



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

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

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

**Date: 16 September 2021**

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Marine and Coastal Access Act 2009

Objections by [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Gosport to Portsmouth

### **Objection Ref: MCA/GPM3/0/1**

- On 20 June 2019, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Gosport and Portsmouth under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to Report GPM3, Fareham to Port Solent was made by [REDACTED], Portchester Sailing Club on 1 August 2019. The land in the report to which the objection relates is route sections GPM-3 S071 to S074 as shown on Map 3c and 4b.
- The objection is made under paragraphs 3(3)(a), 3(3)(c) and 3(3)(f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons 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.**

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### **Objection Ref: MCA/GPM3/0/2**

- On 20 June 2019, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Gosport and Portsmouth under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to Report GPM3, Fareham to Port Solent was made by [REDACTED], Portchester Sailing Club on 1 August 2019. The land in the report to which the objection relates is route sections GPM-3-S073 and S074 as shown on Map 3c.
- The objection is made under paragraphs 3(3)(a), 3(3)(c) and 3(3)(f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons 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.**

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### **Procedural matters**

1. On 20 June 2019 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Gosport and Portsmouth. The period for making formal representations and objections to the reports closed on 15 August 2019.
  2. There were two objections to report GPM3: Fareham to Port Solent which were determined to be admissible. I have been appointed to report to the Secretary of State on the objections. Representations were also received from the objector but they do not raise any additional matters.
  3. I carried out a site inspection on 27 October 2020 accompanied by representatives from NE, Hampshire County Council and the Objector.
  4. Following the site visit the Objector submitted further comments on 28 October 2019 which included photographs showing the condition of the path when there was a high tide. On 5 January 2021 Natural England in reply provided further comments on the condition of the path at high tides; long term stability and suitability of current sea wall; and proposed long term access exclusion to Paulsgrove Lake.
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5. In regard to representations from others received for Report GPM-3 there were 7 in total, 5 made by bodies or individuals whose representations are required to be sent in full to the Secretary of State and considered by NE in its report, and 2 other representations. I have considered all "full" representations and NE's summary of other representations together with NE's comments on each.

### **Main issues**

6. 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.
7. The first objective is that there is 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.

This is referred to in the Act as the English coastal route, but for ease of reference is also referred to as "the trail".

8. 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 trail or otherwise. This is referred to as the coastal margin.
9. 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 the trail are kept to a minimum.
10. 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.
11. 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.
12. NE's Approved Scheme 2013<sup>1</sup> ("the Scheme") sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
13. My role is to determine whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

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

## **The coastal route**

14. Report GPM3 covers the England Coast Path Stretch between Fareham and Port Solent. Generally it follows existing walked routes, including public rights of way and highways, along all this length. It mainly follows the coastline closely, maintaining good views of the sea.
15. Report GPM3 proposes powers for particular sections of the trail to be relocated through a process known as "roll-back"<sup>2</sup> if this should prove necessary due to future coastal change. The power could only be used due to coastal erosion, geomorphological processes or encroachment by the sea, or to link with other parts of the route that need to roll back in direct response to such changes.
16. NE proposals include roll-back for sections GPM-3 S073 and S074 of the trail. Here the trail potentially affects Portchester Castle and the recreational ground and Castle Shore Park. If it becomes no longer possible to find a viable route seaward of the excepted land NE would choose a route landward of it, following discussions with owners and occupiers.
17. In its representations the Ramblers Association has commented that routing the path around Portsmouth Harbour would link a number of sites of great historic interest and Portchester Castle would provide one of the highlights of the path. It adds that generally the trail would pass through some areas of high social deprivation and encouragement of use of a coastal path would enhance the walking environment for recreational and general wellbeing of nearby communities. The Hampshire Countryside Access Forum commends the trail as offering the best coastal route possible in a highly urban industrial stretch of coastline.
18. Access to the saltmarsh/flat at Portsmouth Harbour in the coastal margin seaward of route sections GPM-3-S001 and GPM-3-S089, is to be excluded all year-round by direction under s25A Countryside and Rights of Way (CROW) Act 2000 as it is mudflat and saltmarsh that is unsuitable for public access. The exclusion would not affect the route itself and would have no legal effect on land where coastal access rights do not apply.

## **The objections**

### **[REDACTED]- MCA/GPM3/0/1**

19. The objection, made on behalf of the Portchester Sailing Club, relates to the area (referred to as the pink areas) proposed for long term access exclusion on the grounds of unsuitability for public access "Section 25A No Public Access All Year Round".
20. It is objected that access to the pink areas should be permitted at all hours to members of the sailing club so that they can enjoy the use of their slipway, pier and pontoons, and for boating activities, including the training of young people in the community. Portchester Sailing Club has enjoyed access to all the pink areas for over 90 years for the purposes of sailing, boating and fishing in those areas.

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<sup>2</sup> ie arrangements under s55B of the 1949 Act whereby NE may propose to the Secretary of State in a coastal access report that the route of 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 the proposals in its report, without further confirmation by the Secretary of State.

**[REDACTED]- MCA/GPM3/0/2**

21. The objection relates to the land where the proposed route runs alongside hedgerows shown in GPM-3-074-FP, which is owned by the Portchester Sailing Club. It objects that the proposals contain no reference to the sustainability importance of the Portchester Conservation Area (CA), and that no trees or hedgerows or the birdlife therein should be destroyed in the CA. A suitable pathway revetment should be built out to the seaward side from the existing revetment to the North, from GPM-3-S076 down to the southernmost point of GPM-3-S073.

**The response by NE - MCA/GPM3/0/1**

22. NE acknowledges that more detail should be given about directions to exclude access. In this case the direction is made under s25 CROW Act 2000 and applies to the intertidal saltmarsh and mudflat that is uncovered at low tide, not the waters above it at high tide. Existing rights of access to waters, jetties or slipways would not be affected, nor would existing rights of navigation or moorings in open water. No infrastructure is proposed that would obstruct such navigation or access rights. The direction would not prevent or affect any existing use of the land by right, or user rights under agreement with landowners or informal permission.
23. The direction generally highlights that most of the foreshore is unsuitable for access by new users of the land who may be unaware of local patterns of tidal inundation or extensive areas of soft mud.

**The response by NE - MCA/GPM3/0/2**

24. The proposed route follows an existing public right of way along the sea wall, is "fit for purpose" and would be maintained by the local authority by strimming and cutting back overgrowth on the path. The proposals would not destroy or remove trees, hedgerows or birdlife. The path is not being widened and there would be no encroachment landward on property owned by the sailing club.
25. Any new revetments or sea defences would be a matter for the local authority or Environment Agency and could not be the subject of a modification to the proposals. Generally the Eastern Solent Coastal Partnership oversees flood defence works in this area.
26. NE has taken advice from Historic England (HE) and Fareham Borough Council neither of whom raised sustainability issues on the proposals at this location. NE has published a Habitats Regulations Assessment relating to any potential impact on the conservation objectives of European sites and a Nature Conservation Assessment in which is documented NE's conclusions in relation to other potential impacts on nature conservation. In assessing the risks to designated environmental sites it was considered that without incorporated mitigation there would be a likely significant effect on these sites. After detailed assessment and taking account of avoidance and mitigation measures, there would be no adverse effect on the integrity of the sites. As such the proposals are compatible with relevant site conservation objectives.

**Representations after my site visit**

27. Following my site visit the objector made further representations showing images of the proposed route sections GPM-3-S071 to GPM-3-S074 being

entirely or nearly inundated by high spring tides. The further comments had three themes: the condition of the path at high tides; the long term stability and suitability of current sea wall; and the proposed long term access exclusion to Paulsgrove Lake.

*Condition of the path at high tides*

28. NE understands from discussion with the objector that high spring tides only occur a few times per year. The local authority coastal engineers and the Eastern Solent Coastal Partnership have confirmed to NE that route section GPM-3-S073 is likely to flood between once a year and once every two years; and route section GPM-3-S071 is likely to flood at least annually based on modelling undertaken in 2017.
29. In accordance with the Scheme NE seeks to avoid aligning the trail on land likely to be subject to periodic flooding. The proposed route offers the best fit with key principles for establishing the trail, namely: closeness to the sea (or estuary), sea views, safety and convenience, in accordance with paragraph 4.1 of the Scheme.
30. On my site visit I drew attention to the narrowness of space available to pass at GPM-3-S073. Hampshire County Council (HCC) has since informed NE that this section, which is also a public footpath, has been widened in effect by clearing the vegetation that was encroaching on the path back to the main trunk. HCC has confirmed that, as part of the establishment and maintenance of the ECP, it would ensure that this path is maintained at this width to ensure the safety and convenience of users and would not remove trees or hedgerows but clear the side branches on the path back to the main trunk. The route would not encroach on the Club's fence line separating their boat yard from the existing public footpath. Further, HCC have informed NE that they would install signage advising visitors to take care and follow the inland footpaths and other 'access land' when the tide is extremely high.
31. NE considers that there is very infrequent flooding on this section of the route such that it is appropriate to manage the risk with these informal measures.

*Long term stability and suitability of current sea wall*

32. The objector states that the sea wall should be replaced with one that is fit for purpose all year round and accessible for all. NE is unable to replace sea walls and has advised the objector to contact the local authority and Environment Agency about such matters. NE considers the sea wall in its current state to be suitable for a National Trail but if this section of the proposed route becomes unviable due to more frequent and significant coastal flooding, NE would use its 'roll back' powers as proposed in its report and referred to above, to move the trail inland as the coast changes.
33. In aligning the trail adjacent to Portsmouth Harbour and providing good views of the estuary, NE is aware the route may not be wide enough for some wheelchair users. In response to the objector's concerns NE has identified, and would signpost, an inland route for people with reduced mobility using existing footpaths, access land and other well used routes, which would provide both the opportunity and necessary information for people to make the decision as to which route is appropriate to their abilities.

34. NE considers that, on balance, the proposals are reasonable, given that the alternative, despite an estuary route being available, would be to direct everyone inland of a Sailing Club that offers limited views of the estuary.

*Proposed long term access exclusion to Paulsgrove Lake*

35. NE set out its position on this matter in previous comments, ie that the S25A direction would not affect the Club's existing access to and use of this water.

**Discussion and conclusion**

36. As to objection MCA/GPM3/0/1, it is appreciated that the Club has enjoyed access for many years previously to waters, jetties and slipways for the purposes of sailing, boating and fishing. The further information provided by NE included the correspondence with [REDACTED] appended to its response to the objection, clarifying that the proposed directions to exclude access apply only to those exercising access under s25 CROW Act 2000. I am satisfied that existing rights of access would not be affected, nor would existing rights of navigation or moorings in open water. The modification proposed by the objector in this respect is therefore unnecessary.
37. As to objection, MCA/GPM3/0/2, clearly the responsibility for putting in place any new structure such as a revetment for the purposes of flood defence, lies with the Eastern Solent Coastal Partnership, or "Coastal Partners" as they have been renamed. This body is a partnership between several local authorities including Havant Borough Council who work in collaboration to deliver comprehensive coastal management services and oversee flood defence works in this area.
38. In relation to sustainability issues I am satisfied that the sustainability importance of the CA has been properly considered by NE who has taken advice from HE and Fareham Borough Council. Neither body raised concerns on this matter.
39. NE is required to conduct an appropriate assessment where it concludes that the introduction of coastal access rights in the form proposed is likely to have a significant effect on the conservation objectives for a European site. An appropriate assessment means, here, an assessment of the implications of a plan or project for a European site in view of the site's conservation objectives, made in accordance with Article 6.3 of the Habitats Directive.
40. In assessing the risks to designated environmental sites I have considered the record of full representations and NE's comments on them, including the assessment of likely significant effects (LSE) and consequential adverse effects on the integrity of designated sites. The information provided with the objection does not lead me to disagree with NE's conclusion that taking account of avoidance and mitigation measures, the proposals would not adversely affect the integrity of the sites or be incompatible with relevant site conservation objectives.
41. The narrowness of the sea wall that provides the existing public footpath on which part of the proposed route would lie, is not ideal. However a balance has to be struck among the interests of various users. Measures are proposed by NE and HCC to maintain the proposed route across its full width whilst ensuring no destruction or removal of trees, hedgerows or bird habitats. There would no

encroachment landward onto property owned by the Club and an alternative route would be signposted.

42. Taking all these matters into account I conclude that the proposals comply with the duty in section 297 of the Act.

**Recommendation**

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

*Grahame Kean*

**APPOINTED PERSON**