or seasonal services.
64. Given the limitations of the ferry service I am not satisfied that it is desirable as the main trail with the proposed route as an alternative route or that such arrangement would represent a fair balance in the interests of the public. I further note that MDL, as landowner, has not explicitly proposed a modification on the basis promoted by CLA.
65. I concur with NE that there is no need to withhold a decision on SGF1 pending the outcome of the Report for SGF3 as they are free-standing reports.

## **Conclusions**

66. Much of the proposed route between S054 to S045 passes through woodland with no views of the coast. It is only upon emerging from the woodland onto the access road into the Marina around S050 that coastal views start to open out. Those parts of the Marina covered by buildings (and any curtilage) would be excepted land. Even if people could walk into the main Marina this appears unlikely to be commonplace with appropriate signage. Better views of the wide expanse of estuary are enjoyed along the line of the main trail between the Yacht Club and coastline as it heads away from the Marina towards S045. This route is far more likely to appeal to users of the coastal path than attempting to enter the busy main Marina where vehicles are manoeuvring and machinery is in operation.

67. Where the proposed trail follows the access road public safety issues cannot be discounted altogether because of the close proximity between walkers and Marina traffic. To an extent reliance is placed on both walkers and road users alike to exercise appropriate care and attention for their own and others' safety. However, measures are in place with an existing demarcated pedestrian lane on the ground to improve safety. Whilst people could stray outside the demarcated zone, that risk applies to current use of the same route by those exercising rights along the existing public path.
68. Aligning the route along the walked line of the existing public path would accord with sections 4.7.1 and 4.7.2 of the Approved Scheme.
69. Having regard to all of the above, the proposed route will create a right of access over MDL's land. However, the alignment over which the trail is proposed is currently used by the public as a public right of way. Although the coastal margin is wider than the existing path, there is nothing to suggest that the trail would have a significant adverse impact with regard to the concerns raised by MDL. On balance, any adverse effects do not in my view outweigh the interests of the public in having rights of access over the land.

### **Recommendation**

70. 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. Therefore, I recommend that the Secretary of State makes a determination to this effect.

*K R Seward*

### **APPOINTED PERSON**



The Planning Inspectorate

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

**by K R Seward Solicitor**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Date:**

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Marine and Coastal Access Act 2009

Objections by Orwell Settlement Trustees

Regarding Coastal Access Proposals by Natural England

Relating to Shotley Gate to Felixstowe Ferry

## **Objection Reference: MCA/SGF3/0/1**

### **Priory Park to Shore Lane, Nacton**

- On 15 January 2020 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 9 March 2020 to Report SGF 3: Priory Park to Shore Lane, Nacton, has been made by Orwell Settlement Trustees. The land in the Report to which the objection relates is route sections references SGF-3-S008 to SGF-3-S019.
- The objection is made under paragraphs 3(3)(a),(b),(c) 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 with modifications.**

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### **Procedural Matters**

71. On 15 January 2020 Natural England (NE) submitted a compendium of five reports 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 Shotley Gate to Felixstowe Ferry. Whilst linked, each report in the series is legally separate and contains free-standing statutory proposals for a particular part of the stretch of coast. There is, however, a single Overview document applicable to the whole stretch explaining common principles and background.
72. The period for making formal representations and objections to the reports closed on 11 March 2020. Two objections were received within the specified timescale. Both 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 MCA/SGF3/0/1 (SGF3). The objection reference MCA/SGF1/0/1 is the subject of a separate report.
73. Various representations were also received and I address these below where they refer to the specific sections of trail before me.
74. I conducted a site inspection on 31 March 2021 when I was accompanied by the Estate Manager and agent for the landowner and representatives from NE and Suffolk County Council.
75. Following the site visits I requested further information and clarification from NE and the objector. I have taken into account all of the submissions.

### **Main Issues**

76. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ('the Act') and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
77. The first objective is to secure a route for the whole of the English coast which:

- (c) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (d) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
78. The second objective is that, in association with 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'. Land seaward of the trail which is not excepted land falls within the coastal margin.
79. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (d) the safety and convenience of those using the trail,
  - (e) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (f) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
80. 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.
81. The stretch from Shotley Gate to Felixstowe Ferry includes the estuarial waters of the River Orwell (and part of the estuary of the River Stour). Where it is proposed that the trail extends along a river estuary, section 301 of the Act applies. It states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing. Section 301(4) of the Act sets out additional statutory criteria ('the Estuary Criteria') which must be taken into account when deciding whether, and if so how, to exercise the discretion to extend the trail along an estuary.
82. The Estuary Criteria are:
- (h) the nature of the land which would become part of the coast;
  - (i) the topography of the shoreline adjacent to those waters;
  - (j) the width of the river upstream to that limit;
  - (k) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters;
  - (l) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land;
  - (m) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint; and
  - (n) the existence of a ferry by which the public may cross the river.

83. NE's Approved Scheme 2013<sup>6</sup> ('the Approved Scheme') sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
84. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State on the relevant Report accordingly.

### **The Coastal Route**

85. The objection concerns parts of the proposed trail extending beside the Orwell Estuary lying within the Suffolk Coast and Heaths Area of Outstanding Natural Beauty ('AONB'). The Overview report describes the Orwell as a broad shallow estuary with wide sweeping vistas and large expanses of mudflat exposed between the tides which fully fill the estuary when high.
86. The Approved Scheme explains how there is no requirement under the Act for the trail to extend up any river estuary further than the seaward limit of the estuarial waters. There is a discretion to extend beyond the seaward limit. Careful consideration will always be given to the option of extending the trail as far as the first bridge or tunnel as this is in keeping with the duty to have regard to the desirability of ensuring, so far as reasonably practicable, that interruptions to the trail are kept to a minimum and the requirement to consider any other recreational benefits that would accrue. However, in all circumstances, NE will fully take into account whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.
87. The Approved Scheme also notes<sup>7</sup> that several of the Estuary Criteria relate to its overall character. When considering an estuary in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.
88. NE proposes to align the trail in Report SGF3 along the coast between Priory Park to Shore Lane, Nacton. A new walked route would be created along the entire length mainly following the coastline quite closely and maintaining good views of the sea. The estuary is a haven for wildlife and this length of coast is affected by the Stour and Orwell Estuaries Special Protection Area, the Orwell Estuary Site of Special Scientific Interest and the Stour and Orwell Estuaries Ramsar.
89. The objection relates only to sections SGF-3-S008 to SGF-3-S019 which corresponds with the land ownership forming the Orwell Park Estate. Hereafter, I shall refer to the S0 number only for brevity.
90. The Report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Orwell, extending upstream from the open coast. Public access to the saltmarsh/flat in the coastal margin seaward of the route along this section is to be excluded all year-round by direction under section 25A of the Countryside and Rights of Way Act 2000 ('CROWA'). This does not affect the proposed route itself.

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<sup>6</sup> Approved by the Secretary of State on 9 July 2013

<sup>7</sup> At section 10.4



91. 'Roll-back' is the term used in the Approved Scheme to describe arrangements<sup>8</sup> whereby NE proposes that a specified part of the trail which is subject to significant erosion or other coastal processes, or which links to such a section of trail, should be capable of being repositioned later in accordance with proposals in the report without further confirmation by the Secretary of State. For SGF3, roll-back is proposed in relation to the entire stretch.
92. For clarity and cohesion NE proposes that the landward boundary of the coastal margin within Orwell Park Estate should be specified by a fence line, except for S014 which should coincide with the edge of steps and vegetation.
93. The stretch from S008 to S010 is arable land whereas S011 to S019 is parkland<sup>9</sup>.
94. Certain categories of land are excepted from coastal access rights under Schedule 1 to the CROWA<sup>10</sup>. The list includes, at paragraph 4, land used as a park which is excepted in full. It is undisputed that Orwell Country Park is a park for the purposes of the legislation and therefore qualifies as excepted land.
95. A landowner may choose to dedicate an area of excepted land to provide the trail as coastal margin (under section 16 of CROWA). Where land is dedicated as coastal margin, it will lose its excepted status to enable coastal access rights to come into effect<sup>11</sup>. The Report for SGF3 records that the proposed route would create a trail with the support of the landowner of Orwell Park Estate who has agreed in writing to dedicate the land as coastal margin.

### **The Objection - Orwell Settlement Trustees – SGF 3**

96. Four grounds of objection are raised by the Trustees for the Orwell Park Estate ('the Estate').
97. Firstly, the proposal contains roll-back, specifically contrary to the grounds on which dedication was offered and agreed. The Estate strongly objects to the inclusion of roll-back as its dedication across the parkland was conditional on no roll-back provision. NE has no power to force a route through excepted land. The proposal does not represent a fair balance. There is a complex issue to consider if the trail needs to change but the likelihood of erosion is questionable when the route was agreed on the basis that NE was keen for a location for a "lengthy life-span". The removal of roll-back is essential to strike a fair balance.
98. Secondly, NE should not have used its discretion to extend around the estuary when it does not meet the statutory criteria or provide requisite fair balance.
99. Thirdly, despite considerable discussion the Estate is not convinced NE need to extend the coastal trail around the estuary. There is an existing ferry crossing and estuary trail, among other options. NE could have used a combination of those existing factors and created a suitable alternative when the ferry is not operational. It is suggested that the ferry crossing should be used as the main route and the proposed route involving Estate land could be an alternative route around the estuary without spreading room or roll-back. The Exe and Avon

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<sup>8</sup> made under the provisions of section 55B of the National Parks and Access to Countryside Act 1949

<sup>9</sup> as confirmed at the site visit

<sup>10</sup> as amended by the Access to the Countryside (Coastal Margin) (England) Order 2010 (S.I. 2010/558)

<sup>11</sup> see paragraph 2.3.17 of the Approved Scheme

estuaries are examples of situations where NE has chosen to provide an alternative route in conjunction with a ferry.

100. Fourthly, the report does not show proposals for new fencing as agreed with the Estate. Without fencing, there would be impact on the farming operations of the Estate which focus on high value crops. Contamination can occur when dogs are walked along the edge of the crops and significantly affect the business. This concern was to be addressed by fencing landward of the trail along S008 to S010 but it has not been recorded.

### **Representations**

101. The Ramblers state that they welcome the proposals between S001 and S057. None of the other representations relate specifically to SGF3.
102. The Suffolk Area Ramblers commends the proposed route within the whole Report. The Disabled Ramblers group highlights generally how NE should ensure that, unless the natural terrain itself prevents access, any existing or new infrastructure does not present a barrier to the ability of disabled ramblers progressing along the Coast Path.
103. Suffolk County Council welcomes use of the estuary discretion and supports the proposal for a dedicated access strip through Orwell Park Estate which is a significant improvement on the route currently promoted along the verge of Ipswich Road.
104. The Suffolk Local Access Forum is happy with the route around the Orwell Estuary particularly the new stretch of path through Orwell Country Park and Orwell Park to link up with the public right of way at Shore Lane.
105. The Country Land and Business Association ('CLA') expresses concerns on behalf of affected landowners over the use of the estuary discretion which it considers is misplaced as the Act does not say that the route must be continuous. It repeats the objector's suggestion of utilising the ferry crossing between Felixstowe, Harwich and Shotley combined with an alternative route around the estuary.

### **Natural England's Comments**

106. In relation to the first ground of objection, NE agrees that roll-back does not apply across excepted land categories but should the dedicated path through the parkland become unviable it would be necessary for a replacement route to be implemented using the roll-back power.
107. Section 3.3.3 of the Report acknowledges that complex roll-back would be needed to establish the trail if affected by coastal erosion or other change. Where there is excepted parkland, a gradual move back in step with the coastline is not possible. Instead a new route would be chosen after detailed discussions with all relevant interests. Without further agreement for dedication from the landowner, the trail would have to look for an alignment further inland to avoid the park.
108. The alignment through dedication in Orwell Park was agreed as it is hoped to have a long term future but it is impossible to predict coastal change with certainty. Part of the route is at the top of a soft woodland covered cliff and, if

affected by coastal erosion, it could impact on the viability of the trail. NE is safeguarding against future change by applying roll-back and would work with the landowner to re-align the trail.

109. In response to the second ground of objection, NE states that it followed the statutory criteria for estuaries and guidance in Chapter 10 of the Approved Scheme 2013.
110. On the third ground, an option of using the ferry as the main trail was considered with a full alternative. Much of the proposed alignment between Shotley Gate and Felixstowe Ferry follows the same line as the local long distance Stour and Orwell Walk which is confined to the rights of way network and roads. Consideration was given to proposing part of the Stour and Orwell Walk for an alternative route but it would not improve the management of informal use of the shore or provide a safe route. The road section along Ipswich Road, Nacton was assessed as unsuitable for a national trail and unable to meet National Trail standards.
111. Even an alternative route would still physically exist on the ground and need maintenance. Where new sections were created without an existing public right of way, there would be a visible trail even when the path was not open for public use. This would cause confusion and create potential conflict and disagreement.
112. The ferry service is seasonal and in 2020 it only ran between Shotley Gate and Felixstowe five or six times per day. The alternative route would only be available outside of those times giving rise to the risk of conflict between users and landowners. Users could be many miles into the route when the ferry became available and the alternative route suddenly not available. This makes no practical sense and is unworkable.
113. Classifying the proposed estuary path as an alternative route would prevent shorter walks and fail to secure access to the local beaches, grasslands and hardstanding areas. It would represent a poor fit with underlying policy of securing wider margin for access rights.
114. Comparisons cannot be drawn with the Exe estuary trail which is a surfaced multi-user trail available all year round. It does not involve any new access and multiple ferry companies service the estuary unlike the Orwell.
115. Fourthly, details of fencing need to be finalised between Suffolk County Council and landowners once the precise alignment is confirmed by the Secretary of State. The Estate has NE's continued assurance that fencing in the arable field will be paid for as it provides a link to the dedication the Estate has kindly offered through the park.

### **Further information provided**

116. It emerged during the site visit that misunderstanding had arisen over the modifications sought by the Estate in terms of the removal of roll-back and the details of its objection. Therefore, I wrote to the Estate and NE after the visit to obtain clarification. This prompted various exchanges between those parties.

117. The Estate confirms that it does not object to roll-back in relation to the agricultural land. Its concern applies specifically to the park. On that basis NE agrees to the proposed modification to the removal of complex roll-back for the parkland between S011-S019 (inclusive). Subject to that modification, the Estates' objection relates solely to the fencing of the arable land for S008-S010 (inclusive). Grounds 2 and 3 of its original objection fall away.
118. In this regard, NE had written to the Estate in September 2020 confirming the *"commitment to fund fencing linked with the alignment over the arable field and the onward journey through the dedication. We will fund what is needed to do the job required from it. The final specification to be agreed at the time the work is to be undertaken (by the local authority)."*
119. However, the Estate requires, either: (a) provision within the proposals for any fence to be installed to meet an agreed specification and for the trail not to be implemented until the Estate is satisfied (in writing) that there is a suitable fence in place; or (b) the specification is agreed in writing now with NE and Suffolk County Council with a commitment to implement according to that specification.
120. NE responded to say they cannot agree a final specification but *"will reassert that we want a fence to prevent damage to the high value crops from landward trespass off the alignment of the England Coast Path on the edge of the arable fields"*. NE emphasise that *"we are fully committed to a fence that delivers this requirement."* NE points out that keeping dogs and people out of high value crops is the sole reason for having a fence and one which fails to do this is pointless and would not be worth the public investment. NE's published process is to agree with landowners the infrastructure needs once the route alignment is approved and moving through the establishment phase.
121. It is standard practice that before the Statutory Instrument is laid before Parliament to open the trail all the necessary infrastructure is in place to allow the trail to be used. NE say they have given an assurance that as long as the fence is constructed to the specification agreed with the Estate then the trail can be opened. It prevents NE opening the trail if a substandard fence is constructed.
122. These exchanges culminated in a suggestion from the Estate that a "minimum" specification be agreed with NE at this stage, with final details decided at the implementation stage. NE confirmed that they would pay for fencing which needs to fulfil the function of keeping dogs and humans on the correct side of the fence-line without being intrusive in the exposed landscape or affect bird flight lines between the estuary and arable fields. Indeed, as a relevant authority for the purposes of section 85 CROWA, NE must have regard to the purpose of conserving and enhancing the natural beauty of the AONB. Thus, the fencing must be appropriate to the location within an AONB and proximity to protected sites for wildlife.
123. Notwithstanding these concerns, NE felt able to provide a signed letter addressed to the Estate dated 26 April 2021, agreeing to the suggestion of a combined deer and dug-in rabbit fence. The letter sets out details of the specification with an assurance that if that type of fence is unviable for whatever reason then NE will continue to work with the Estate to design a suitable fence to be in place before the trail opens.

124. The Estate remains concerned that the letter allows a different specification should the preferred fence be unviable and that the reasons for unviability could be unlimited. However, the Estate would be content with NE's response if my report were to state that I expect the agreed fence (i.e. a minimum combined deer and rabbit) to be implemented, unless an alternative is subsequently agreed between NE and the Estate.

## **Discussion**

125. Delivery of the proposals for SGF3 depend upon the dedication of the required stretch of excepted land. Without dedication, the land would not be available for the coast path. The Estate, as landowner, makes clear that dedication will only occur if there are no roll-back provisions through the parkland. They say this is a condition of dedication. Unless the provisions for roll-back are removed from the proposals then the Estate could decline to dedicate the land required for the trail.

126. There is now consensus between NE and the Estate that roll-back can apply to the arable land, but not to the excepted parkland.

127. Section 3.2.23 of the Report specifies that new fencing will be installed alongside the trail at sensitive locations and along sections at Orwell Park. At 3.2.24 the Report records that fencing and culverts as jointly agreed necessary by the Estate and NE will be installed on land owned by the Estate as part of the route alignment and dedication. The Report is no more prescriptive than that.

128. During my site visit I saw that considerable lengths of fencing would be required to enclose the field boundaries to afford protection from encroachment along S008 to S010, inclusive. The Estate is understandably concerned to ensure that valuable crops are protected against contamination and that it has sufficient control over the details of the fencing before public use of the trail begins. By the same token, there is a duty under section 85 CROWA to have regard to the purpose of conserving and enhancing the AONB which must be considered not only by NE but also in determining whether to support the current proposals.

129. Given the detailed considerations clearly undertaken by NE, I am reassured that appropriate fencing can be achieved to the satisfaction of the Estate whilst also having regard to the AONB and the protection of wildlife. Now that agreement has been reached between NE and the Estate upon a minimum specification for the fencing, there are measures in place to address this ground of objection. I am satisfied that sufficient assurances have been given by NE and that if the minimum agreed specification of fencing proved unviable for whatever reason then there would have to be further agreement with the landowner for an alternative. The trail could not open until that had occurred and the agreed fencing was in place. Ultimately, the Estate could decline to dedicate the land until agreement had been reached. There is no need to modify the Report for SGF3 to include the details of the fencing when they are recorded elsewhere. That approach also accords with the scenario pursued by the Estate as an alternative option to modification.

130. In light of the above there is no reason to suppose that the trail cannot be secured by dedication of the land.

131. On the issues raised by CLA, the Report (at 3.3.2) sets out that NE considered aligning the trail along the existing Stour and Orwell Walk which uses lanes and roads inland through Nacton. Several reasons are given for not proposing this option. The proposed route is made with the support of the landowner. It is closer to the sea than the Stour and Orwell Walk and would afford better sea views. It is also safer than the Stour and Orwell Walk which uses narrow country lanes with no pavements. The proposal provides an opportunity to improve on the current uncontrolled access on the shore by providing a clear route away from saltmarsh and mudflats. Overall, the proposed route strikes the best balance in terms of the criteria described in chapter 4 of the Approved Scheme.
132. For the reasons given by NE, I consider that use of the proposed route as an alternative route to the ferry service would not represent a practical or workable solution. Furthermore, it is no longer an approach advocated by the affected landowner now that agreement has been reached with NE on the terms.

### **Conclusions**

133. The trail along this stretch would deliver relatively close range and sweeping views across the Orwell estuary over a considerable length. This can only be achieved through dedication of land in Orwell Park which would otherwise be excepted from the provisions. Any alternative would be much further inland and the views would be nowhere near as impressive or with the same recreational benefit to the public. Modifications have been proposed by the Estate which are now agreed by NE in terms of removal of roll-back through the parkland. Agreement has also been reached on the minimum specification of fencing for the arable land albeit the precise final details may require resolution, to be agreed between NE and the landowner.

### **Recommendation**

134. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance with modifications, as agreed between NE and the landowner, to remove roll-back from the parkland within the Estate's ownership. I consider that those modifications would meet the coastal access requirements by facilitating delivery of the trail. Without those modifications, the proposals would fail to strike a fair balance.
135. I therefore recommend that, if minded to approve the proposals, the Secretary of State does so with modifications to remove the provisions for roll-back from the proposed trail between SGF-3-S011 to SGF-3-S019 (inclusive) and amending column 4 of the Proposals Tables in Part 3.3 of the Report for SGF 3 for those sections accordingly.

*K R Seward*

### **APPOINTED PERSON**