



The Planning Inspectorate

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

by Paul Freer (BA) Hons LLM PhD MRTPI

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

Date: 10 November 2021

Marine and Coastal Access Act 2009

Objection by: [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to South Promenade (Kingsway), Cleveleys to Brades Lane, Freckleton

Site visit made on 16 June 2021

File Ref: MCA/CPH1

Objection References: MCA/CPH1/0/1/1394

South Promenade (Kingsway), Cleveleys to Brades Lane, Freckleton

- On 7 October 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.
- The following objection has been made to Report CPH1: South Promenade (Kingsway), Cleveleys to Brades Lane, Freckleton:
 - [REDACTED], dated 18 October 2020The land in the Report to which the objection relates is route sections ref. SO79 to SO83.
- The objection is made under paragraph 3(3)(a) 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.

Procedural Matters

1. On 15 January 2020 Natural England ('NE') submitted a compendium of 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 Cleveleys and Pier Head, Liverpool. 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 2 December 2020. One objection was received within the specified timescale. That objection was determined to be admissible. I have been appointed to report to the Secretary of State on that objection.
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 16 June 2021 when I was accompanied by [REDACTED], and representatives of NE and Lancashire County Council ('LCC').

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
 - (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 that 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. NE's Approved Scheme 2013¹ ('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.
11. 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

12. The objections concern parts of the proposed trail where it crosses land at Brook Cottage, Lytham Road, Warton. At this point, the trail follows a raised flood embankment at the edge of mud flats. The embankment passes over Wrea Brook, which continues inland immediately to the west of Brook Cottage. Two public footpaths link the raised flood embankment with Lytham Road (A584). The first footpath continues from the embankment along the eastern boundary of Brook Cottage to Lytham Road. From Lytham Road, the second footpath returns to the embankment via two sets of concrete steps.

The Objection

13. The main theme raised in the objection is that the proposed route directly traverses a long-established private garden within the curtilage of Brook Cottage, a private residential dwelling. The proposed route is not a designated public footpath, nor is it presently open for access by the public. It is gated between S079 and S083. The route directly overlooks the residential areas of the dwellinghouse, and if accepted would both create an intrusion of privacy and reduce the garden area for private use. It is disputed that the proposed landward boundary of the route provided clarity and cohesion, on the basis that of the two existing public footpaths are clearly shown on the definitive map for the area.

¹ Approved by the Secretary of State on 9 July 2013

Representations

14. The Ramblers and the Open Spaces Society consider that the proposed route would be good in the event of bad weather, but that when the weather is calm a better alternative would be the Promenade. This would give a better experience for users of the England Coast Path. It is therefore suggested that the way forward would be to show the main route near the sea on the Promenade, with an alternative route shown for use on bad weather.
15. Whilst S114 to S129 is the practical route used by walkers at present, there is a public right closer to the sea by using Freckleton Footpath 14. This is presently in dreadful condition being waterlogged at Naze Point, but would be a better route for the England Coast Path if repaired. The access being created at Brook Cottage is welcomed, so avoiding the walk inland and then back out.
16. The Lancashire Local Access Forum (LLAF) adopts the strategic position of expediting the completion of the project at the earliest opportunity. The LLAF notes that the route takes a line well away from the coast and would prefer a route closer to the Ribble estuary.
17. BAE Systems stresses the requirement for a buffer between the airfield perimeter and any development, and requests that further consultation should occur. Freckleton Parish Council supports the concept of coast path, but details some of the hazards and requirements for improving infrastructure and the path surface. [Redacted] expresses similar concerns over the infrastructure and the impacts of this infrastructure on his land holdings. [REDACTED] and [REDACTED] both request that existing kissing gates are retained in order to facilitate stock control. The Disabled Ramblers express concerns over the accessibility of some aspects of the proposals, and asks that greater efforts are made to ensure that less mobile users are able to use and enjoy as much of the England Coast Path as possible.

Natural England's Response to the Objections

18. The proposed route follows a flood embankment. The ground lies just above the landward edge of the adjacent coastal marsh ground and has none of the attributes of a garden: it is very similar in appearance to the flood embankment on either side, only is separated from it by gates. The planning application for Brook Cottage specifically identifies the curtilage of the dwelling as ending landward of the proposed route of the England Coast Path, insofar as the curtilage extends as far as the landward side of the embankment followed by the England Coast Path. NE consider that the alignment is entirely consistent with paragraph 8.21.4 of the Approved scheme, which indicates that land covered by flood/sea defence works is not excepted land and that the trail may therefore be aligned along the flood bank where it is safe, suitable and convenient for public access on foot.
19. NE accepts that the route is not a designated footpath, but points out that the 2009 Act gives a duty to NE to propose a route for a new coastal path, including to create new paths where no suitable routes exist currently. NE also acknowledge the existence of the public footpaths to either side of Brook Cottage, but consider that they do not provide a reasonably direct or convenient route along the coast as set out in paragraph 4.3.1 of the Approved Scheme. The combined distance between points S078 and S083 using the two footpaths would be some 400 metres. By comparison, the distance between the same

- points along the proposed route would be approximately 75 metres. More importantly, access to the flood embankment using the public footpath on the western side of Wrea Brook entails two sets of concrete steps. These and the narrow path beside the brook would be impassable to users of off-road mobility scooters, whereas the flood embankment would be suitable for all degrees of mobility over a distance of approximately 2.5 km overall. The detour back to Lytham Road would therefore unnecessarily restrict users of mobility vehicles.
20. There is no evidence that the land crossed by the route is used as a garden. All four sections of the route (S079 to S083) are outside the curtilage of Brook Cottage. Whilst parts of the curtilage of Brook Cottage may be visible from the proposed route, this is equally true of the existing footpaths to either side of the property. The proposed route would perhaps lead to a slight reduction in the use of the two footpaths, and therefore a reduction in the current intrusion or lack of privacy. It is a condition of the planning permission for Brook Cottage that existing trees and shrubs should be retained along the southern boundary of the curtilage in order to provide a visual buffer between the property and the estuary. That vegetation, if correctly retained, should be adequate to largely or completely screen the proposed route of the England Coast Path from the house.
21. NE suggest that concerns of the landowner could be reduced by reverting to the default position with regards to the landward boundary of the coastal margin, such that access rights would extend no more than 2m metres landwards of the trail centre line. NE would be prepared to install a new fence to the landward side of the trail at approximately 2 metres from the trail centre line. This would have the effect of increasing separation between accessible land and the curtilage of Brook Cottage.

Natural England's Comments on the Representations

22. NE considered the route slightly closer to the sea, but that the proposed route was suitable overall. The more seaward area of the Promenade would be available to walkers in any event, many of whom will probably chose to walk that way, sea conditions permitting. NE also considered the existing public footpath in the area as a possible route for the England Coast Path, but the existing footpath is largely on saltmarsh and is in extremely poor condition. Bringing the footpath up to a minimum standard for the England Coast path would be problematic, and would give rise to considerable concerns in terms of the loss of protected habitat within, or on the very edge, of a designated site. Given the availability of a nearby suitable alternative, the route over the marsh was ruled out.
23. Similarly, NE thoroughly investigated options for a route closer to the Ribble estuary between Freckleton and Preston, but concluded that this was not possible for a range of reasons that included safety, land management and nature conservation.
24. The accessibility of the route will be discussed with the relevant access authority prior to the establishment of the coastal path to ensure that all works and infrastructure are fully compliant with the law and best practice.
25. LCC have indicated that the kissing gates referred to by [REDACTED] and [REDACTED] form an unnecessary obstruction on the footpath and should be removed for that reason. NE would be prepared to fund replacement gates with

a more accessible design if deemed acceptable and feasible by LCC and the landowners. It is expected that any issues concerning the infrastructure referred to by Freckleton Parish Council will be resolved during the establishment phase, and that ongoing maintenance would be carried out by LCC or a Trail Partnership.

26. The proposed route generally follows the line currently be used by the public in the vicinity of Warton airfield, albeit this differs in places from the line shown on the definitive map. LCC will hold further discussions with key stakeholders prior to establishment works being undertaken, although the pattern of access around the airfield would be broadly unchanged and it is unlikely the proposals for England Coast path would give rise to concern.

Analysis

27. The Approved Scheme defines certain categories of land which are exempted ('excepted land') from coastal access rights under Schedule 1 of the Countryside and Rights of Way Act 2000, as amended by the Access to the Countryside (Coastal Margin) (England) Order 2010. For this purpose, excepted land includes land covered by buildings or the curtilage of such land. The term 'building' is defined in the Glossary to the Approved Scheme as including any structure or erection, and any part of a building. There is no definition in the Glossary of 'curtilage'.
28. There is no dispute that Brook Cottage itself qualifies as a building for the purposes of the Approved Scheme. The question, then, is whether the proposed route crosses the curtilage of Brook Cottage. If so, the proposed route would cross excepted land. That would not be permissible.
29. The starting point is the planning permission for Brook Cottage. In June 2017, planning permission was granted under reference 16/0985 for, in summary, the erection of a two-storey dwelling as a replacement for the existing cottage and outbuildings. The permission is subject to a number of conditions, including conditions requiring the submission, implementation and maintenance of a landscaping scheme (conditions 8 & 9) and the erection of boundary treatment to define the domestic curtilage of the dwelling (condition 14). The latter condition requires that the agreed means of enclosure shall be erected/planted prior to the first occupation of the dwelling *to provide a physical separation around the domestic curtilage and the wider red edged area shown on the site plan* identified on Drawing No: 16-11 PL04 REV B (emphasis added).
30. Drawing No: 16-11 PL04 REV B depicts the area to which the application is subject as a red line. The red line extends over the raised embankment which the proposed route would follow. The domestic curtilage is depicted by an orange line. That orange line does not extend over the raised embankment, but follows the landward edge of the raised embankment. Similarly, on the north side of the dwelling, the area encompassed by the orange line only covers part of the area enclosed by the red line.
31. Drawing No: 16-11 PL04 REV B was one of the drawings submitted with the application for planning permission for the replacement dwelling on this site. It is also one of the approved drawings cited on the Council's formal Decision Notice in granting planning permission 16/0985, and to which the consent relates. It is clear from Drawing No: 16-11 PL04 REV B that the application site (as defined by the red line) and the curtilage of Brook Cottage (as defined by the orange line)

- were accepted and indeed proposed by the applicant for planning permission ([REDACTED], who submitted this objection) as being separate entities at the time the application was submitted.
32. Furthermore, it is clear from the wording of Condition 14 of planning permission 16/0985 that the area enclosed by the orange line is considered to define the domestic curtilage of Brook Cottage. This is evident from the reason behind the imposition of that condition: to provide a physical separation around the domestic curtilage and the wider red edged area shown on the site plan identified on Drawing No: 16-11 PL04 REV B. Condition 14 requires that this curtilage must be defined by fencing/planting before first occupation of the dwelling, and thereafter retained at all times.
 33. At the time of the site inspection, the replacement dwelling approved by planning permission 16/0985 was nearing completion but had not yet been occupied. Given that a material start has clearly been made on the development approved under permission 16/0985, the conditions imposed upon that permission have taken effect². In relation to condition 14 of that permission, the requirement is that the domestic curtilage is defined by fencing/planting prior to first occupation of the dwelling. Since occupation of the dwelling has not occurred at the time of the site inspection, there was no requirement for the fencing/planting to be in place at that time. Nevertheless, the implementation of planning permission 16/0985 means that condition 14 has taken effect, and thereby fixed the domestic curtilage to that shown on Drawing No: 16-11 PL04 REV B.
 34. At the site inspection, [REDACTED] maintained that his garden extends over the raised embankment. That may be case. The condition of the raised embankment at this point currently has the character and appearance of a domestic garden. Nevertheless, the Approved Scheme specifically defines excepted land as including land covered by buildings or the *curtilage* of such land (emphasis added). The Approved Scheme does not refer to garden land.
 35. Planning permission 16/0985 defines the domestic curtilage of the replacement dwelling as that shown on Drawing No: 16-11 PL04 REV B. That permission has been implemented. On the implementation of that planning permission, the domestic curtilage shown on Drawing No: 16-11 PL04 REV B became the relevant benchmark.
 36. The flood embankment which the proposed route would follow is outside of the domestic curtilage as shown on Drawing No: 16-11 PL04 REV B and therefore as defined by planning permission 16/0985. The corollary is that the proposed route does not cross excepted land. The proposed route would cross land owned by [REDACTED] and shown as being with the application area for planning permission 16/0985. That is permissible: the 2009 Act gives a duty to NE to propose a route for a trail, and this can include to create new paths over private land where no suitable routes exist currently.
 37. In that context, the presence of the two existing public footpaths on either side of Brook Cottage is noted. The footpath to the east of Brook Cottage presents no insurmountable difficulties, but the same is not true of the footpath to the west of the property (that to the west of Wrea Brook). The two sets of steps at the start

² Assuming that the permission has been implemented in accordance with that permission.

- of the footpath (from Lytham Road) would present a difficulty to those with impaired mobility, and an impassable obstacle to those who rely on mobility scooters. The narrowness of the footpath in places would present an added difficulty. By comparison, the surface and width of the proposed route would present no difficulties for walkers of all degrees of mobility.
38. Furthermore, the use of those footpaths would add a considerable distance to the route for those who would be able to use them. NE calculate the total distance to be in the region 400 metres. This compares with a distance of approximately 75 metres between the same points along the proposed route. The detour using the footpath also takes the walker inland and away from the sea. The Ramblers and the Open Spaces Society both welcome the proposed route on the grounds that it avoids the walk inland necessitated by use of the two footpaths.
39. For these reasons, the two existing public footpaths on either side of Brook Cottage do not provide a suitable route for the England Coast Path and would not accord with paragraph 4.3.1 of the Approved Scheme. The route proposed by NE is entirely suitable and is to be preferred.
40. The replacement dwelling nearing completion at Brook Cottage features windows in the south elevation that face onto the proposed route. At the site inspection, [REDACTED] pointed out that the windows in the ground floor of that elevation served bedrooms. To the extent that views into these rooms are possible from the proposed route (by reason of its elevated position in relation to the dwelling), this would result in a loss of privacy to the occupiers of that dwelling once occupation of the dwelling takes place. Similarly, the presence of walkers on the route would be apparent to those occupiers and would be intrusive. The resultant loss of privacy would be greater than that experienced from walkers using the two public footpaths on either side of the property.
41. That situation would change once the replacement dwelling is completed and planning permission 16/0985 fully implemented. The proposed site plan submitted with the application (Drawing No: 16-11 PL04 REV B) contains a notation to the effect that the existing trees and shrubs are to be retained in order to form a visual buffer between the domestic curtilage and the estuary. The secondary effect of that would be to provide privacy for the occupiers of Brook Cottage.
42. It was apparent at the site inspection that much of that vegetation has been removed. Nevertheless, conditions 8 & 9 of planning permission 16/0985 respectively require the submission, implementation and subsequent maintenance of a landscaping scheme. The reasons for imposing those conditions are stated on the Council's formal Decision Notice as including the visual amenity of the locality and to protect wildlife and biodiversity. The implementation of that landscaping scheme would also prevent direct overlooking of Brook Cottage from the proposed route (including the ground floor bedroom windows in the south elevation) and would provide adequate privacy for the occupiers of that property. Any overlooking that may result from use of the public footpaths on either side of Brook Cottage is likely to reduce as walkers take advantage of the shorter distance and better sea views offered by the proposed route. The net result would be an overall improvement in the living conditions enjoyed by the occupiers of Brook Cottage in relation to their privacy.

43. In his objection, [REDACTED] suggests that the proposed route would reduce the garden area for private use. This is technically correct, insofar as the proposed route would permit public access to an area that [REDACTED] has assimilated into his private garden. But this has not always been the case. An aerial photograph taken as recently as 2019 shows the area of the embankment to have a very different appearance to that at the time of the site inspection, being similar in appearance to other sections of the flood embankment on either side. The vegetation referred to in the notation on Drawing No: 16-11 PL04 REV B, subsequently largely removed, is clearly visible. The gates across the flood embankment appear to be in place, and there is also a fence or other form of boundary treatment on the landward edge of the embankment.
44. Furthermore, in submitting the planning application for the replacement dwelling, [REDACTED] has expressly accepted (and indeed proposed) that the domestic curtilage is that defined in Drawing No: 16-11 PL04 REV B. That domestic curtilage does not include the flood embankment. The concepts of 'curtilage' and 'garden' are related but separate things: a private garden can exist outside of a domestic curtilage. Whilst the proposed route would mean that parts of [REDACTED] garden would no longer be private, the sanctity of the domestic curtilage of Brook Cottage would remain unaffected by the proposed route. A private garden space, albeit of a reduced size, would still be available to the occupiers of that property, safeguarded by the landscaping and fencing/planting around the domestic curtilage required by the conditions imposed on planning permission 16/0985.
45. NE suggest that the separation between the accessible land and the curtilage of Brook Cottage to be achieved through the erection of a fence to the landward side of the trail at approximately 2 metres from the trail centre line. However, given that the domestic curtilage would be physically defined under the terms of planning permission 16/0985, that would not be necessary.

Conclusions

46. The proposed route does not cross excepted land. The route is suitable for walkers of all degrees of mobility, and provides a pleasant walking experience as part of a section that extends for some 2.5km and which offers unrestricted views towards the sea.
47. There are no suitable alternatives to route proposed by NE. The use of the footpaths on either side of Brook Cottage significantly increases the length of the route. Those footpaths would be difficult to negotiate for those with impaired mobility, and would be wholly impassable for those with mobility scooters.
48. It is recognised that the route would reduce the area of private garden available to the occupier of Brook Cottage. However, the full implementation of the planning permission for the replacement dwelling at Brook Cottage would provide the occupiers of that property with a domestic curtilage which would offer private amenity space and adequate levels of privacy for the dwelling itself.
49. On balance, in my view any adverse effects that have been identified by the objector do not outweigh the interests of the public in having rights of access over the land. None of the comments made in representations alter my conclusions on that respect.

Recommendation

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

Paul Freer

APPOINTED PERSON