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

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

Date: 4 January 2019

Marine and Coastal Access Act 2009
Objection by [REDACTED] Witham Fourth District Internal Drainage Board
Regarding Coastal access Proposal by Natural England
Relating to Sutton Bridge to Skegness

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Objection Ref: MCA/Sutton Bridge to Skegness/2 Land at Hobhole Drain Pumping Station

- 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 14 March 2018 to chapter 2 of the Report has been made by [REDACTED] of Witham Fourth District Internal Drainage Board ('the Board'). The land in the Report to which the objection relates is route section SBS-2-S061, SBS-2-S062 and SBS-2-S063FP.
- The objection is made under paragraphs 3(3) (a), 3(3) (c) and 3(3) (f) 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; the failure to include proposals for an alternative route; and the failure by NE to exercise a discretion conferred by section 310 (3) of the 2009 Act (discretions which relate to a case where continuity of any part of the coast is interrupted by a river).

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.

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 objections considered in this report relates to land between Fosdyke Bridge and Freiston Shore SBS-2-S061, SBS-2-S062 and SBS-2-S063FP. 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 route ('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 a representative of the Board, a representative of NE and a representative of Lincolnshire County Council.

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.
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, and (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
9. NE's Approved Scheme 2013^[1] ('the Scheme') is the methodology for the implementation of the English Coast Path 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 paragraphs 3(3) (a), (c) and (f) 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, subject to Chapter 2 of the Report runs from Fosdyke A17 road bridge (grid reference: TF3188 3222) to Freiston Shore (grid reference: TF4079 4364) as shown on maps 2a to 2p (SBS-2-S001FW to SBS-2-S073). The Trail generally follows existing walked routes including public rights of way (public footpaths and some public bridleways). In order to reach the first available crossing point of Boston Haven, the Trail includes a section within Boston town centre which makes use of existing footways beside public carriageways and pedestrian crossing points.
14. The Trail mainly follows the coastline quite closely, predominantly along the seabank, offering views towards the sea across broad sections of saltmarsh in many places. The section of the Trail to which this objection relates (SBS-2-S061 to SBS-2-S063FP) is over a route which is currently in use by the public although unrecorded in the definitive map of public rights of way.
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 Board is very concerned that the proposed path will be accompanied by restrictions in respect of work activities or requirements for permissions that will adversely affect the Board's ability to carry out its functions, particularly in relation to the operation, maintenance and repair of the Hobhole Pumping Stations.
17. The pumping stations are key land drainage and flood defence assets operated by the Board which is responsible for providing drainage and flood protection for Boston, the surrounding villages and 40,000Ha of land. The Board maintains 700Km of watercourse and 7 pumping stations. The Hobhole pumping stations are the primary asset for controlling water levels within the district.
18. It is important that essential operations are not hampered by restrictions in respect of working on or near a public footpath. Routine maintenance of the pumping station's infrastructure and other operations around the site require the use of heavy plant such as excavators and diggers and works can block the entirety of the proposed route across either the diesel or the electric pumping stations.
19. Breakdowns in the pumping station equipment can occur at any time and require an immediate response and may result in the proposed route being blocked with no notice. The work of the Board should not be hampered by the imposition of a footpath over the infrastructure of the pumping stations; the ability of the Board to undertake management and maintenance of its asset should not be hampered by the need to get permission from another party.
20. The problem could be completely mitigated by routing the Trail along existing public rights of way on the west bank of Hobhole Drain, crossing the Drain at Nunn's Bridge and then along the eastern side of the Drain re-joining the Haven to the east of the pumping station. Alternatively, the Board would accept the Trail on the proposed route subject to an agreement whereby in order to perform its duties without delays, the

Board can close those parts of the Trail which pass over the Board's structures without having to obtain the permission of third parties. At such times, the Board would be willing to erect suitable signage to direct Trail users along Hobhole Drain to Nunn's Bridge.

The Response by Natural England

21. NE 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), with views of the sea from the Trail (Section 4.6) and utilises existing walked routes along the coast (section 4.7).
22. NE acknowledges the error in the published report which classified approximately 20m of the pumping station metalled track as a public right of way (SBS-2-SO63FP). A modification to the Report will be proposed to correct this inaccuracy. However, this gap between the public rights of way recorded in the definitive map and statement is not apparent on the ground or from Ordnance Survey mapping. In addition, from the public rights of way at either side of the pumping station there is no barrier to onward progress and the proposed Trail route is an unhindered currently walked route. The proposal to route the Trail over this land is therefore consistent with section 4.7 of the approved scheme.
23. The proposal to route the Trail over the surfaced track at the diesel pumping station reflects the current use of the track by the public to link adjacent public rights of way; the track also serves as an access road to dwellings situated to the west of the diesel pumping station.
24. It is not anticipated that the alignment of the Trail will significantly interfere with the day to day operational needs of the Board nor any response to emergencies which arise. Section 5.2.1 of the approved scheme states "*Our flexible arrangement powers under the 2009 Act should in general ensure that coastal access rights will not interfere in any significant way with the operational needs of coastal business or organisations...*". Furthermore section 5.2.1 recognises that "*small scale operations can and do normally take place alongside public access. Where there is the potential for visitors to disrupt work the problems can often be avoided through informal techniques*".
25. The statutory powers and duties of the Board in relation to drainage and flood defence are acknowledged and it is recognised that there may occasionally be a need to close without warning the section of the Trail which passes over the Board's infrastructure. Informal management of the Trail in such circumstances has the potential to minimise any conflicts between public access and land management objectives.
26. Such informal management can be achieved by the positioning of purpose made signs which explain the need for short term closure of the Trail and clearly indicate the most convenient diversion available. A route to Nunn's Bridge alongside Hobhole Drain as suggested by the Board may be the most convenient alternative route. If informal management techniques fail to minimise conflicts between public access and management of the site, NE would consider whether a direction could be applied to temporarily exclude access to the Trail and provide a formal alternative route at those times.

27. Whereas the alternative route suggested by the Board may be suitable as a temporary diversion when works are required at the pumping station, this route does not satisfy the requirements for the permanent alignment of the Trail as it is not convenient and direct, is not close to the sea, offers no views of the sea and would ignore the existing walked line along the coast.
28. NE disagrees with the suggested modification of the Trail proposed by the Board. It does however recognise the proposed alternative as an alternative route in times of emergency.

Conclusions

29. Of principal concern to the Board is the adverse effect the routing of the Trail would have upon its ability to undertake emergency maintenance operations to the infrastructure of the pumping stations without having to acquire third party consent for temporary closures of the Trail [16].
30. The Trail (SBS-2-SO61-SBS-2-SO63FP) would run in part over the access road which leads past the diesel pumping station before leaving the access track to run in a westerly direction over open ground which in turn lies over part of the infrastructure of the electric pumping station immediately above the Hob Hole outlet. Maintenance of the pumps, sluices and other equipment in the past has involved the closure of the roadway past the diesel pumping station [18]. As the roadway is not shown on the definitive map as being subject to a public right of way [14, 22] the Board has been able to secure the temporary closure of the road without having to seek the permission of the Highway Authority. It is the Board's contention that using the access road for the Trail will require the consent of the Access Authority for future temporary closures which in an emergency would hinder the ability of the Board to carry out its statutory duties [19].
31. NE recognise that there may be a need for the Trail to be temporarily diverted if there is a breakdown in the Board's equipment the repair of which would necessitate the closure of the access road at the diesel pumping station and have suggested that informal management measures could be employed to facilitate the closure of the Trail at short notice [25]. EN suggests that custom signage could be erected to inform Trail users of the reasons for the temporary closure and to direct users along an alternative route which utilises existing public rights of way either side of Hobhole Drain and Nunn's Bridge [26].
32. As a means of ensuring that emergency repairs to the Board's pumping stations can be carried out in a timely manner, the Secretary of State may wish to note that the suggested solution put forward by NE would accommodate the competing statutory requirements for provision of access to the coast and for internal drainage and flood defence.
33. The Secretary of State may also wish to note that the proposals put forward by NE accord with section 5.2.1 of the Approved Scheme which is designed to ensure that coastal access rights do not significantly interfere with the operational needs of coastal organisations [24].
34. The Board has suggested that the problems it envisages could be fully mitigated if the Trail followed the existing public rights of way which run either side of Hobhole Drain between the diesel pumping station and Nunn's Bridge [20]. Having regard to these submissions the Secretary of State may wish to note that in discharging the coastal access duty regard

must be paid to a number of factors [8]. Whilst here is no evidence that the proposed alternative route is unsafe for public use or that it would be subject to interruption, it is not on the periphery of the coast nor does it provide views of the sea. In my view, the proposed alternative alongside Hobhole Drain would not discharge the coastal access duty.

Whether the proposal strikes a fair balance

35. Having regard to all of the above, the proposed route of the Trail will have some adverse impacts upon the Board's activities although NE has proposed mitigation measures in times of emergency and would consider the application of a direction to temporarily exclude access at times of programmed maintenance if the informal arrangements fail to minimise conflict. Although an alternative route is available alongside Hobhole Drain such a route would fail to discharge the coastal access duty in respect of the relevant considerations. The Secretary of State may wish to note that I do not consider that any adverse effect upon the Board's activities outweigh the public interest in having rights of access over coastal land in the vicinity of the Hobhole pumping stations. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

36. 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 the relation to the objection made under paragraphs 3(3)(a), (c) and (f) 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

[\[1\]](#) Approved by the Secretary of State on 9 July 2013