



The Planning Inspectorate

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# 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

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Marine and Coastal Access Act 2009

Objections by: Cape Limited; [REDACTED]; [REDACTED]; [REDACTED];  
[REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Penwortham New Bridge, Preston to Tarleton Lock

Site visit made on 15 June 2021

File Ref: MCA/CPH3

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<https://www.gov.uk/planning-inspectorate>

**Objection References: MCA/CPH3/0/1/0068; MCA/CPH3/0/3/1661;  
MCA/CPH3/0/4/0119; MCA/CPH3/0/5/0534;  
MCA/CPH3/0/6/0780; MCA/CPH3/0/7/1662;  
MCA/CPH3/0/8/1331; MCA/CPH3/0/9/1675;  
MCA/CPH3/0/10/1509; MCA/CPH3/0/11/1509**

**Penwortham New Bridge, Preston to Tarleton Lock**

- 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 objections have been made to Report CPH3: Penwortham New Bridge Preston to Tarleton Lock:
  - [REDACTED], dated 18 November 2020
  - [REDACTED], dated 18 November 2020
  - Cape Limited, dated 20 November 2020
  - [REDACTED], dated 23 November 2020
  - [REDACTED], dated 23 November 2020
  - [REDACTED], dated 25 November 2020
  - [REDACTED], dated 27 November 2020
  - [REDACTED], dated 27 November 2020
  - [REDACTED], dated 2 December 2020

The land in the Report to which the objections relate is route sections ref. SO15, SO25-30, SO35 and SO37-42.

- The objections are variously made under paragraph 3(3)(a),(c) and (d) 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.**

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**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. Nine objections were received within the specified timescale, of which eight were determined to be admissible. I have been appointed to report to the Secretary of State on those objections.
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 15 June 2021 when I was accompanied at various times by [REDACTED], [REDACTED], [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 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,
- (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. The stretch from Penwortham New Bridge, Preston to Tarleton Lock includes the estuarial waters of the River Douglas and part of the estuary of the River Ribble. Where it is proposed that the trail extends along a river estuary, section 301 of the Act applies. It 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.

11. 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.

12. NE's Approved Scheme 2013<sup>1</sup> ('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.

13. 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**

14. The objections concern parts of the proposed trail extending beside the River Douglas and the River Ribble. At this point, the trail generally follows an existing public footpath. Apart from a relatively short section across farmland (S015 to S017), the route is on a low flood embankment. The public footpath is popular with walkers, including those with dogs. A narrow strip of the land seaward of the path, including riverbank and mudflat (exposed at low tides), would fall within the coastal margin. The fields to the landward side of the embankment would not form part of the coastal margin.

### **The Objections**

15. The objections cover five main themes:

- the position of the proposed route
- risk to the public arising from quicksand, coastal flooding and path erosion
- impacts resulting from increased levels of access, including trespass, damage to crops and the risk of disturbance and disease caused by straying dogs
- impact on ground nesting birds.
- concerns over maintenance liability and the cost of additional fencing

*Public safety*

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

16. The public would be put at risk due to areas of quicksand, coastal flooding and path erosion.

*The position of the proposed route*

17. The objectors propose modifications to the route, specifically that the route should exclude the sections between Hesketh Bank and Tarleton Lock, on the basis that there is no advantage to be gained by the route extending further south than Hesketh Bank in terms of views of the sea or physical features.

18. Alternatively, some objectors suggest using the existing pedestrian walkway on the A59 road bridge as an alternative to creating a new crossing over the River Douglas.

19. In relation to the land at Lower Marsh Farm (sections SO25-28), [REDACTED] contends that the alignment of the public footpath, as shown on definitive map, is incorrect. It is proposed that the trail should follow the existing walked route along the grass bank rather than the farm track as proposed, and that there should be a change in the location of the kissing gate at the junction of sections SO26 and SO27 in order to prevent accidental damage.

20. Similarly, [REDACTED] maintains that the Ordnance Survey base maps show an incorrect alignment of the public footpath as it passes through Middle Grange Farm (section SO15). It is also suggested that the labelling of the report map encourages trespass on his land.

*Increased levels of access*

21. The general concern is that the route would encourage a lot more people on rural farmland, including motorbikes and mountain bikers.

22. The route would have a negative impact on the horses and livestock which graze the adjoining land. There is a greater risk that dogs owned by members of the public which have not had the appropriate preventative treatments may pass parasitic worms to the horses and livestock. There is also a greater risk that stray dogs may cause distress to and/or cause injury to livestock.

23. The land is being used for arable farming. There could be an impact on crops being grown by walkers potentially trespassing.

*Impact on ground nesting birds*

24. The route will inhibit ground nesting birds as a result of damage caused by trespass by the public, as well as disturbance from their dogs. This is particularly important in terms of Skylark and Partridge, both of which have the highest conservation priority.

*Maintenance liability and the cost of additional fencing*

25. Concern is expressed in terms of the cost to landowners of providing additional fencing to prevent trespass onto their land, and in terms of maintaining the route.

## **Representations**

26.LCC point out that the path on the western side of the River Douglas between Plox Brow and Tarleton Lock is not a Public Right of Way. It would therefore not be possible to re-join the route should access of this path be obstructed. LCC also point out that crossing the River Douglas via the road bridge over the A59 requires crossing four lanes of high-speed carriageway unaided. For these reasons, LCC support the provision of a crossing at Tarleton Lock.

27.The Ramblers and the Open Spaces Society support the route from CPH-3-S001 to CPH-3-S014, but consider that better alternatives are available in relation to the proposed route between CPH-3-S015 to CPH-3-S017. In particular, the new outer embankment offers good views over the estuary. Similarly, The Ramblers and the Open Spaces Society support the route from CPH-3-S018 to CPH-3-S021, but consider that the better alternative between CPH-3-S022 to CPH-3-S029 would be to follow the western side of the former Longton tip. The possibility of the river crossing at Tarleton Lock is noted, but in the interim it is suggested that the guide to the Coastal Path should make reference to the local bus services.

28.The Lancashire Local Access Forum (LLAF) adopts the strategic position of expediting the completion of the project at the earliest opportunity, and confines detailed comments to the potential crossing of the River Douglas. The LLAF that using the road bridge over the A59 is unpleasant, dangerous and unattractive, and urges that the Coastal Path is used as a catalyst for providing a crossing at Tarleton Lock.

29.The representations by West Lancashire Borough Council, [REDACTED]and [REDACTED] all request that a bridge across the River Douglas should be delivered as part of the project. The representation by [REDACTED] asks that any new bridge over the River Douglas should serve the needs of both walkers and cyclists, and suggests the most appropriate location for the new bridge is at Becconsall. 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 English Coast Path as possible. National Grid notes the proximity of the route to some of its assets and asks that further information is provided to its risk management team.

30.The representation by [REDACTED] does not favour a new bridge over the River Douglas, and suggests instead the route utilises the existing pedestrian walkway on the A59 road bridge.

## **Natural England's Response to the Objections**

31.Given that a number of the objections raise similar grounds, it is convenient to summarise the response of Natural England to the main issues raised by the objections collectively rather than be each objection individually.

### *The position of the proposed route*

32.NE exercised their discretion in relation to the Douglas Estuary so as to include a route on either side of the estuary as far upstream as Tarleton Lock. This was considered to be the most appropriate point for the possible installation of a new bridge. Whilst the provision of a bridge is beyond the remit of the

England Coast Path programme, due to the estimated cost, NE consider that it should be possible for a bridge at this point to be delivered in the medium term via partnership approach.

33.NE confirm that the use of the A59 road bridge was considered at some length during the initial planning stages. The pedestrian walkway is on the upstream side of the road bridge, such that utilising that walkway as part of the English Coast Path would involve several risky crossings of busy main roads. The highways authority advised that this would not be safe without considerable road engineering schemes, which are beyond the remit of the coastal access programme.

34.In relation to the land at Lower Marsh Farm (sections SO25-28), LCC have confirmed that the existing public footpath follows the farm track and not, as [REDACTED] believes, the grass bank that runs alongside it. There would be some advantage to the route following the grass bank: its elevated position affords better views towards the estuary and would avoid any potential conflict with the operation of the farm.

35.However, the top of the grass bank is relatively narrow. It is bounded on the seaward side by a fence to the former landfill site. To the landward side, the side of the grass bank slopes steeply down to the existing public footpath. The surface at the top of the grass bank is uneven. [REDACTED] has attempted to infill some of the uneven ground but at this time the surface remains difficult to negotiate in places, particularly for those with impaired mobility.

36.NE have confirmed that there is no objection to the trail following the grass bank, providing that it can be brought up to the required standard and preferably following a legal change to the definitive map. In that regard, NE would cover all the agreed costs associated with the establishment of the England Coast Path to a suitable standard but are unable to cover the legal costs relating to a change to the definitive map.

37.LCC have also confirmed the line of the definitive public footpath as it passes through Middle Grange Farm (sections SO15) is correctly depicted on the Ordnance Survey base maps. LCC is in discussion with the landowner over modification of the definitive map to allow the public footpath to be routed around the farm buildings.

#### *Public safety*

38.The narrow strip of the land seaward of the route would fall within the coastal margin, and does feature estuarine mudflat at low tides. The route follows an existing public footpath on a low flood embankment and is an obvious route to follow. The public would be very unlikely to encounter any quicksand on the trail itself as it is entirely above mean high water. For the same reasons, it is very unlikely that any parts of the route would be routinely impacted by flooding. The 2009 Act recognises that the coast is an inherently risky environment and that walkers must assume primary responsibility for their own safety. The proposed alignment in this area is entirely consistent with the Approved Scheme in relation to alignment on an embankment (8.21.4) and in relation to the use of existing walked routes (4.7). There is no reason to expect increased risks as a result of the proposals in this vicinity.

39. Ongoing funding for the maintenance of the England Coast Path will be available to deal with the repair of localised erosion.

*Increased levels of access*

40. The route follows a public footpath that is already popular with walkers, including those with dogs. It is anticipated there that might be a medium increase in activity in levels of access on these sections of the public footpath as a result of them becoming part of a National Trail<sup>2</sup>.

41. There is a general requirement for dogs to be kept under effective control whilst on land with coastal access rights. The risk of distress to livestock caused by straying dogs would not be significantly greater than that resulting from the use of the existing public footpath. Specialist advice from the Animal and Plant Health Agency (APHA) confirms that dogs are hosts to certain infectious diseases that can affect cattle and sheep. Those diseases can be passed to livestock through dog faeces. However, the vast majority of pet dogs are fed commercial dog food which is either processed or if raw produced to human standards of consumption. Accordingly, APHA advise that the likelihood that walker's dogs may carry infection is very low.

42. It is noted that there is no fence on the landward side along some sections of the route. Had trespass and the associated damage to crops been a significant issue from the use of the existing public footpath, it may have been expected that landowners would have already erected a fence. It is considered that the additional increase in damage to crops resulting from this footpath becoming part of a National Trail would not be significantly greater than that resulting from the use of the existing public footpath.

*Impact on ground nesting birds*

43. This section of the route is not within or adjacent to any protected National or European sites. The Habitats Regulations Assessment and Nature Conservation Assessment undertaken in relation to the English Coast Path project have not identified any impacts in relation to ground-nesting birds. The route follows a flood embankment that is already well-used by walkers. It is unlikely that birds would choose to nest on or in close proximity to the route itself.

*Maintenance liability and the cost of additional fencing*

44. In those exceptional cases where fencing alongside the trail is deemed essential for land management, safety or nature conservation purposes, Natural England would expect to finance the installation of such fencing. This is not one of those exceptional cases. The flood embankment is already a public footpath, and the adjoining landowners would have installed fencing of their own volition if such fencing had been necessary.

45. The maintenance of route would not be responsibility of the landowner or occupier. The expectation is that LCC will take on future maintenance, but that in the longer term a Trail Partnership could be created to take over responsibility for trail management and maintenance.

**Natural England's Comments on the Representations**

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<sup>2</sup> Not in relation to the coastal margin.



46.NE agree that a new bridge over the River Douglas is the only satisfactory solution and consider that it should be regarded as a high priority by all stakeholders. NE agree that it would make sense for any new bridge to serve the needs of both walkers and cyclists, subject to other considerations such as the feasibility of adjoining routes. In that context, the site of the disused railway bridge at Becconsall has already been considered separately by LCC in terms of a viable location for a new pedestrian/cycle bridge, but the span between the existing abutments is considerable. The use of the A59 road bridge was considered but was rejected on public safety grounds.

47.NE is directed to make use of existing coastal paths where these meet the criteria within the coastal access scheme. Whilst some sections of those existing paths are not particularly close to the coast, such as S015 to S017, there are no significantly more seaward routes that would be suitable. In relation to the stretch between S022 to S029, NE did consider the option of following the western side of the former Longton tip but concluded that ground conditions were unfavourable and that the cost of establishing a route on this line would outweigh the advantages.

48.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. Given that the establishment of the England Coast Path is minimal and very localised in this area, NE would not anticipate any risk arising from proximity to National Grid infrastructure.

### **Analysis**

49.I will conduct my analysis in relation to the four main themes covered in the objections.

#### *The position of the proposed route*

50.Section 296 of the 2009 Act places a duty on Natural England and the Secretary of State to use their powers to secure twin objectives. One of those objectives is to secure a route around the whole of the English coast. The provision of a crossing over the River Douglas is fundamental in achieving the continuity of the trail, and therefore to delivering that key objective.

51.NE consider that Tarleton Lock to be the most appropriate point for the possible installation of a new bridge. The River Douglas is relatively narrow at this point, and therefore is only accessible by small craft. This means that the span of the bridge would be the shortest possible. The clearance of the base of the bridge above water level could also be kept to a minimum. For these reasons, the estimated cost of installing a new bridge at this point should enable a bridge to be provided in the medium term via a partnership approach. On that basis, I consider that a crossing at Tarleton Lock represents the optimum opportunity of securing the continuity of the trail, and therefore to delivering the key objective set out in section 296 of the 2009 Act.

52.The channel of the River Douglas generally increases in width downstream from Tarleton Lock. In addition, at some points there is extensive low-lying marsh on either side of the channel. The increased width of the channel means that it is accessible by larger craft. A crossing downstream from Tarleton Lock

would therefore require both a greater span and a greater clearance of the base of the bridge above water level. A crossing downstream of Tarleton Lock would be both technically more challenging and potentially more expensive than a crossing at Tarleton Lock, and as such are less likely to secure the key objective set out in section 296 of the 2009 Act.

53. Three potential alternative crossing points have been put forward: (i) the existing United Utilities pipe bridge; (ii) the projection of the raised former railway embankment (both downstream of Tarleton Lock); and (iii) the pedestrian walkway on the A59 road bridge upstream of Tarleton Lock.

54. In relation to the United Utilities pipe bridge, the width of the channel and the riverbank at that point is greater than at Tarleton Lock. It would be technically more challenging and potentially more costly to install a bridge at this point<sup>3</sup>. The same applies to the possible extension of the former railway embankment. In addition, at the time of my site visit, the land on the opposite bank of the River Douglas was being redeveloped. The integration of a potential new crossing into that scheme would be an added complication and would potentially delay delivery of the key objective of the programme in terms of the continuity of the trail. For those reasons, I consider that neither of the two potential crossing points drawn to my attention would be more suitable than the potential crossing point at Tarleton Lock.

55. The pedestrian walkway on the A59 road bridge is on the upstream side. In the absence of extensive and potentially costly engineering works that would fall outside the remit of the England Coast Path, utilising that pedestrian walkway would involve several risky crossings of busy main roads. This would put the public at unacceptable risk. For that reason, the use of the A59 road bridge as the crossing point of the River Douglas would not be appropriate.

56. Some of the objectors have proposed that the route of the England Coast Path be modified to exclude the sections between Hesketh Bank and Tarleton Lock entirely. Given the potential difficulties and additional expense of providing a crossing point downstream of Tarleton Lock, I am satisfied that NE have exercised its discretion appropriately in selecting Tarleton Lock as the most suitable point for a new bridge. Accordingly, I do not recommend that the proposed route is modified in this respect.

57. In relation to the land at Lower Marsh Farm (sections SO25-28), there would be some advantage to the route following the grass bank in terms of affording better views towards the estuary than does the existing public footpath. However, on balance, those advantages would be outweighed by the risk to public safety arising from the uneven surface on the top of the grass bank combined with the steeply sloping side of the grass bank. Those risks would, in my judgment, be greater than any risk to the public arising from conflicts with livestock or farm machinery from use of the existing public footpath.

58. The balance in this regard would tilt the other way should the top of the grass bank be brought up to the required standard through funding from NE. Should the trail then follow the top of the grass bank without an attendant change to the

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<sup>3</sup> The existing pipe bridge is evidently in poor condition. There is no evidence to demonstrate that it could be converted for safe pedestrian use.

definitive map, the landowner would be left in the position of having two parallel routes on his land. That would not be in his best interests.

59. The Approved Scheme indicates that where there is a clear walked line along the coast, whatever its status, NE will normally adopt it as the coastal path provided that it is safe and practicable for the public to use, can be used at all times, and its alignment makes sense in terms of the statutory criteria and principles set out in the Approved scheme. In relation to the land at Lower Marsh Farm, the situation is somewhat complicated by the fact that there are two walked lines that run broadly parallel to each other: the existing public footpath, and the top of the grass bank. The alignment of both the existing public footpath and the walked line on the grass bank makes sense in terms of the statutory criteria and principles set out in the Approved Scheme: if anything, more so in the respect of the walked line on the grass bank. But only the existing public footpath can be guaranteed to be available for use at all times, and only the existing public footpath is safe and practicable for the public to use. It follows that, at this time, only the existing public footpath can deliver the key objective of achieving the continuity of the trail.

60. Consequently, notwithstanding the benefits offered by the walked line on the grass bank, at this time only the existing public footpath meets all the criteria for the England Coast Path. Accordingly, I do not recommend that the proposed route is modified in this respect of the land at Lower Marsh Farm.

#### *Public safety*

61. The narrow strip of the land seaward of the path would fall within the coastal margin, and does feature estuarine mudflat at low tides. The route generally follows an existing public footpath on a flood embankment. It is an obvious route to follow, and is entirely separate from the estuarine mudflat to the seaward side. There would be very little risk of walkers inadvertently straying onto the estuarine mudflat: it would require a deliberate decision to deviate off the path down the sides of the embankment in order to reach the mudflats.

62. The position of the route on the summit of a flood embankment means that the public would be very unlikely to encounter any quicksand on the trail itself, as the route is entirely above mean water. For the same reasons, it is very unlikely that any parts of the route would be routinely impacted by flooding.

63. I did not observe any obvious evidence of coastal erosion of the flood embankment which the route would follow at the time of my site visit. Furthermore, NE confirm that ongoing maintenance of the England Coast Path will be available to deal with the repair of localised erosion.

64. The 2009 Act recognises that the coast is an inherently risky environment and that walkers must assume primary responsibility for their own safety. The clear separation of the route atop a flood embankment is sufficient to enable walkers to readily exercise that responsibility, both in relation to the estuarine mudflats and any risk of flooding. Consequently, whilst there would always be the potential risk of accidents, in the normal course of events using the route would not put the public at unacceptable risk.

#### *Increased levels of access*

65. The route downstream from Tarleton Lock generally follows a flood embankment. Apart from one short section (S015 to S017), it does not pass through the fields owned and/or farmed by the objectors. There is an existing fence along some sections of the route. Along others, aside from occasional gaps to provide access to farm tracks, the base of the flood embankment is heavily vegetated on the landward side. This vegetation in itself forms an effective barrier to trespass by walkers and their dogs alike.

66. The route follows a public footpath that is already popular with walkers, including those with dogs. NE anticipate there that might be a medium increase in activity in levels of access on these sections of the public footpath as a result of them becoming part of a National Trail<sup>4</sup>. That, plus the barriers to trespass provided by the existing fence and vegetation adjacent to the flood embankment, is sufficient to ensure that the risk of damage to crops would not be significantly greater than that resulting from the use of the existing public footpath.

67. There is a general requirement for dogs to be kept under effective control whilst on land with coastal access rights. The risk of disturbance caused by straying dogs would not be significantly greater than that resulting from the use of the existing public footpath. Moreover, the specialist advice from APHA is that the likelihood that walker's dogs may carry infection is very low.

68. The likely increase in the levels of access is therefore unlikely to be materially different to that experienced through the existing use of the public footpath, either in terms of trespass, damage to crops, distress to livestock by straying dogs or through the spreading of disease.

#### *Impact on ground nesting birds*

69. The Habitats Regulations Assessment and Nature Conservation Assessment published by NE have not identified any impacts in relation to ground-nesting birds. Given that route follows a flood embankment that is already well-used by walkers, with a surface mostly of short grass, it is unlikely that birds would choose to nest on or in close proximity to the trail itself. A more suitable habitat for ground-nesting birds is provided by the vegetation that adjoins some sections of the route and within the adjoining fields. Birds nesting in that habitat would not be at significantly greater risk of being disturbed than through the use of the existing public footpath by walkers, including those with dogs.

#### *Maintenance liability and the cost of additional fencing*

70. The flood embankment is already a public footpath, and it is reasonable to conclude that the adjoining landowners would have installed fencing of their own volition if such fencing had proven to be necessary. There is no evidence to show that fencing alongside the trail is essential for the purposes of land management, public safety or nature conservation. The maintenance of route would not be responsibility of the landowner or occupier.

### **Conclusions**

71. The trail along this section follows an existing public footpath on a low flood embankment. This path is safe and practicable for the public to use, can be

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<sup>4</sup> Not in relation to the coastal margin.

used at all times, and its alignment makes sense in terms of the statutory criteria and principles set out in the Approved Scheme. As such, it accords entirely with section 4.7 of the approved scheme.

72.The identification of Tarleton Lock as a crossing point of the River Douglas is entirely logical. I am satisfied that NE has exercised its discretion under section 301 of the 2009 Act appropriately in that respect.

73.On balance, in my view any adverse effects that have been identified by objectors do not outweigh the interests of the public in having rights of access over the land.

### **Recommendation**

74.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**