

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

Marine and Coastal Access Act 2009

Objection by [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Site visit made on 8 February 2017

File Ref(s): MCA/GAL0123/10

Objection Reference: MCA/GAL0123/10

Mossband Hall Farm, Longtown, Carlisle

- On 25 July 2016 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 16 September 2016 to chapter 1 of the Report, Gretna to Allonby, has been made by [REDACTED]. The land in the Report to which the objection relates is route sections ref. GAL-1-SO12 to GAL-1-SO20.
- 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 Matters

1. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby 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 Gretna and Allonby.

2. The period for making formal representations and objections to the Report closed on 19 September 2016 and 11 objections were received within the specified timescale. 10 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/GAL0123/10. The remaining objections are considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.

3. I carried out a site inspection on 8 February 2017 accompanied by the landowners' agent and representatives from NE.

Main Issues

4. 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 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.

5. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.

6. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:

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- (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.

7. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.

8. Section 301 of the 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. 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. 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.

9. NE's Approved Scheme 2013¹ ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.

10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

11. The proposed trail between Gretna and Allonby is almost entirely above the seaward limit of the Solway Firth's estuarial waters, the terrain and natural environment of which pose a number of particular challenges. Much of the estuary is dominated by large areas of saltmarsh and mudflats, as are the river estuaries leading from the Solway Firth. Considerable parts of the Solway Firth are designated for nature conservation or heritage preservation, including the Solway Firth Special Area of Conservation, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and

¹ Approved by the Secretary of State on 9 July 2013

Marshes Site of Special Scientific Interest and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.

12. In relation to estuaries, the Approved Scheme states that careful consideration will always be given to the option of extending the trail as far as the first bridge or tunnel as that 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, consideration will be given to whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.

13. The Approved Scheme also notes at section 10.4.1 that several of the Estuary Criteria relate to its overall character. It states that 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.

14. NE proposes to align the trail along the entire southern side of the Solway Firth. The part of the trail subject to Chapter 1 of the Report runs from Gretna to Knockupworth Bridge. Paragraph 1.3.1 of the report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Sark as far as Sark road bridge at Gretna, the River Esk as far as Metal bridge and the River Eden as far as the road bridge at Knockupworth.

15. The objection relates to sections GAL-1-S012 to GAL-1-S020. As all sections of the route referred to in this report have the prefix GAL-1, for ease of reference I shall refer to the trail sections by the S0 number only. The proposed route is located some distance inland from the channel of the River Esk. It is behind a sea defence wall and along the edge of agricultural land and provides few views of the estuary.

16. NE considered aligning the trail along the sea defence wall along Mossband marshes, thereby providing views of the estuary. However, the sea defence wall is covered by a HSE directive to exclude public access due to ongoing civil engineering works. It was also considered that siting the trail inland of the sea defence wall would limit possible disturbance to areas of national and international importance for the overwintering, feeding and breeding of resident and migratory birds.

17. NE propose to permanently exclude access to the sea defence bank in order to avoid disturbance to birds and propose a long term access exclusion to all areas of saltmarsh and intertidal flats in this area because the land is unsuitable for public access.

The Objection

18. The coastal margin includes the majority of Mossband Hall Farm, sandwiched between the trail and the excluded land. Mossband Hall Farm is an intensively farmed agricultural unit operating a farming system based on arable rotation, a suckler cow herd and sheep flock. The land is cropped and ploughed on a regular basis and should be excepted from coastal access rights.

19. The footbridge proposed at S012 must not impede access to the drainage outlets and ditch into which the drains outfall. These are critical to the drainage of both the agricultural land and the highway. Excavator access up to the headwall must be maintained in order to keep the ditch clean.

20. Along sections S013 and S014 the trail needs to have a hard core surface and be no more than 1.5m wide.

21. The proposals specify a gate between S014 and S015. Pedestrian access should be separate to the agricultural access and a kissing gate should be installed.

Natural England's comments on the objection

22. Any parcel of land within the coastal margin that is ploughed will immediately become excepted from coastal access rights for a period of 1 year. It is not possible to offer any access exclusion or restriction over such areas since no new access rights are available. If the land reverted to permanent pasture it would cease to be excepted land and would become potentially accessible. If problems arose NE would be willing to consider the need for further access management measures, including the possibility of access restrictions or exclusions. However, it is considered that there is very little likelihood of such access rights being taken up by walkers and appropriate information will be provided at key points to make it clear to users why access along the floodbank is not permitted.

23. The footbridge will be installed immediately alongside the existing highway fence, subject to final engineering considerations. This will ensure that it does not hinder future works to clear the drain below.

24. It is agreed that the route along the edge of the field will be surfaced. A compacted hard core will be laid for a width of approximately 1.5m immediately adjacent to the western side of the existing boundary fence.

25. A new kissing gate will be installed instead of relying on the existing field gate. The exact design of this and the gate proposed at the junction of Sections S015 and S016 will be discussed with [REDACTED] prior to installation.

Discussion and Conclusions

26. The objector's agricultural land is situated between the sea defence wall and the trail. I agree with NE that, for the reasons given at paragraph 16, it would not be appropriate to align the trail along the sea defence wall and that public access should be excluded from both the wall and land to the seaward side of the wall. There will also be no access to the agricultural land whilst it is ploughed as it will be excepted land.

27. If the land reverts to permanent pasture it would cease to be excepted land and public access would be possible. Due to the position of the trail inland of the sea defence wall and some distance from the estuary, views of the estuary from the proposed trail are severely limited and I accept that in these circumstances some members of the public may attempt to continue their walk closer to the sea. However views from the agricultural land are also severely restricted and it is proposed that information will be provided to make it clear that access to the sea wall and beyond will not be permitted. Accordingly there would be little benefit to be gained from accessing the agricultural land. In any event I note that in those circumstances NE would be willing to consider the possibility of access restrictions or exclusions.

28. NE has accepted the need to ensure that the footbridge does not hinder drainage, that certain parts of the route should be surfaced with compacted hard core and that a kissing gate should be installed adjacent to the existing field gate.

Recommendation

29. 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.

Alison Lea

APPOINTED PERSON