



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

Objections by [redacted] & [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Eastbourne to Camber

Site visit made on 28 June 2021

File Refs: MCA/EBC2/O/17/EBC1826 & MCA/EBC2/O/20/EBC1045

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The Parade, 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 objections, dated 4 June and 10 May 2020, concern Report EBC2, Bay View Caravan Park, Pevensey Bay to Herbrand Walk, Cooden and relates to route sections EBC-2-S049 to EBC-2-S054 as shown on Map EBC2b.

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] and [redacted], the response of NE and my conclusions and recommendation.
2. As the issues raised by [redacted] and [redacted] raise the same issues and relate to the same section of the proposed route, I have dealt with them in the same Report.

Objections considered in this report

3. 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.
4. 23 objections were received to the Report, all of which were deemed to be admissible. The objections considered in this report relates to The Parade, Pevensey Bay between Western and Bay Roads. The other objections are considered in separate reports.

Site visit

5. 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 Parade and the immediate surroundings.

Main Issues

6. 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.

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 referred to as "the trail" in this report.

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 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.

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. [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)]

12. 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.

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.

The Coastal Route

14. The trail, subject to part 2 of NE's 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. The section of trail subject to these objections is aligned along The

¹ Approved by the Secretary of State on 9 July 2013

Parade, a surfaced road some 120m in length. The Parade is aligned parallel to the beach and serves residential properties on its landward side.

The Objections

15.[redacted] is concerned that the routing of the coastal path along The Parade would result in a significant loss of privacy to her house [redacted]. Whilst she accepts that people already walk along The Parade, it is said that this is for localised pedestrian access and is tolerated by residents on that basis. The establishment of the trail would give rise to increased use of the road by people who are not known to [redacted]. The concern is that these people would look into the house and garden, something which would be highly intrusive.

16.[redacted] also states that the proximity of the trail to the garden would compromise the ability to socially distance. Other issues raised include a lack of consultation on the part of NE and the effect of the trail on carbon emissions.

17.[redacted] raises a number of similar points and mentions that his security would be compromised.

18.[redacted] suggests the trail could be aligned across the top of the beach, seaward of the residents' gardens, where most people walk and the views are superior. [redacted] argues that the trail could be aligned along Channel View Road, instead of Bay Avenue.

Response by NE

Privacy

19.Sections EBC-2-S049 to S052 are aligned along The Parade, a grassed track. The proposals, if approved, would create coastal access rights along the trail and create associated coastal margin. The Parade is not registered with Land Registry and has four existing pedestrian accesses.

20.Pevensey Bay's shingle beach lies seaward of the trail and a run of gardens. Shingle makes for difficult walking, and the Coastal Access Scheme (7.12.4) 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.

21.Along the 5 miles of Pevensey Bay's shingle beaches (between Eastbourne and Bexhill), NE have aligned the trail onto firmer surfaces where possible, where it could be close to the coast and provide continued views of the sea, while avoiding significant impact on the affected private interests.

22.The Parade is approximately 200m of grassed surface thoroughfare, and offers a respite from shingle walking, where those walking the coast path can choose to leave the beach. It also provides views of the beach and coast.

23.Houses, such as [redacted] and [redacted], are located on the landward side of the thoroughfare and are separated from the proposed trail by low garden walls and small front gardens. On the seaward side of the proposed trail, the gardens are clearly marked out, for example with bollards or ropes. Gardens like these are excepted from coastal access rights under Schedule 1 to the Countryside and Rights of Way (CROW) Act 2000 to help protect private interests and privacy.

24.NE would expect an increase in the number of walkers using The Parade, as a result of aligning the England Coastal Path here. However, it is unlikely to be a high increase as some new visitors may well choose to walk along the shingle beach and local people are unlikely to change their established patterns of use due to the trail alignment.

25.The gardens that lie adjacent to The Parade will be clear to anyone walking this part of the trail. The gardens are also emphasised by some existing 'private land' notices. As such, NE would expect visitors to continue to be respectful of the residents here, and naturally keep a distance from the homes landward of the trail. The Parade is a wide strip of land approximately 7m wide which allows walkers to be mindful of residents using their gardens.

26.[redacted] questions why an analysis of the privacy impacts relating to the 'split' gardens on The Parade was not fully explored in the Overview or Report EBC2. During the period prior to publication, NE sought to identify the issues of the landowners and occupiers affected by the plans.

27.In doing so, NE were aware of the concerns of a number of residents along Pevensey Bay, Normans Bay and towards Cooden whose properties or gardens are close to the beach. Each area has been considered in relation to the principles of the 2009 Act, including residents' privacy in the gardens (whether 'split' or not) and the requirement to strike a fair balance between public benefits and private interest. NE consider that the issues raised by landowners are appropriately summarised in the Overview, p25, under c) Interests of owners and occupiers.

Security

28.The Parade already has public access and there are currently very low recorded crime incidents for this area (<https://www.adt.co.uk/crime-in-my-area>). NE do not have evidence that formal pedestrian access compromises security in the way predicted by [redacted]. Owners of beachside properties are no doubt already alert to security risks and undertake basic security measures such as securing belongings or locking up equipment, where possible. Increased use of the trail may well have a positive, deterrent effect on criminal activities, by increasing the presence of law-abiding people in the area.

Covid-19

29.NE appreciate the concerns raised in relation to social distancing. However, given the width of The Parade at over 7m, it is not anticipated that the ability to maintain a safe distance from others would be compromised.

Carbon emissions

30.With regard to the direct impact of vehicle emissions on European designated sites, it is the nitrogen oxide emissions from road traffic that can represent a risk to sensitive vegetation where critical levels might be exceeded. Traffic emissions can also be a short-range contributor to nitrogen deposition. The usual distance criteria considered when assessing the impact of road traffic emissions on European sites is 200m and the rule of thumb for change in the average annual daily traffic flow that might be impactful is 1,000 or more. Coastal access proposals are concerned with providing a walking route and whilst NE expect there will be some increased visits to coastal sites by visitors

travelling by car, NE do not believe there is an appreciable risk of there being an impact on European Sites even approaching these threshold levels, as to some extent visits to the coastal path will replace recreational journeys that might otherwise have been made.

31.Plans for promotion of the Coast Path once it is completed and open are still in development at this stage, but sustainable transport and encouragement to explore areas close to where people live will be a consideration – helping to reduce carbon emissions and tackle climate change.

Consultation

32.The Approved Coastal Access Scheme lays out a process for developing the coastal access proposals, which includes dialogue with local landowners of potentially affected land. Sharing NE’s initial thinking regarding the route alignment and providing an opportunity for discussion about where the route may go is fundamental to developing the final proposals².

33.During January 2018, letters went out to landowners in Pevensey, inviting them to contact NE about coastal access and later to share our initial thinking of the route. NE subsequently met a number of residents individually and in groups and also arranged public ‘drop-in’ meetings in Pevensey and Parish Council meetings to give owners and other local people the opportunity to raise issues that may need to be addressed. NE circulated a mapped summary of our thinking to affected landowners and others in Jan 2019.

34.As part of this process, NE met with the previous owners of the [redacted] on 4 July 2018³. NE also met with two other residents on this part of The Parade who raised concerns about the proximity of the trail to their houses.

35.Unfortunately, NE were unaware of the change of ownership at the [redacted] until the objection was received, after publication. However, before publishing the proposals to align the trail along The Parade, NE were made aware by other residents of the concerns about privacy, as well as opinions about the access status of the track. NE took these into account when publishing their final proposals.

Alternative routes

36.The Approved Scheme provides guidance that the route should normally be close to the sea. However, that does not mean the trail must pass along the land closest to the sea, especially where the surface elsewhere is more convenient for walking (para 4.5.2). Given the existing use of the grassed route, the width of the trail and the benefit for walkers to be able to take breaks from shingle along a clearly marked National Trail, NE considered this alignment meets the key principle of ‘proximity of the trail to the sea’.

37.In terms of [redacted] suggestion, NE comment that there is only 70m of The Parade between Channel View Road and Bay Avenue, the suggested diversion would further reduce the sea views available from the trail which is already positioned inland of buildings to the east of Bay View Road.

² See paragraphs 3.4.5–3.4.6

³ A file note of the meeting between NE and the former owners of Blue Dolphins dated 4 July 2018 has been provided – see Annex 1.

38. Aligning the trail along Channel View Road may also result in some walkers trying to access/leave the beach directly from the end of this road across a garden area currently roped off from both the road and beach. The proposed alignment along Bay Avenue offers direct access to the shingle beach on an existing shingle track (see Annex 2 – Google Streetview of beach access at Bay Avenue).

Conclusions

Privacy and security

39. As [redacted] accepts and as I saw at the time of my visit, there is already informal pedestrian access along The Parade. Whilst it is not unreasonable to suggest that the establishment of the trail would give rise to some increased use, I do not consider the numbers involved would be significant particularly as some would inevitably opt to walk along the shingle beach.

40. Putting that rather fundamental point to one side, it is not clear to me from the objections why the security and privacy of the objectors would be compromised by future users of the coastal path but not by existing users. Whilst I accept the familiarity point, there is no reasonable basis on which to conclude that future users of the trail would be any more likely to pose a security or privacy concern than people who happen to share the same post code as the objectors.

41. In my experience users of long-distance walking routes, of the kind proposed here, are ordinary law-abiding citizens who are just as likely to respect private property, as any other group of people. Accordingly, I find the points raised regarding privacy and security to be unconvincing.

Covid-19

42. Matters relating to the Covid-19 pandemic have clearly moved on since [redacted] wrote her objection. Accordingly, the points raised somewhat fall away. Even if there was to be a reintroduction of social distancing measures, I have no reason to conclude that users of the trail and residents would find it difficult to maintain a suitable distance in light of the generous width of The Parade.

Carbon emissions

43. As already set out, it is unlikely that the coastal path would result in a significant number of new people visiting the area. Accordingly, any increase in vehicular emissions would be correspondingly small and nowhere near the level that would give rise to a 'likely significant effect' on the nearest designated wildlife sites, which in any event appear to be some distance from Pevensey Bay.

Consultation

44. From the information provided it appears that ownership of [redacted] changed after NE carried out its initial consultations in 2018. Whilst that is unfortunate, it would be unreasonable to expect NE to re-consult every time a property changed hands. Based on the information provided by NE (see paragraphs 31-34 above), I am satisfied that all the relevant consultation procedures were adhered to. As the points raised in [redacted] objection, were

raised by the former owners⁴ and duly considered by NE, I am not persuaded that any party has been unduly prejudiced.

Alternative routes

45. Two alternative routes have been proposed by the objectors. I will deal with each in turn.

46. In common with other objectors in the Pevensey Bay area, [redacted] suggests that the trail should be aligned across the top of the beach, which benefits from superior sea views.

47. 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 Parade. It is inevitable that some would exercise that option. However, mindful of the difficulties associated with walking on shingle for any length of time, particularly for the less mobile, and considering advice in the Approved Scheme⁵, I consider that the proposed alignment along The Parade best meets the relevant criteria.

48. [redacted] suggestion of re-routing the trail along Channel View Road rather than Bay Avenue would inevitably diminish the coastal qualities of the route. Moreover, as I saw on my visit, there is a more coherent and convenient route to the beach from the southern end of Bay Avenue something which would assist those wishing to avoid the section along The Parade. In light of concerns raised by the objectors regarding privacy, that must be seen as a significant benefit over Channel View Road.

Other Matters

49. On the site visit a number of objectors asserted their right to erect gates and fences across The Parade. However, were this to occur, it would be a matter for the relevant authority at that time. It is not a consideration to which I can ascribe any degree of weight to in this report.

Recommendation

50. 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 objections, 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

⁴ [redacted] and [redacted]

⁵ See paragraph 7.12.4