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

by Alan Beckett BA MSc MIPROW

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

Date:

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Marine and Coastal Access Act 2009

Objection by [REDACTED]

Regarding Coastal Access Proposal by Natural England

Relating to Sutton Bridge to Skegness

Site visit made on 27 November 2018

File Ref(s): MCA/Sutton Bridge to Skegness/1

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## **Objection Ref: MCA/Sutton Bridge to Skegness/1 Land at Wainfleet to the west of River Steeping Estuary**

- On 24 January 2018, Natural England ('NE') submitted a Coastal Access Report – Sutton Bridge to Skegness ('the Report') to the Secretary of State for Environment, Food and Rural Affairs ('the Secretary of State') under section 51 of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act'), pursuant to its duty under section 296 (1) of the Marine and Coastal Access Act 2009 ('the 2009 Act').
- An objection dated 22 February 2018 to chapter 3 of the Report has been made by [REDACTED]. The land in the Report to which the objection relates is route section SBS-3-S038.
- The objection is made under paragraph 3(3) (a) of Schedule 1A to the 1949 Act on the grounds that the proposals in the Report fail to strike a fair balance as a result of the position of the proposed route.

**Summary of Recommendation:** I recommend that the Secretary of State make a determination that the proposals set out in the Report do not fail to strike a fair balance.

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### **Procedural and Preliminary Matters**

1. I have been appointed to report to the Secretary of State on objections made to the Report. This report includes the gist of submissions made by the objector, the gist of the responses of NE and my conclusions and recommendation.

### ***Objections considered in this report***

2. On 24 January 2018, NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the coast between Sutton Bridge and Skegness. The period for making formal representations and objections to the Report closed at midnight on 21 March 2018.
3. Two objections were received to the Report, which I deemed to be admissible. As the objections do not relate to contiguous areas of affected land, it is appropriate to consider the objections in separate reports. The objection considered in this report relates to land between Freiston Shore and Gibraltar Point SBS-3-S038. The other extant objection will be considered in a separate report.
4. In addition to the objections, a total of 3 representations were made in relation to the Report. None of these representations relate to the section of the English Coast Path ('the Trail') subject to this report and I have not had regard to these representations in making my recommendation.

### ***Site visit***

5. I carried out a site inspection on 27 November 2018 when I was accompanied by [REDACTED] and by [REDACTED] of NE.

### **Main issues**

6. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions 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 able 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.

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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.
  8. In discharging the coastal access duty there must be 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, (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum, and (d) the protection of sensitive features.
  9. NE's Approved Scheme 2013<sup>1</sup> ('the Scheme') is the methodology for the implementation of the Trail and associated coastal margin. It forms the basis of the proposals of NE within the Report.
  10. NE and the Secretary of State must 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. The objection has been made under paragraph 3(3) (a) of Schedule 1A to the 1949 Act.
  12. My role is to consider whether or not a fair balance has been struck by NE 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. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

13. The Trail, as described in Chapter 3 of the Report runs from Freiston Shore north car park (grid reference: TF4079 4364) to a sluice on the west bank of the River Steeping near Gibraltar Point, (grid reference: TF5533 5812) as shown on maps 3a to 3m (SBS-3-S001 to SBS-3-S038).
14. This section of the Trail follows some existing walked routes, including public rights of way, however most of this section follows lengths of sea bank that have had no previous public access rights. The Trail follows the coastline closely along sea banks and maintains good views of the sea across adjacent saltmarshes and mudflats.
15. This part of the coast includes the following sites, designated for nature conservation or heritage preservation: (a) The Wash Special Area of Conservation (SAC); (b) The Wash Special Protection Area (SPA); (c) The Wash Ramsar Site; (d) The Wash Site of Special Scientific Interest (SSSI) (e) The Wash National Nature Reserve (NNR).

### **The case for the Objector**

16. The proposed siting of the Trail on the landward base of the sea bank is inappropriate as the public walking the Trail would have no view of the green marsh, the tidal edge between the green marsh and the saltmarsh and possible wildlife habits and movements.
17. The siting of the route on the landward base of the sea bank is based on protecting wildfowl and waders from disturbance by humans although little or no

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

confirmed data about population numbers is given in the Access and Sensitive Features Appraisal.

18. The Trail should be on the top of the sea bank which is already maintained by the Environment Agency. Locating the Trail on the top of the sea bank would ease the burden on the public purse as Lincolnshire County Council would not be required to maintain a path at the rear of the bank.
19. There would be little or no harm caused to feeding or roosting birds by walkers using a route on the top of the sea bank. This part of the marsh had been used by the RAF as a live bombing range in the past; a few walkers travelling along the top of the sea bank would not present a harmful disturbance. The Wainfleet Wildfowl Club has permission to shoot over the green marsh in front of the sea bank and the sailing club also have access through the marsh on the Steeping.
20. Locating the Trail at the top of the sea bank would provide uninterrupted views over the saltmarsh.

### **The Response by Natural England**

21. NE submits that it has followed the key principles of alignment and management as set out in the approved Scheme. Particularly relevant are the principles of the Scheme regarding the convenience of the Trail (section 4.3) in that the proposed route would be reasonably direct (Section 4.3.2), pleasant to walk along (Section 4.3.3), close to the sea (section 4.5) whilst providing protection to sensitive features (Section 4.9)
22. Locating the Trail on the landward base of the sea bank allows for the discharge of international obligations under the Habitats Directive by avoiding disturbance to the year-round bird interest in this location whilst fulfilling the requirements of domestic Coastal Access legislation.
23. There is currently no formal public access on this section of the coastline and very little if any de facto access. The intertidal marshes in this area are expansive and offer a significant roost for the whole of the Wash during extreme high tides. Consequently, bird numbers are concentrated in this corner of the Wash during such tides and there is nowhere else available to them to flee if subject to disturbance by humans.
24. The Access and Sensitive Features Assessment contains some data regarding bird population numbers but is not a record of all statistical information held. Detailed analysis of published wetland bird survey data flagged up the potential for visual disturbance on several key species known to feed and roost in the intertidal marshes. Specifically a high-level risk of disturbance to Dark Bellied Brent, Shelduck, Dunlin, Bar-tailed Godwit, Curlew and Redshank was identified.
25. The proposal to locate the Trail at the rear of the sea bank has been informed by the best information available. Although bird populations and movements within an estuary can be complex and vary through the tidal cycle, the data generated by wetland bird surveys, the known location of roosting birds and information gathered from the many bird watchers who frequent the Gibraltar Point area has all contributed to the assessment of how disturbance arising from public access may impact upon bird populations.
26. There is a robust body of evidence which shows that visual disturbance to feeding and roosting birds can affect both individual survival and overall population

- breeding performance. For those breeding birds which utilise the upper marsh the available evidence demonstrates that nesting birds would be disturbed by the presence of humans on the sea bank or at the foreshore.
27. It is acknowledged that use of the marsh as a live bombing range would have had a direct impact on some individuals on those days when the range was in use. However, the ranges were last used in 2010 and increasing bird numbers have subsequently been able to feed and roost in relative tranquillity. An increase in year-round human activity on the Trail would present a significant disturbance risk.
  28. Although the activities of the Wainfleet Wildfowl Club are likely to introduce some disturbance, such activities are seasonal, whereas the disturbance caused by public use of the top of the sea bank would be year-round. It is not considered that activity at the moorings along the Steeping is readily visible from the area of most importance for roosting and feeding birds; vessels on the river are likely to have a smaller visual impact upon bird populations than pedestrians on the sea bank.
  29. It is considered that public access along the top of the sea bank at this location will have the greatest disturbance impact on birds on the salt marsh due to the visibility of users, particularly during high tides. The proposed route on the landward base of the sea bank screens walkers from that part of the saltmarsh identified as being of importance as a roost and delivers a Trail which is close to the sea and which is safe and convenient without taking a significant inland detour to avoid sensitive features. The public will be able to enjoy a view of the sea as the trail follows the top of the sea bank for a considerable distance southward once beyond the area which is of exceptional significance for its bird life.
  30. The proposal to locate the Trail at the rear of the sea bank discharges the duty to protect sensitive features on the coast and the duty to deliver coastal access rights by proposing a route that avoids sensitive areas and which applies an exclusion on spreading room. Informal management techniques to aid user compliance with the route of the Trail at this location will be employed; it is proposed that two short sections of fencing will be provided to guide users to the rear of the sea bank along with information as to why the Trail does not follow the top of the sea bank.
  31. Although the top of the sea bank is cut by the Environment Agency, this is for the prevention of scrub encroachment on the sea defence and not to facilitate public access. Maintenance of a route for public access by the local authority will be the same whether the route is at the top of the bank or to the rear; consequently, locating the Trail on top of the sea bank would not lead to a saving to the public purse.
  32. It is noted that the proposed route has not been objected to on land management grounds and it appears that the objector's sole concern is that the public should have a view of the sea on this section of the Trail. The proposed route on the top of the sea bank was initially considered but rejected as pedestrians on the sea bank would be likely to cause significant disturbance to the wetland birds feeding and roosting in this intertidal area. The modification of the proposed route to that suggested by the objector is not supported.

## Conclusions

33. NE has given consideration to the alternative route proposed by the objector which would run along the top of the sea bank [32], as the Trail will do to the south of the section at issue [29]. Having regard to these submissions the Secretary of State may wish to note that in discharging the coastal access duty regard must be given to a number of factors [8] and that the coastal access duty must be balanced with his international obligations under the Habitats Directive.
34. It is the objector's contention that there would be little disturbance to bird life if the Trail were located on the top of the sea bank [19]. During my site visit (which included walking the full length of section SBS-3-S038 in both directions) there was no evidence of roosting or feeding birds being put to flight as a result of the presence of the site visit party on top of the sea bank. However, the visit was conducted at low tide when the bird population is more likely to be found on the mudflats of the shoreline than on the salt marsh above mean high water.
35. Although there was no visible evidence of disturbance during the site visit, and although NE acknowledge that the Access and Sensitive Features Assessment is not a record of all statistical data on bird populations in the area [24], the Secretary of State should bear in mind the various national and international designations of the Wash of which this coastline forms a part [15]. At times of extreme high tides, the saltmarsh in this location is likely to provide a refuge for wildfowl and waders [23]; at such times disturbance arising from human activity is likely to be more significant than was evident during my site visit.
36. Whereas the objector suggests that the alternative route will reduce the burden of maintenance on the public purse as the sea bank is mowed by the Environment Agency as part of the coastal defence [18], the maintenance regimes required to prevent scrub encroachment on the sea bank may be different to that required to ensure that the Trail is available for the public to walk throughout the year. The costs of maintaining a route suitable for the Trail are therefore likely to be no different irrespective of whether the Trail is located on top of the sea bank or at its foot on the landward side.
37. NE proposes to encourage walkers to use the route to the rear of the sea bank by means of sections of fencing to guide users along existing slopes leading to and from the rear of the sea bank [30] and to explain the need for the Trail to follow this route using information boards at the ends of the section [30]. Such works will be required on this section otherwise there will be nothing to prevent users from walking along the top of the sea bank.
38. Whilst the proposed route would not provide views of the sea [16], it would still be direct, pleasant to walk along and would be as close to the sea as possible [29]. Furthermore, the location of the route at the rear of the sea bank would reduce the likelihood of visual disturbance to feeding and roosting bird life on the adjacent salt marsh during high tides. Whereas the use of the intertidal zone by wildfowling pursuing their legitimate activities [19, 28] will result in some degree of disturbance, such disturbance is seasonal, and it would be in the interests of those engaged in such activities to keep disturbance to a minimum to prevent quarry from being alerted to their presence. In contrast, the location of the Trail on the top of the sea bank has the potential to introduce year-round disturbance which is likely to have a much greater adverse impact upon species and populations of national and international importance.

39. Bearing in mind the above, the proposed alternative route along the top of the sea bank would not satisfy the coastal access duty in that it would not offer protection to sensitive coastal features.
40. I saw from my site visit that there would be extensive views of the sea and the saltmarsh if the Trail were located at the top of the sea bank. However, similar views would be available to the public from those sections of the Trail to the north and the south of SBS-2-S038. Whilst there is a public interest in having a Trail which is close to the sea and allows views of the sea, there is also a public interest in the conservation of wildlife and habitat. The routing of the Trail on the landward base of the sea bank in this location is a means by which these conflicting interests can be reconciled.

### **Whether the proposal strikes a fair balance**

41. The objector's concerns appear to relate solely to the ability of the public to have views of the sea from the sea bank. Whilst it would not be possible to have views of the sea from SBS-3-S038 if it were at the landward base of the sea bank, such views would be available to the north and south of this section of the Trail, and the routing of the Trail at the foot of the sea bank would mitigate the risk of disturbance to those birds feeding and roosting in the salt marsh at this important location.
42. The Secretary of State may wish to note that I do not consider that the absence of sea views from this section of the Trail outweighs the public interest in the protection of bird populations which utilise the salt marsh from visual intrusion and disturbance. There is no evidence before me that the routing of the Trail at the landward base of the sea bank would have any adverse effect upon the objector's landholding or his ability to farm his holding in an efficient manner. As such I do not consider that the proposal fails to strike a fair balance.

### **Recommendation**

43. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objection made under paragraph 3(3)(a) of Schedule 1A to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

APPOINTED PERSON



