



The Planning Inspectorate

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

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

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 Eastbourne to Camber

Objection Ref: MCA/EBC2/O/2/EBC0721

2 The Promenade, Pevensey Bay

- On 27 February 2020, Natural England (NE) submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Eastbourne to Camber under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
 - Natural England submitted its reports in accordance with its duty under the Marine and Coastal Access Act 2009 (the 2009 Act) to improve access to the English Coast.
 - The objection, dated 15 April 2020, concerns Report EBC2, Bay View Caravan Park, Pevensey Bay to Herbrand Walk, Cooden and relates to route sections EBC-2-S032 to EBC-2-S033 as shown on Map EBC2b.
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Site visit made on 28 June 2021

File Ref: MCA/EBC2/O/2/EBC0721

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 and Preliminary Matters

1. I have been appointed to report to the Secretary of State on objections made to NE's report. This report summarises the submissions made by [redacted], the response of NE and my conclusions and recommendation.

Objection considered in this report

2. The report submitted by NE to the Secretary of State set out the proposals for improved access to the Sussex Coast between Eastbourne and Camber. The period for making formal representations and objections to the report closed on 9 June 2020.
3. 23 objections were received to the Report, all of which were deemed to be admissible. The objection considered in this report relates to The Promenade, Pevensey Bay between Western and Bay Roads. The other objections are considered in separate reports.

Site visit

4. I carried out an accompanied site inspection on the morning of 28 June 2021 when I was accompanied by [redacted] and [redacted] for NE, [redacted] for East Sussex County Council, and [redacted]. I viewed the proposed alignment of the trail along The Promenade and the immediate surroundings.

Main Issues

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires Natural England (NE) and the Secretary of State to exercise their relevant functions to secure 2 objectives.
6. 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 referred to as "the trail" 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 trail 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,

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- (b) the desirability of the trail 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.
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. [If the objection relates to land by a river estuary rather than the sea] 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. [If NE's use of the estuary discretion is a fundamental part of the objection also add in the estuary criteria which are set out in s301(4)]
11. NE's Approved Scheme 2013¹ ("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.
12. 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.

The Coastal Route

13. The trail, subject to part 2 of the Report, runs from Bay View Caravan Park, Pevensey Bay (grid reference: 564876 102546) to Herbrand Walk, Cooden (grid reference: 569786 106115) as shown on maps 2a to 2d. The trail generally follows existing walked routes including public rights of way and promoted routes.
14. The section of trail subject to this objection is aligned along The Promenade, a surfaced road some 120m in length. The Promenade is aligned parallel to the beach and serves residential properties on its landward side.

The Objection

15. [redacted] is the co-owner of [redacted] and owns land on the landward and seaward side of The Promenade. Accordingly, it is argued the proposed trail would bisect the curtilage of her property. [Redacted] also points out that existing pedestrian use of The Promenade is on a permissive basis with the road being closed one day a year. It is also suggested that an alternative and more preferable route exists along the top of the beach.

Response by NE

¹ Approved by the Secretary of State on 9 July 2013

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16. Section EBC-2-S033 is aligned on the carriageway of The Promenade. At the time of publication, NE understood that The Promenade was not registered with the Land Registry, however attachments to the objection show that from 24 September 2019, the carriageway outside [redacted] is owned by [redacted].
 17. Directly seaward of The Promenade and a run of gardens lies the shingle beach of Pevensey Bay. Shingle makes for difficult walking, and the Coastal Access Scheme² advises to avoid walking across shingle for any great distance where a viable alternative is available, unless the shingle route provides the best 'fit' with the statutory criteria.
 18. Along the five miles of Pevensey Bay's shingle beaches (between Eastbourne and Bexhill), NE have aligned the route onto firmer surfaces where possible, where the trail could be close to the coast and provide continued views of the sea, while avoiding significant impact on private interests.
 19. The Promenade is a residential road, with limited through-traffic and provides roughly 120m of firm, gravel surface: a respite from shingle walking, where those walking the coast path can choose to leave the beach. If walkers wish to keep to the open shingle beach between sections EBC-2-S032 and S034, they can do so as this will be part of the accessible coastal margin associated with the trail.
 20. Houses, such as No 2, are located on the landward side of the road and are separated from the proposed trail by low garden walls and small front gardens. On the seaward side, there is a run of clearly defined gardens – sometimes roped or fenced off from The Promenade and the beach.
 21. Some categories of land, such as gardens, are excepted under Schedule 1 to the Countryside and Rights of Way (CROW) Act 2000 from coastal access rights to help protect private interests and privacy. In NE's view, [redacted] garden, with its decked areas and planting is excepted land. Guidance from the Department for Food and Rural Affairs (DEFRA) states that '*a garden is usually enclosed land near a building. It typically includes areas of lawn, flower borders and other cultivated plants*'. As the trail is aligned along The Promenade, NE do not consider this road fits comfortably with DEFRA's definition of garden or curtilage.
 22. The term 'curtilage' is not defined, but generally means a small area, forming part and parcel of the house or building to which it is attached. In most cases the extent of curtilage will be clear: typically, an enclosure around a dwelling containing a garden, garage and side passage; a walled enclosure outside a barn, or a collection of buildings grouped around a farmhouse and farmyard. In light of the above, NE do not consider The Promenade is excepted land and are therefore proposing to align the trail over it. That would be the case irrespective of whether The Promenade is an unadopted highway.
 23. The private gardens on both sides of The Promenade will be clear to anyone walking the trail, if approved. As such, NE would expect visitors to be respectful of the residents, minimising any significant impacts on the landowners' privacy.

Conclusions

²²² See paragraph 7.12.4

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24. [redacted] points out that The Promenade is privately owned with no public rights of way. Despite that, it was clear from my observations that local people do walk along the road and that that use appears to be tolerated by frontagers. The establishment of the coastal path is unlikely to generate significant numbers of additional visitors to the area and the route will not bisect [redacted] property anymore than it currently does.
25. The proposed coastal path will not necessarily follow existing public rights of way or walked routes. The requirement of the coastal access duty is to secure a route for the whole of the English coast. As is made clear in the Scheme³ the 2009 Act *"allows existing coastal access to be secured and improved and new access to be created in coastal places where it does not already exist"* (my emphasis).
26. To protect the interests of private landowners, certain categories of 'excepted land' are identified in Schedule 1 to the CROW Act⁴. Amongst these are land covered by buildings or the curtilage of such land and land used as a park or garden. Although it is not my role to adjudicate on what is, or is not, excepted land, in my view, The Promenade does not sit within any of the categories of excepted land set out in the 2009 Act or the Approved Scheme.
27. As the land on the seaward side of the trail would automatically become 'coastal margin', walkers would have the option to continue along the beach as an alternative to The Promenade. Some may choose to exercise that option. However, given the difficulties associated with walking on shingle, particularly for the less mobile, I consider that the proposed alignment along The Promenade is the most appropriate route.

Recommendation

28. Taking account of all matters viewed on my site inspection, as well as the objection, representations and comments made relating to it, I conclude that the proposals do not fail, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraph 3(3)(a), (b), (c) or (e) of Schedule 1(a) to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Dominic Young

APPOINTED PERSON



³ See paragraph 1.2.1

⁴ See also in Figure 1 of the Approved Scheme