

**Annex C**



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

**by Susan Doran BA Hons MIPROW**

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

**Date 5 October 2021**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Bamburgh to the Scottish Border

Site visit made on 1 July 2021

File Ref: MCA/Bamburgh to the Scottish Border/01

**Objection Reference: MCA/BBS3/0/1**

**Land at Beal Farm comprising route sections BBS-3-S001 and BBS-3-S002**

- On 15 January 2020 Natural England submitted a Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 5 March 2020 to chapter 3 of the Report, Bamburgh to the Scottish Border, has been made by [redacted]. The land in the Report to which the objection relates is route sections BBS-3-S001 and BBS-3-S002.
- The objection is made under paragraphs 3(3)(a), (c), (d) and (e) of Schedule 1A to 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 set out in the Report do not fail to strike a fair balance.

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**Procedural and Preliminary Matters**

1. I have been appointed to report to the Secretary of State on an objection made to the Report. This report includes the gist of submissions made by [redacted] (the Objector), the response of Natural England (NE) and my conclusions and recommendation. Numbers in square brackets refer to paragraphs within this report.

***Objections considered in this report***

2. The Report submitted by NE to the Secretary of State set out the proposals for improved access to the Northumberland Coast between Bamburgh and the Scottish Border (including Holy Island). The period for making formal representations and objections to the Report closed on 11 March 2020.
3. Two objections were received to the Report both of which were deemed to be admissible. However, one was subsequently withdrawn.
4. In addition to the remaining objection, two representations were made in relation to the Report and I have had regard to these in making my recommendations.

***Site visit***

5. I carried out a site inspection on 1 July 2021 when I was accompanied by [redacted] for NE, [redacted] for Northumberland County Council (NCC), and [redacted] and [redacted] representing the Objector.
6. Following the site visit I sought further clarification on a number of points and have had regard to the responses received from NE and the Objector in making my recommendations.

**Main Issues**

7. 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.
8. 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.
9. 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.
10. NE's Approved Scheme 2013<sup>1</sup> (the Scheme) is the methodology for implementation of the England Coast Path (ECP) and associated coastal margin. It forms the basis of the proposals of NE within the Report.
11. 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.
12. The objection has been made under paragraphs 3(3)(a), (c), (d) and (e) of Schedule 1A to the 1949 Act.
13. 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**

14. The trail, subject to chapter 3 of the Report, runs from Beal (grid reference: NU 0792 4269) to Berwick-upon-Tweed (grid reference: NT 9972 5278) as shown on maps 3a to 3i. It generally follows existing walked routes including public rights of way and promoted routes. The relevant section of trail (BBS-3-S001 and BBS-3-S002) runs alongside the coast, following an alignment inside the boundaries of two arable fields, and is not an existing walked route.
15. The proposed route lies within the Northumberland Coast AONB Partnership and adjacent to the National Nature Reserve, Lindisfarne Ramsar site, Berwickshire and North Northumberland Coast Special Area of Conservation (SAC)<sup>2</sup>, Lindisfarne Special Protection Area (SPA)<sup>3</sup> and Lindisfarne National Nature Reserve. The area also forms part of the Heritage Coast. Access to the Northumberland coast is year-round, with use peaking in the summer months.

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

<sup>2</sup> Including for its intertidal mud, sand, and saltmarsh habitats

<sup>3</sup> Including for its overwintering birds

## The Objection

16. The Objector argues that despite the existence of a coastal public right of way (Northumberland Coast Path), and inland of a permissive right of access (Sustrans National Cycle Route 1, Coasts and Castles), the proposed route (running north of the Causeway) is located within the arable fields rather than on the coastal margin. The reasons given for not aligning it along the existing public right of way are its boggy nature, that the proposed route addresses local conservation issues, has the consent of the landowner, and the public right of way would remain there anyway. However, the trail immediately south of the Causeway follows similar terrain within the coastal margin, close to the public right of way.
17. The land has been subject for a decade or more to Stewardship Schemes designed to provide grazing ground for light bellied brent and other geese. The Stewardship Agreement, of which an important part is the grazing for geese, appears to have been ignored. People using the proposed trail along the edge of the arable fields, which is on higher ground compared to the coastal margin where the public right of way is situated, will be highly visible to the grazing geese which are sensitive to disturbance and prefer to be in sight of their sea habitat. Such issues are highlighted elsewhere in the Report on land further south around the Fenham Flats area. In addition, the Report refers to ryegrass leys for geese at Ross, Elwick and Easington. Since 2017 Beal Farm has adopted ryegrass leys but it is not thought that any bird counts have been conducted since the change from a barley option for the geese to the ryegrass option: accordingly, that data may not be up to date. For all these reasons the proposed route is considered inappropriate.
18. Elsewhere, the proposed trail provides for an alternative between 1 August and 31 May each year. An alternative (permissive) inland option already exists at Beal Farm with views of the coast and Holy Island and could be utilised.
19. It is unclear why certain restrictions cover the area from Fenham Flats to the Causeway, yet they do not extend to its north where there is no difference in the nature of the saltmarsh/mudflats, as evidenced by the Special Protection Area (SPA) and Special Area of Conservation (SAC) designations extending across the Causeway.
20. Consent to the proposed route was given on condition that various other projects involving NE were brought to a satisfactory conclusion. However, this has not happened. Assurances were given that the proposed route would be fenced on either side, yet the Report makes no mention of this. For these reasons, consent has been withdrawn.
21. Given the inherent conflict between humans and wildlife at this location, a more sensitive approach to minimise disturbance to wildlife would be to utilise either the existing public right of way, or inland permissive right of access, both of which the Report states are very popular and have already been developed with sensitive features in mind. Utilising the existing public right of way, or a route between it and the eastern boundary of the adjacent arable fields adhering more to the coast, would be on similar terrain to that immediately to the south of the Causeway. An alternative route along the pre-existing permissive inland route when either the primary route is not passable, and during the goose grazing season, would provide more spectacular views of the sea than the proposed route and maintain the continuity of the trail whilst resulting in less disturbance to

wildlife, in particular the geese. In addition, not being located on arable land will negate the need for compensation for the loss of that land.

## **The Representations**

### ***Representation R/1 – Disabled Ramblers***

22. The Disabled Ramblers' have concerns where access furniture along the trail is unsuitable for users of all-terrain mobility vehicles and push chairs. There is a significant and steadily increasing number of people who use all-terrain and other mobility vehicles on rugged terrain including uneven grass, bare soil or rocky paths, foreshore areas and some sea walls and beaches, including slopes of 1:4, obstacles 6 inches (15cm) high and water to a depth of 8 inches (20cm). Unless the natural terrain prevents access, any new or existing infrastructure along the trail should not present a barrier to the ability of such users to progress along the path. Existing man-made structures that are a barrier to those who use mobility vehicles should be addressed; all existing and proposed structures should be suitable for those using large mobility vehicles, and comply with BS5709:2018 Gaps, gates and stiles; the Equality Act 2010 and Countryside and Rights of Way Act 2000 should be complied with; and advice in 'Disabled Ramblers Notes on Infrastructure' should be followed.

### ***Representation R/2 – The Ramblers***

23. The Ramblers' fully support NE's proposals for the England Coast Path between Beal and Berwick-upon-Tweed.

## **Response by NE**

### ***The Objection***

24. The proposed route was chosen in agreement with the Objector. Whilst the Objector stated it was dependent on other matters not linked to the delivery of the ECP, it was made clear that NE (in its role relating to the trail) could not influence those other discussions. All agreed the route proposed in the report would be used. The condition of the existing public right of way was explained as boggy in places and unsuitable for the trail, concerns shared by the access authority and by those representing the Area of Outstanding Natural Beauty. The National Nature Reserve manager was concerned about the path's impact upon the bird assemblages using North Low waters/mud and the disturbance to a bird hide at the mouth of North Low.
25. The route had been suggested by the Objector who stipulated it be fenced to stop people roaming, to which NE agreed. NE also agreed to provide additional fencing further inland through the Countryside Stewardship Agreement.
26. NE did not consider the permissive route during discussions as they were regarded as too far inland when a more viable seaward option was available. This is in line with chapter 4.6.1 of the Coastal Access Scheme that "*The trail should normally offer views of the sea, because they are a key part of many people's enjoyment of the coast*".
27. NE feels the proposed route provides the best experience to users as it is dry and still affords good views of the surrounding area including Holy Island, again in accordance with chapter 4.6.1 of the Scheme.

28. As regards the proposed modification, the public right of way is available, and was initially considered appropriate by NE. However, the Scheme (at 7.9.5) states the trail would "*not normally cross wetland areas provided that there is a suitable route around them unless there is a suitable public right of way*".
29. As regards the suitability of the public right of way, the methodology requires NE to place particular emphasis on the safety and convenience of the route (4.1 of the Scheme). Whilst it is clear that the public right of way is used by the public, it is also clear that in its current boggy state it would not meet the requirements set out in the National Trail standards without extensive and costly improvements.

### **Representation R/1 – Disabled Ramblers**

30. NE has adopted the guidelines set out in the Coastal Access Scheme at paragraphs 4.3.8 to 4.3.11.
31. NE is aware of BS5709 and, in designing the proposed route, has tried to make it available to as wide a group of users as is reasonably possible. This includes avoiding creating unnecessary new barriers to access by choosing infrastructure that will have the least restrictive impact. There are no stiles proposed on this route. Gaps have been used where appropriate, although this is not always possible where livestock are present. Pedestrian gates are favoured over kissing gates on most of the route and fastenings and latches will be suitable and simple to operate.
32. NE will work with NCC to establish the trail and will discuss accessibility with them when planning the schedule of works, including those issues highlighted by the Disabled Ramblers' (to the north of the section that forms the subject of this report).

### **Representation R/2 – Ramblers Association**

33. NE welcomes the positive comments from the Ramblers' about the proposed route.

### **Discussion and conclusions**

34. No issues arise for the Disabled Ramblers' as regards access on the sections of the trail that are the subject of this report; and support is expressed in the representation from the Ramblers' for the proposed trail alignment.
35. In considering the issues raised by the Objector, I turn first to that of alignment and consider below the other aspects of disturbance to wildlife and alternative routes.

### **Proposed route alignment**

36. Although the Objector had agreed the alignment of the proposed route this was conditional upon other matters involving NE that are separate to the creation of the trail. It is unfortunate that the landowner has now withdrawn their support for the proposed alignment indicating the other matters have not been resolved to their satisfaction. However, NE has confirmed that the proposed route will be fenced, as previously agreed with the landowner, and a requirement of the Objector for a route on the proposed alignment. This fencing would be situated on the landward, and where needed, seaward side of the proposed route through the Objector's fields. This would go some way to mitigate concerns about the

public, including dog walkers or their dogs, straying from the path, and thereby reduce some of the potential impacts that may arise as regards disturbance to wildlife.

37. From my site visit it was evident that the proposed route meets the requirements of the scheme as regards views of the coast due to its elevated position and for the most part unobstructed views. Views along a short section north from the Causeway are obscured by a hedge which was in full leaf at the time of the visit. From the bird hide at the junction of BBS-3-S001 and BBS-3-S002 heading west along the section BBS-3-S002 views are restricted, again by a hedge, although this section provided a display of wild dog rose in full flower in July, adding natural history interest.
38. Overall, the elevated position of the proposed route affords good views of the coast and sea. In addition, it would provide a firm and generally level surface for users.

### ***Disturbance to wild geese***

39. This area as a whole is an important overwintering ground for light-bellied brent and greylag geese which feed and forage on the mudflat/saltmarsh habitat at low tide and on grass or cereal fields inland at high tide, also using them as high tide roosts. Accordingly, some fields alongside the coast are actively managed by farmers and landowners with rye grass leys to help support the geese during the winter months<sup>4</sup>.
40. The Habitats Regulations Assessment ('HRA')<sup>5</sup> notes that light-bellied brent geese population figures have increased in recent decades with the majority of these geese being found on the Fenham Flats from Ross Point to Beal Point and on Holy Island Sands between September and March, where they tend to feed on the arable crops and grassland from late December onwards. NE's aim is to maintain their numbers. Numbers of greylag geese, on the other hand, have fallen in recent decades and a conservation objective is to restore numbers and maintain safe passage for them between roosting and feeding areas by restricting human disturbance.
41. In developing the coastal access proposals for this section of the trail, the HRA considered the possible impact on inland grass fields for foraging geese at Ross, Elwick and Easington, as well as the saltmarsh. Objectives at sensitive locations include making use of established coastal paths, or alternatively to take account of risks to sensitive nature conservation features and incorporate mitigation, for example by making use of alternative routes during migration; working with local partners and landowners to manage access in sensitive locations; and to raise awareness of the importance of this area of coast for wildlife and how to help protect it.
42. It is noted, as set out in the HRA, that geese regularly use the manged farmland at Beal Point as well as at Elwick Farm and fields around Ross Low with bird counts showing that fields close to the mean high-water mark are regularly used; geese favouring ryegrass ley. Examples are cited at Budle Bay and Fenham Flats which lie to the south of Beal. The HRA acknowledges there is a risk from

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<sup>4</sup> In particular around Ross, Elwick and Easington

<sup>5</sup> regulation 63 of the Habitats Regulations 2017 (as amended)

increased disturbance to foraging geese on farmland at Ross, Elwick and Easington. These appear to be more sensitive areas and here a seasonal alternative inland route is proposed. This differs to the area through which the trail passes at Beal in that Fenham Flats is currently undisturbed and the inland fields have little or no access to them. For overwintering geese, foraging activity disturbance is likely to impact on the health of the population. Indeed, the proposals are that Budle Bay and Fenham Flats, between Holy Island and the mainland will be subject to restricted access, whereas the stretch north of the causeway towards Goswick Sands will become coastal access margin. At Beal at least, there is already access along the existing public right of way, the Northumberland Coast Path, and accordingly the land here is already subject to some level of disturbance. Further, the land in question at Beal is described by NE as "supporting habitat outside the SPA".

43. At the visit it was clarified the field managed by the Objector to encourage overwintering geese is that through which the section of proposed trail BBS-3-S001 passes. A possible option to mitigate against potential disturbance to the geese here would be to provide some form of hedging/screening on the landward side of the fencing to be installed alongside the trail. However, NE has confirmed that the view of their senior ornithologist is the agreed fencing in itself is likely to be sufficient to avoid any significant disturbance to the geese. The main purpose being to avoid people and dogs approaching the geese and putting them to flight, notwithstanding that people walking along the field edge would remain visible to the geese. Further, the Objector considers a hedge screen would have a negative impact on the geese as it would interrupt their sight line to the water which may result in them moving elsewhere. In addition, a hedge would take up valuable agricultural land on the landward side of the proposed route.
44. Accordingly, fencing alongside the proposed route appears to be an appropriate mitigation to reduce disturbance to the overwintering geese for a route on this alignment.

### ***Alternative routes***

45. The Objector would prefer the trail to follow the existing public right of way, or a route close to it. The existing public footpath, the Northumberland Coast Path, is evident on the ground by a clearly worn trod. There is a slight discrepancy in its alignment at BBS-3-S002 where the base map for the ECP (Map 3a) shows it running to the north crossing the water course, whereas NCC clarified at the site visit that the definitive alignment had been diverted some years ago and now runs on the south side of the water course.
46. As regards the ECP, in striking a balance between access and nature conservation, NE agreed to follow existing public rights of way or walked routes in the most sensitive locations and to consider limiting access at the most sensitive times if an alternative could not be found. Whilst there is an existing public right of way here, NE rejected it as it was considered unsuitable for the trail route due to its boggy nature; and there are no other walked routes, save for one further inland (the permissive cycle way).
47. As stated above [28] the Scheme does not envisage the trail crossing wetland areas unless there is a suitable public right of way which already crosses the area. Although the existing public right of way runs over the saltmarsh, I did not find it particularly boggy underfoot at the time of my visit. However, the strand line indicated it is subject to inundation at times by the tide. There is scope for



- people to deviate to slightly higher ground to avoid such inundations, although such a route between the existing walked line and the proposed route within the arable fields would, in my view present, access issues for some users.
48. The proposed trail at Beal avoids the saltmarsh and follows an alignment in the adjacent fields, thereby avoiding pressure on the saltmarsh habitat. In addition, proposed signage will direct people away from the more sensitive saltmarsh. Unlike the public right of way, the proposed route is on slightly higher ground with improved views of the coast and follows a firmer surface compared with the public right of way which is subject to uneven ground underfoot.
49. Although the Objector comments that the trail to the south of the causeway crosses the wetland, an examination of the proposals indicates that the proposed route avoids the wetter ground.
50. As regards the permissive Coast and Castles cycle route, which also forms part of National Cycle Route 1, this lies much further inland and is enclosed by hedges. Whilst a route here would provide a level surface affording good access, this would be shared with cyclists. I did not find the views of the coast to be as good so do not feel it meets the aims of the Scheme as effectively as does the proposed route. In addition, locating the trail here would result in the land between it and the sea falling into the category of coastal margin, unless falling under the umbrella of excepted land.

### ***Other matters***

51. As stated above [45] the alignment of the public right of way<sup>6</sup> is incorrectly shown on Map 3a where it crosses the water course at Longbridge End, having been subject to a legal diversion to cross it further to the west, coincident with the proposed trail<sup>7</sup>. The Objector points out this route is also coincident with the Sustrans route, expressing concern about additional use and the ability of the bridge crossing the sluice to accommodate such increased usage. Whilst the Secretary of State may wish to note these comments, this location falls outside the area that is the subject and scope of this Report.
52. The Objector also suggests that should the proposed ECP route be recommended, that in future a sensible rationalisation would be to amalgamate the existing Sustrans route with it. Additionally, that the encouragement of further pedestrian access along the coast together with increasing holiday traffic to Holy Island, which it is argued would be to the detriment of wildlife, suggests that improving the car parking, interpretation and other facilities at the start of the causeway would be logical. Again, whilst the Secretary of State may wish to note these comments, these matters do not form part of the proposal under consideration.

### ***Whether the proposals strike a fair balance***

53. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights [11]. Having regard to all of the above, the proposed route would provide a firm, relatively level

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<sup>6</sup> Represented by a green short-dashed line on Map BBS 3a

<sup>7</sup> At BBS-3-S003 and BBS-3-S004

surface with largely uninterrupted and extensive coastal views, whilst providing mitigation against disturbance to overwintering geese by the public and their dogs through the provision of fencing. However, these factors must be weighed against the concerns of the Objector as expressed above, which include the effect on overwintering geese and the establishment of a new additional route on his farmland.

54. Overall, I consider that any adverse effects have been taken into account in the proposed route alignment and do not in my view outweigh the interests of the public in having rights of access over coastal land. As such I do not consider that the proposals fail to strike a fair balance.

### **Recommendation**

55. 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 objections within paragraphs 3(3)(a), (c), (d) and (e) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

*S Doran*

**Appointed Person**