



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

by Mark Yates BA(Hons) MIPROW

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

Date 20 May 2022

Marine and Coastal Access Act 2009
Objections from [redacted] and [redacted]
Regarding Coastal Access Proposals by Natural England
Relating to Hunstanton to Sutton Bridge

Site visits made on 28 March 2022

Ref: MCA/HSB2/1&3

Objection Reference: MCA/HSB2/1
Hunstanton to Sutton Bridge

- On 25 November 2020, Natural England ("NE") submitted Coastal Access Reports 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 to Report HSB2, Beach Road, Shepherds Port to South Outmarsh, Kings Lynn, has been made by [redacted]. The land to which the objection relates is route sections HSB-2-SO11 to HSB-2-SO47 (shown on map 2a).
- The objection is made under paragraphs 3(3)(a), (d) and (e) of schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

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.

Objection Reference: MCA/HSB2/3
Hunstanton to Sutton Bridge

- On 25 November 2020 NE submitted Coastal Access Reports to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection to Report HSB2, Beach Road, Shepherds Port to South Outmarsh, Kings Lynn, has been made by [redacted]. The land to which the objection relates is route sections HSB-2-SO11 to HSB-2-SO47 (shown on map 2a).
- The objection is made under paragraphs 3(3)(a) and (e) of schedule 1A to the 1949 Act on the ground that the proposals fail to strike a fair balance in such respects as are specified in the objection.

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 the objections made to Report HSB2, Beach Road, Shepherds Port to South Outmarsh, Kings Lynn ("the Report"). This report includes the gist of the submissions made by the objectors, the responses of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs contained in this report. Before making my recommendation, I will also consider the Habitats Regulations Assessment and Nature Conservation Assessment undertaken by NE.
2. An objection made to route section HSB-2-SO61 (shown on maps 2f and 2g) was withdrawn following my visit to the site. Additionally, NE confirms that in light of the withdrawal of this objection it no longer wishes for consideration to be given to a potential alternative route. I have therefore not considered it appropriate to address this matter further.

Objections considered in this report

3. On 25 November 2020 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the north Norfolk coast between Beach Road, Shepherds Port and South Outmarsh, Kings Lynn. The period for making formal representations and objections to the Report closed on 20 January 2021.
4. Objections were received to the Report which were deemed to be admissible. This report considers the two objections that remain in relation to the Report. In making my recommendations, I have also had regard to the representations made to the Report. Particular regard should be given to those representations that relate to the objections and the Habitats Regulations Assessment.

Site visit

5. I carried out a site inspection on 28 March 2022 when I was accompanied by representatives of the objectors and NE. The accompanied visit involved the proposed route where it crosses the objectors land.
6. Having parked in the car park at Beach Road, I walked alone along the proposed trail where it corresponds with an existing public footpath, including a proportion of route section HSB-2-SO11 to HSB-2-SO47, before meeting the interested parties. Where the route passes over the objectors land it corresponds with the top of a concrete block surfaced bank. To the landward side are a number of holiday properties and beyond these is a private road serving the properties.

Main Issues

7. 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 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.
8. The second objective is that, in association with the English Coastal Path ("the ECP"), 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 coastal route or otherwise.
9. 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.
10. NE's Approved Scheme of 9 July 2013 is the methodology for the implementation of the ECP and associated coastal margin. It forms the basis of the proposals of NE within the Report.

11. 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.
12. The objections have been made under paragraphs 3(3)(a), (d) and (e) of schedule 1A to the 1949 Act.
13. 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 my recommendation to the Secretary of State accordingly.

The Cases for the Objectors

[redacted]

14. He outlines that this section follows the concrete defence revetment and passes over private land. The land owned by the property owners is stated to extend down to the fourth castellation on the seaward side. The proposed route would be aligned with the landward side of the bank. He says this side of the bank is ill defined, and in some cases very close to property windows and therefore it impinges on the privacy of the owners. [redacted] considers it would be better to align the path on the clearly defined seaward side of the top of the bank.
15. [redacted] says signage should inform people of the limitations of the path given that it crosses private land. This should make it clear that no recreational activities such as picnics are allowed, and that there is no access over the roadway and between the properties. It should also clearly specify the parking and access points.

[redacted]

16. He requests that the proposal is modified to specify the seaward boundary of the margin. There is no need for walkers to use the landward side of the bank, which brings them in very close proximity to the properties. He suggests that the path is signposted on the bank to show the width of the path and he considers that 1 metre should be sufficient.
17. The representation from [redacted] outlines that consideration should be given to the privacy of the owners of the properties. The land is privately owned, and attention is also drawn to the private access road. He requests that information to users clearly states where the access points are located.
18. [redacted] additionally states that the existing footpath is a linear route and should not be used for recreational purposes such as cycling, bird watching, resting and picnics.

Additional points raised in the relevant representations

19. These outline that they anticipate there will be an increase in use of the path due to the subsequent publicity and promotion given to it. Accordingly, people should be made aware of the boundary of the footpath and public information should carry a clear message to address the concerns of the property owners.
20. It is stated that the properties cannot be fenced due to a covenant in the deeds. Reference is made to people using gaps between the properties to reach the

inland access road and thus impinging on their privacy. Additional concerns are raised in relation to use by cyclists, motor vehicles and problems with dogs and other forms of anti-social behaviour.

21. It is suggested that alternative routes could comprise of a 1.5 metre path from the western side of the bank or the path that goes inland over the Royal Society for Protection of Birds ("RSPB") site.

The Responses from NE

22. NE outlines that route sections HSB-2-SO11 to HSB-2-SO47 coincide with a hard surfaced protective sea bank. It is pointed out that the top of this bank is an existing public footpath which has a recorded width of 4 metres. At the landward base of the bank there are a row of properties that are mainly used as second homes. The bank has been used for access for many years as evidenced by the recording of it as a public footpath. This area has a sandy beach, large car park, over 400 caravans as well as permanent buildings and is close to Heacham and Hunstanton. It is considered that these factors mean there will be no significant change to the current level of use.
23. NE says it does not have the power to restrict access to keep walkers on the seaward side of the bank given the extent of the public footpath. However, it has used the discretion under section 55D(2) of the 1949 Act to clarify the extent of the public's rights to the landward slope of the bank nearest to the properties. Certain coastal land types are included automatically in the coastal margin where they fall landward of the trail if they touch it at some point. A bank is one of these land types, therefore its landward slope would fall into the coastal margins by default, giving people the right of access to it.
24. NE found that the landward slope of the bank has various uses including garden, steps, decking and in places infilled to create a flat area. They consider the various features do not provide a particularly clear boundary for walkers and that the landward edge of the interlocking blocks that make up the surface of the footpath is a more recognisable boundary. NE therefore proposes that the landward boundary of the coastal margin should be the landward edge of the path and no coastal access rights would be created on the slope of the bank nearest to the properties.
25. NE outlines that its duty is confined to the ECP and associated margin and does not extend to car parks or access points onto the path. The proposed route follows an existing public footpath and NE would work with Norfolk County Council to ensure that it is signed and waymarked in order to steer walkers away from areas where there is no right of access. Additionally, landowners can erect appropriate signage to clarify access rights in relation to their land.
26. NE states that some of the activities mentioned by the objectors are permissible already in light of the route being a public footpath. Any significant nuisance arising out of use that is not permissible should be brought to the attention of Norfolk County Council.

Conclusions

27. I accept that public use of this section of the proposed route is likely to have an impact on the privacy of the owners and occupiers of various properties. However, it corresponds with an existing public footpath which was added to the

definitive map in 2014 on the basis of use by the public. Whilst it is possible that there may be some additional use as a result of the footpath being designated as part of the ECP, it is apparent that given the location, the path is significantly used at the present time [22].

28. Given that the relevant section of the public footpath has a defined width of 4 metres, over which people are permitted to walk, there would seem to be little merit in the ECP having a lesser width and following the western side of the bank [14 and 16]. Public rights would continue to exist over the whole width of the footpath. NE recommends that public access should not extend beyond the landward edge of the path [24]. In terms of the suggestion that the ECP follows an alternative route diverting inland over the RSPB's land [21], this is unlikely to address the concerns of the objectors. The public footpath would endure, and its location means it is likely to continue to be used to a significant extent.
29. There is scope for signage to be placed on site to ensure that people are aware of the route of the ECP. The same should apply for the existing public right of way. In terms of people engaging in activities that are not permitted, these matters should be raised with the appropriate authority. It may be deemed necessary to place further signage on site regarding particular issues. In relation to people walking between the properties or using the private road [20], these are matters for the landowners to address. On the first issue, I noted that access is more readily available between certain properties.
30. I consider that particular regard should be given to this part of the proposed ECP corresponding with an existing well used public footpath overlooking the Wash. The placing of it onto an alternative alignment would not remove the concerns of the objectors regarding the use of the public footpath. In the circumstances, I find that the proposed route put forward by NE does strike a fair balance.

Other Matters

Habitats Regulations Assessment ("HRA")

31. The following should assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Competent Authority is required to make an Appropriate Assessment of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case NE. If the Appropriate Assessment demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network.
32. An HRA, approved on 12 November 2020, providing the information to inform the Competent Authority's Appropriate Assessment, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations. The HRA considered the potential impacts of the coastal access proposals on the following three sites of international importance for wildlife: The Wash Special Protection Area and Ramsar site, Greater Wash Special Protection Area and The Wash and North Norfolk Coast Special Area of Conservation.

33. Part C of the HRA identifies some potential risks to the relevant qualifying features. It concludes that the proposals for coastal access alone, without incorporated mitigation, is likely to have significant effects (or may have significant effects) on some or all of the qualifying features of the European site(s). Part D considers the risks in more detail, taking account of avoidance and mitigation measures incorporated into NE's access proposal and concludes that there will not be an adverse effect on the integrity of any of these sites either alone or in combination with other plans and projects.
34. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Hunstanton and Sutton Bridge are fully compatible with the relevant European site conservation objectives. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts.
35. A representation has been submitted by the RSPB, which covers general matters in relation to the HRA and site-specific matters. Some of these issues relate to sites located outside of the land included in the Report. The Secretary of State is referred to this representation and NE's detailed response.
36. In response to the concerns raised by the RSPB regarding the monitoring approach adopted, NE points to particular sources of information forming part of the first level of data collection. Attention is drawn to the recommendation in pages 71-72 of the HRA for visitor behaviour to be measured over a particular section to determine whether any additional mitigation is required. NE says if issues are identified a range of responses may be triggered including changes to infrastructure, restrictions and ultimately a change to the route. Monitoring is proposed in additional locations to determine whether further infrastructure is required and monitor compliance with the correct route.
37. The RSPB refers to the possibility of people trespassing onto the sea wall to view raptors occurring more often following the establishment of the ECP. They draw attention to the need to implement particular official viewing points. On this matter, NE outlines that the proposal in the HRA to create viewing points remains but the need to resolve certain matters means that a design has not yet been agreed. NE intends to continue discussions with the Environment Agency on this matter. I note that the decision of NE to not pursue an alternative to route section HSB-2-SO61 [2] means that this proposal would no longer have the potential to reduce the likelihood of people deviating onto the top of the bank.
38. It is NE's intention that access would be managed through signage and fencing. If these measures are not successful, the situation would be reviewed, and the use of restrictions considered. NE states that new signage would provide information on the special nature of the area and how to visit responsibly. Although it is not considered possible to propose a system of wardens for the ECP as suggested by the RSPB, NE intends to work with the Norfolk Green Infrastructure and Recreation Avoidance Mitigation Strategy. This is funded by contributions from housing development and identifies a programme of county wide mitigation measures with the aim of avoiding adverse effects on the integrity of habitat sites.

39. NE outlines that the ECP would be managed to National Trail quality standards, which includes regular monitoring of its condition and associated signage and other new infrastructure. Should wider circumstances change at any time in the future, NE says management can be adapted to reduce any negative impacts on sensitive sites.
40. NE states that the HRA considered more than 20 projects and plans for the Hunstanton to Sutton Bridge stretch of the ECP. Whilst it is accepted that some plans were omitted in error, NE confirms that consideration of these plans does not alter the conclusions in the HRA.
41. There is clearly some uncertainty regarding the degree to which particular sections of the ECP would be used by the public in the future and the extent that people may deviate from the designated route where no access rights are currently in place. However, some reliance should be placed on the assurances given by NE regarding the monitoring to be employed and the potential for further measures to be implemented to address any matters of concern. This could ultimately involve realigning the route of the ECP.
42. There is some concern that agreement has not yet been reached in terms of the proposed viewing points. Given that these are intended to reduce the likelihood of people trespassing onto the sea wall, the Secretary of State may wish NE to finalise arrangements for the siting of this infrastructure before approving the Report.
43. Overall, I consider that significant reliance should be placed on the conclusions reached in the HRA [33-34]. NE concludes that, when account is taken of the avoidance and mitigation measures, the proposals would not adversely affect the integrity of the relevant European sites. I do not find that the representation from the RSPB leads me to reach a different view.

Nature Conservation Assessment (NCA)

44. The NCA of 2 November 2020 should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed in the HRA. It is apparent that the Wash SSSI and the Hunstanton Cliffs SSSI are most relevant to the Report. NE were satisfied that the proposals to improve access to the English coast between Hunstanton and Sutton Bridge are fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of their functions.
45. In respect of other sites of local interest and undesignated sites, they are satisfied that in developing the new access proposals the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.

Additional representations

46. I have addressed the representations from the RSPB and the owners of properties adjoining route section HSB-2-SO11 to HSB-2-SO47 above. Details have been provided of a number of additional representations. I note that a proportion of these relate to land outside of the Report or the route sections that are the subject of the objections. Others cover general points relating to the

Report. Issues have been raised which broadly relate to additional rights of access, accessibility for those with reduced mobility and the potential for flood defence works to be undertaken. Some of the representations are supportive of proposals in the Report.

47. The ECP is for use by pedestrians and requests for additional rights of access are not matters to be considered as part of this process. Additionally, NE outlines that all reasonable steps would be undertaken to make the trail as accessible as possible for those with limited mobility. NE also recognises the potential need to close sections of the ECP because of planned or emergency work on the flood bank. It is asserted that future flood defence improvements will not be hindered by the trail.
48. The Secretary of State may wish to note the contents of the representations. He will also be aware that the issue to be determined is whether the proposals strike a fair balance between the interests of the public in having particular rights of access over land and the interests of any person with a relevant interest in the land.

Recommendation

49. 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 objections. I therefore recommend that the Secretary of State makes a determination to this effect.

Mark Yates

APPOINTED PERSON