



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

by Alan Beckett BA MSc MIPROW

A person appointed by the Secretary of State for Environment, Food and Rural Affairs

Date 31 March 2022

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Silecroft to Silverdale

Report SCS 2 Green Road Station to Jubilee Bridge, Vickerstown

Route sections SCS-2-S012 to SCS-2-S017

Site visit made on 28 June 2021

Reference: MCA/SCS2/01

Objection Reference: MCA/SCS2/01
Land at Rectory Moss, north of Angerton Hall

- On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silecroft and Silverdale. The period for making formal representations and objections to the reports closed on 4 March 2020.
- There is 1 admissible objection to report SCS2. The objection is dated 18 February 2020 and is made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.
- Representations made on behalf of the Ramblers' (R14) and the Open Spaces Society (R15) refer specifically to the sections considered in this report. There are other representations which refer to the sections of the trail considered in the SCS2 report, but none of the comments made are specific to the sections subject to the objection.
- I carried out an inspection of the proposed line of SCS-2-S012 to SCS-2-S017 accompanied by [redacted] ('the objector') and representatives of NE and a representative of Cumbria County Council.

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 an objection made to report SCS2 ('the Report'). This report includes the gist of submissions made by the objector and those making representations, the gist of the responses made by NE and my conclusions and recommendations.

Main Issues

2. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ('the 2009 Act') and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
3. The first objective is that there is a route ('the trail') 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.
4. 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.

5. Section 297 of the 2009 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.
6. 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.
7. 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.
8. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. It forms the basis of the proposals of NE within the Report.
9. My role is to determine whether the proposals set out in the 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

10. The trail, subject to the Report, runs from Green Road railway station (grid reference SD 1896 8394) to Jubilee Bridge, Vickerstown (Grid reference SD 1862 6864) as shown on maps SCS 2a to SCS 2l (points SCS-2-S001RD to SCS-2-S110FW). The trail generally follows existing walked routes, including public rights of way and in the main follows the coastline quite closely and maintains good views of the sea.
11. The trail includes four sections of new path. The proposed new path between Duddon Mosses National Nature Reserve ('the NNR') and Rectory Moss (maps SCS 2a and 2b) includes the sections which are the subject of this objection. This section of the trail also takes a significant inland diversion to avoid land which regularly floods.

The case for the objector

12. The objector submits that the proposed coastal path does not follow the coast where it crosses his land, and that anyone following a coastal path would have expected the route to be tidal and would plan a journey accordingly. The objector states that his family has farmed at Angerton Hall for 45 years and in that time many people have walked along the edge of Angerton Marsh without incident. The objector's view is that the coastal path should follow the coast.
13. In the objector's view, if the coastal path has to be aligned inland then it should follow the road from Angerton level crossing to Waitham Hill and on to Foxfield level crossing. This route is currently well used by the public and

would not incur costs or inconvenience anyone, unlike the proposed route of the trail.

14. It is not considered fair or reasonable for existing farming practices to be disrupted by the creation of a new path which is not near the coast. The fields are used for grazing of sheep and cattle which will be at risk from the public and their dogs. The proposed route would run between existing barbed wire fences which would pose a risk to path users. As regards SCS-2-S012 to SCS-2-S014, the path will run on the northern boundary of a field used for sheep, lambs and cattle and their calves. As the path would run on NNR land on the western side of Duddon Moss, the path should continue over the NNR to meet SCS-2-S015.

Representation R14 (Ramblers) and R15 (Open Spaces Society)

15. It is noted that the proposed route between SCS-2-S012 and SCS-2-S021 is walkable and inexpensive to implement. However, it is tedious and poorly related to the coast. This section which is out of sight of the coast does not meet the requirements of the scheme. Although NE considered a route to the seaward side of the railway (see paragraph 2.3.3 of the Report), the reasons for rejecting this route are regarded as untenable. A more coastal route has been publicised in local newspapers and published guide books; whilst these are now out of print, a walked route on the seaward side of the railway has been in use in the past and can be considered as an existing walked route. A more coastal route than the one proposed would require additional expenditure for a small number of kissing gates.

The response by Natural England

The objection

16. It is not disputed that aligning the trail on the seaward side of the railway between Foxfield station and Kirkby Pool would be preferable in normal circumstances; consideration was given to aligning the trail seaward of the railway between SCS-2-S006RD and SCS-2-S020. However, it was concluded that such a route would not be viable in part due to the typical ground conditions underfoot and partly because of the risk of walkers being stranded by exceptionally high tides and unable to escape landwards due to the railway.
17. Paragraph 4.2.4 of the approved Scheme advises that the trail will not be aligned upon roads unless the road presents the only or best option available. A route following the road from Angerton Hall railway crossing towards Waitham Hill and then turning south along an unsurfaced track to SCS-2-S015 had been considered. However, the route proposed for the trail limits the use of the public road and crosses land which currently carries public access rights as it forms part of a registered common.
18. NE submits that the proposed route is closer to the sea than the suggested alternative along the public road network, crosses land which carries a public right of access on foot and provides some views of the sea due to the low embankment on which the railway sits. NE considers that the proposed route will provide a pleasant route for those following the trail.
19. The proposed route on the northern boundaries of the fields is considered to be an alignment which would reduce the likelihood of path users coming into

- close proximity to grazing livestock. It is considered that the fields at issue are sufficiently large for livestock and path users to avoid each other.
20. It is acknowledged that there are barbed wire fences currently on the land and that adjustments to the existing fences can be made to reduce the risk to path users from barbed wire fences. Aligning the path within a fenced corridor would require consent under s38 of the Commons Act 2006 for the erection of a new fence on the field side of the trail.
21. Consideration had been given to aligning the trail on the southern boundary of the NNR. However, the terrain is significantly more challenging on the NNR side of the boundary; grass tussocks and deep wet peat would make it difficult to create a suitable route and the required consents are unlikely to be forthcoming.

Representations R14 and R15

22. NE agrees that a route seaward of the coastal railway between Foxfield and Kirkby Pool would be preferable; however, it was concluded that such a route was not viable, partly due to the typical conditions underfoot and partly due to the risk of walkers being stranded by rising or exceptionally high tides and unable to escape across the railway.

Conclusions

Alternative routes

23. NE has considered the alternative routes proposed by the objector which would run along the seaward side of the railway line or along the public roads between Angerton Hall and Foxfield level crossings or on the southern boundary of the NNR. 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 those factors set out in paragraph 5 above.
24. It is acknowledged that the proposed route over SCS-2-S012 to SCS-2-S017 would provide limited views of the sea due to the embankment carrying the coastal railway. The objector notes that people have made their way along the coastal route without mishap for many years. Whilst that may be the case, this section of the trail would provide a route which was available at all states of the tide as it is landward of the coastal railway. Those who wished to follow any existing route along the seaward side of the railway when tide conditions are favourable would remain free to do so should they so wish.
25. There is no evidence that the proposed route would be unsafe for pedestrians. Despite the proximity of the ground crossed by SCS-2-S012 – S014 to the southern edge of the NNR, the ground underfoot was relatively firm and suitable for pedestrians to use without risk of injury. Routing the trail over registered common land would also provide a trail which was always available for use irrespective of the state of the tide.
26. Concern was expressed by the objector that routing the trail between barbed wire fences would give rise to a risk of injury to trail users. I saw that the northern boundaries of the affected fields were marked by drainage ditches with a stockproof fence located on the field side of the ditch. A second fence comprised of wooden posts with a single strand of barbed wire is located

approximately 1 metre from the boundary fence. I understand that this 'breast wire' fence is used to keep grazing cattle away from the main boundary fence. [redacted] does not wish to lose this secondary fence.

27. To ensure that path users are not injured by the barbed wire already present on site would require the dismantling of the existing 'breast wire' fence and its re-positioning to provide an appropriate width between fences for trail users. This would reduce the risk of injury to users whilst preventing grazing cattle from damaging the main boundary fence. As the proposed route runs over registered common, and as there is insufficient width for the trail to run between the existing fences, the re-positioning of the 'breast wire' fence or its replacement with a new stockproof fence would require NE to obtain the necessary consents under the Commons Act 2006 ('the 2006 Act') as part of the establishment of the trail.
28. The objector questioned whether the whole of SCS-2-S012 to SCS-2-S014 crossed registered common; it was his understanding that the north-east corner of this field was common land, but the remainder was not. If the objector considers that the register of common land is incorrect, provision is made within the 2006 Act for an application to be made to amend the register.
29. The alternative route via the public road suggested by the objector would require a greater detour inland than is proposed by NE and would not satisfy the requirements of the Scheme as the trail should not be aligned upon roads unless the road is the best or only available option. The use of the public road network between Angerton and Foxfield level crossings for this section of the trail would not satisfy the requirements of the coastal access duty.
30. The proposed route crosses land which is already subject to a public right of access and is free from vehicular traffic; as such it would provide a suitable, safe, and convenient route for the public to use.

Habitats Regulations Assessment (HRA)

31. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) 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 Natural England (NE). If the AA 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 (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network.
32. The Habitats Regulations Assessments dated 4 December 2019 and 7 October 2020 provide information to inform the Competent Authority's AA. These assessments were undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRAs considered the potential impacts of the coastal access proposals on the Duddon Mosses Special Area for Conservation (SAC); the Morecambe Bay and Duddon Estuary Special Protection Area (SPA); the

- Morecambe Bay SAC; the Morecambe Bay Ramsar site; and the Duddon Estuary Ramsar Site. The HRAs have identified the relevant sites affected by the proposals.
33. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, further assessment under the HRA provisions was required. The overall Screening Decisions found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European Site(s) 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity ('AEoI') of the designated sites.
 34. The scope of the appropriate assessment is set out in Part D1 and Table 4 and Part D1 and Table 6a of the HRAs and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in D2; the Secretary of State should note that in relation to the Duddon Mosses SAC HRA this relates to SCS-2-S010 to SCS-2-S015, and not just those sections of the trail to which this report relates. In relation to the Morecambe Bay SPA & SAC NRA, this relates to the entirety of the SCS and SDC sections of the trail.
 35. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives. Those relevant to this report where there is some residual risk of insignificant impacts are:
 - Path surfacing and other infrastructure leads to loss of extent of the Qualifying Features within the site.
 36. In section D4 of the HRAs, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEoI 'in-combination' with other plans or projects. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from path resurfacing, other infrastructure works and changes in recreational activities as a result of the access proposals which had the potential to act 'in-combination' with those from other proposed plans or projects.
 37. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on Duddon Mosses SAC, Morecambe Bay and Duddon Estuary SPA, Morecambe Bay Ramsar site and Duddon Estuary Ramsar site either 'alone' or 'in-combination' with other plans and projects.
 38. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE,

the HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

Nature Conservation Assessment (NCA)

39. The NCA, 9 December 2019, should be read alongside the HRAs. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), Limestone Pavement Orders (LPO) and undesignated but locally important sites and features, which are not already addressed in the HRAs. Relevant to this report is the Duddon Mosses SSSI; the impact of the proposals on designated features of Duddon Mosses SAC were considered in the relevant HRA. NE were satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale were 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.
40. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained, including the consent to undertake operations on a SSSI.

Whether the proposal strikes a fair balance

41. Having regard to all the above, the proposed route of the trail is unlikely to have any significant adverse effect upon the land crossed by the trail as it is currently subject to a public right of access on foot. The adjustment of the existing fencing arrangements (subject to the necessary consents being obtained) will further limit any adverse impact trail users may have upon animal husbandry and current agricultural practices.
42. Although alternative routes have been suggested, these are not viable or fail to discharge the coastal access duty in respect of the relevant considerations. I do not consider that the minor adverse effects outweigh the interests of the public in having rights of access over coastal land. As such I do not consider that the proposals fail 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 objections within paragraphs 3(3)(a), (c) and (e) 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