



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] and [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Silecroft to Silverdale

Report SCS 3 Jubilee Bridge, Vickerstown to Newbiggin

Route sections SCS-3-S040 to SCS-3-S042

Site visit made on 28 June 2021

Reference: MCA/SCS3/01 & 02

Objection Reference: MCA/SCS3/01 & 02 Land at Rampside

- 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 are 2 admissible objections to report SCS3. The objections are dated 2 March 2020 and are made under paragraphs 3(3)(a), (b), (c), (d) 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. The objections relate to contiguous areas of affected land within the ownership of the objectors. As the objections relate to contiguous areas of land it is expedient to consider these objections together in one report.
- In addition to the objections, a total of six representations were made in relation to report SCS3. Of these representations, those made on behalf of the Ramblers' (R2) and the Open Spaces Society (R3) support the proposals made by NE in relation to those sections of the English Coast Path ('the trail') which are the subject of the objections. In addition to making objections to the proposal, [redacted] and [redacted] ('the objectors') both made representations (R4 and R5) in relation to the sections considered in this report.
- I carried out an inspection of the proposed line of SCS-3-S040 to SCS-2-S042 accompanied by one of the objectors and their representative together with 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. I also recommend that if the proposals were modified to show an Optional Alternative Route between the southern end of SCS-3-S039FP and SCS-3-S043FW on Roa Island Road, such a modification would 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 report SCS3. 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 Natural England ('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 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

10. The trail, subject to the SCS3 report, runs from Jubilee Bridge, Vickerstown (Grid reference SD 1863 6863) to Newbiggin (SD 2705 6937) as shown on maps SCS 3a to SCS 3h (points SCS-3-S001FW to SCS-3-S064). 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 is proposed to run inland from the coast in two locations. At Beacon Hill (map 3e) to the north of the sections subject to these objections, the trail would run inland to avoid an informal cliff path that has become unusable.

The case for the objectors

12. The objectors submit that the proposed route is shown as following the existing public right of way which runs along the foreshore of the beach. The

proposal does not show that the public should not use this route when the tide is in or that there is an optional alternative route available for when the tide is in. The proposal suggests that the public will be able to walk over the sea defence banking which has been built up to protect residential property from inundation by high tides.

13. The sea defence immediately to the west of Kingsmead and Station House has been built up over many years at substantial private cost. Encouraging the public to walk over the sea defence is likely to lead to damage over time which would reduce its effectiveness and leave the property vulnerable to encroachment by the sea.
14. Notwithstanding the damage to the sea defence there would be a significant increase in occupier's liability should anyone fall whilst walking on the sea defence if the tide is in. This is not considered fair or reasonable.
15. Furthermore, those walkers crossing the sea defence would be able to see into private domestic property which would result in intrusion and loss of privacy.
16. Cutting back the hedge and shrubbery to the north of the property between the beach and the Westfield Trail to create a route for the trail would damage an existing privacy screen and leave gaps in the boundary through which trespassers could gain access to the property.
17. The solution would be to re-route the coast path along the Westfield Trail to Roa Island Road instead of turning west and then south to access the beach; it should be noted that the proposed route does not run on the beach for the previous $\frac{3}{4}$ of a mile.

Representation R4 ([redacted]) and R5 ([redacted])

18. The proposed route which would link the Westfield Trail to the beach immediately adjacent to the boundary of Kingsmead and Station House would require clearance of vegetation which would affect wildlife living within the area. There are rabbit warrens of varying depths, and it is known that great crested newts and natterjack toads have been found in the area which is also a roosting area for bats. It is requested that all necessary surveys are undertaken prior to any physical works taking place should the proposed route be chosen.

The response by Natural England

19. NE understands from discussions with Cumbria County Council, that there is a highly unusual situation regarding the recorded public rights of way within the vicinity of the objectors' properties. The right of way to the north and west of Kingsmead and Station House takes the form of an access 'corridor' which had been dedicated by agreement between the then landowners and the local district council which had been responsible for highway matters at the time of the dedication.
20. NE understands that the access authority intends to clear a route between the Westfield Trail and the beach as soon as possible and prior to any new coastal access rights being commenced.
21. The approach to the alignment of the trail in relation to existing walked lines is set out in part 4.7 of the Scheme. The expectation is that the trail will follow

existing public rights of way where these meet the criteria of the Scheme. Following consultation with both the objectors and the access authority, it is proposed to route the trail between the foreshore and the Westfield Trail at the northernmost extent of the access 'corridor'.

22. It is proposed that the inland extent of the coastal margin should match the inland extent of the 'right of way area' as dedicated with the trail following a centre line through this area. It is not accepted that the proposal would encourage trail users to leave the line of the trail or accessible coastal margin and enter private land. Information boards will be posted at either end of the section to advise users that this section may on occasion be inundated by high tides, thus allowing users to continue along the Westfield Trail to Roa Island Road (or vice versa).
23. NE is of the view that as this section of coastline is already popular with residents and visitors alike, it is considered unlikely that any issue of trespass onto private land might arise, particularly if this is not the case at present.
24. With regard to occupier's liability, the 2009 Act specifically reduces the occupier's liability in relation to land where coastal access rights apply. This however does not apply to excepted land including existing public rights of way. Although the entire foreshore and beach would be accessible, it is expected that the majority of users would follow the proposed trail along the beach and that overall levels and patterns of usage would not change.
25. The access authority proposes to clear what it considers to be the most appropriate line through the dedicated 'access corridor' between the beach and the Westfield Trail. Consequently, there would be no risk that gaps along the boundary of the properties would be created, or that privacy would be impacted, or trespass encouraged.
26. The modification proposed by the objectors is not supported; consideration had been given to aligning the trail as suggested but the proposed route was chosen as it remains close to the sea and maintains a better view of the sea than from the Westfield Trail. As the proposed route is already accessible to the public as a result of a previous dedication, the proposal strikes a fair balance.
27. Whilst the suggestion that the trail be aligned along the Westfield Trail as far as Roa Island Road is resisted, NE would be willing to see the short section between SCS-3-S039 and SCS-3-S043FW become an Optional Alternative Route if this would address the concerns of residents.

Conclusions

Alternative route

28. To align the trail along that part of the Westfield Trail between the southern end of SCS-3-S039FP and that part of SCS-3-S043FW on Roa Island Road is unlikely to satisfy the coastal access duty; the alternative is further from the sea than that which is proposed and does not afford views of the sea. Whilst the objector notes that SCS-3-S039FP its itself an inland route, the trail has been aligned along the existing public footpath to avoid an eroding cliff edge on an informal path.

29. The objectors expressed concerns with regard to the potential for damage to the sea defence if trail users attempted to walk along it to avoid incoming high tides. NE consider that appropriate signage at the ends of sections SCS-3-D040 and SCS-3-S042 would address this perceived problem. However, the objectors are concerned that those users who arrive at the southern end of SCS-3-S040 and find the tide to be in might not retrace their steps but might attempt to cross the sea defence in order to continue to Roa Island Road.
30. From the evidence I have before me, it appears that the sea defence lies within that area of land over which a public right of access has been dedicated. That being the case, the public could make their way along the sea defence irrespective of the state of the tide. In practice, it seems unlikely that anyone would choose to do so as there is an evident walked line on the foreshore which is in general use; there were a number of people on the beach at the time of my site visit who are likely to have passed the properties in question by means of the foreshore route.
31. The inclusion of that part of the Westfield Trail between SCS-34-S039FP and SCS-3-S043FW on Roa Island Road as an Optional Alternative Route during high tides may provide some comfort to the objectors and may dissuade users from attempting to negotiate a way along the sea defence.
32. The corridor of land dedicated for public access at the northern end of the objector's property is shown on the available maps to taper from the junction with the Westfield Trail to the foreshore. No clearance work had been undertaken by the access authority prior to my site visit and it is likely that a path of an appropriate width could be made through the existing vegetation which would not adversely impact upon the objectors' privacy or lead to trespass into the amenity areas outside their homes.
33. Having regard to the above, the Secretary of State may wish to note that in discharging the coastal access duty regard must be given to those matters set out in paragraph 5 above. The proposed alignment would provide views of the sea and would be in close proximity to it. The proposed route would run across land over which there is an existing right of public access; that part of the proposed route on the foreshore is already in use and there is no suggestion that the proposed trail would be unsafe or inconvenient for users.

Environmental concerns raised by the objectors

34. NE have prepared assessments under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) to assess the impact of its access proposals upon habitat (HRA) and nature conservation (NCA) interests.
35. The Habitats Regulations Assessment (HRA) notes (D3.2.6) that Great Crested Newts are present at Sandscale Haws NNR within the Duddon Estuary SPA (maps SCS-2g and SCS-2-h) and that Natterjack Toads are found in sand dunes, saltmarsh, and grazing marsh around the Duddon Estuary SPA (D3.2.7). The HRA notes that Natterjack Toads are to be found at Haverigg (maps SCS-1a to d); Kirkby Pool to Roanhead (maps SCS-2b to g); and at Sandscale Haws (maps SCS-2g to h).
36. Contrary to the submissions made by the objector on this point, neither the HRA nor the Nature Conservation Assessment (NCA) suggest that either of

these species have been identified as being present along sections SCS-3-S040 to SCS-3-S042. The alignment of the trail at this location is therefore unlikely to have an adverse impact upon these protected species.

Other matter

37. Whilst the objectors raised concerns about the terms on which the right of access had been granted, the definitive map and statement provides conclusive evidence of the status, position and width of the public right of way which has been dedicated. It may be possible for the history of this matter to be investigated if the objectors now challenge the veracity of the dedication and the recording of that dedication. However, that would be a matter for the objectors to progress should they so wish.

Habitats Regulations Assessment

38. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under 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.
39. The HRA dated 7 October 2020 provides information to inform the Competent Authority's AA. The assessment was 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 HRA considers the potential impacts of the coastal access proposals on the Morecambe Bay and Duddon Estuary Special Protection Area (SPA); the Morecambe Bay Special Area of Conservation (SAC); the Morecambe Bay Ramsar site; and the Duddon Estuary Ramsar site. The HRA has identified the relevant sites affected by the proposals.
40. 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 decision 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 sites '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.
41. The scope of the appropriate assessment is set out in Section D1 and Table 6a of the HRA 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 section D2; the Secretary of State should note that in relation to the Morecambe Bay and Duddon Estuary SPA, the Morecambe Bay SAC, the Morecambe Bay Ramsar site, and the Duddon Estuary Ramsar site, this relates to the entirety of the SCS and SDC section of the trail and not just the section of SCS3 to which this report relates.

42. 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 impact are:
- On saltmarshes, sand dunes, estuaries, large shallow inlets and bays: More frequent trampling following changes in recreational activities as a result of the access proposals and constructing new sections of path through these habitats leads to changes in distribution of the feature within the site, reduction in extent of the feature within the site, changes in key structural, influential, and distinctive species, and changes in vegetation community composition; and
 - Non-breeding waterbirds: Disturbance to foraging, breeding, or resting birds, following changes in recreational activities as a result of the access proposals, leads to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
43. In section D4 of the HRA, 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 more frequent trampling following changes in recreational activities and from the constructing of new sections of path had the potential to act 'in-combination' with those from other proposed plans or projects.
44. However, assessing the risk of 'in-combination' effects (D4 step 2 and table 17), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on the Morecambe Bay and Duddon Estuary SPA, the Morecambe Bay SAC, the Morecambe Bay Ramsar site and the Duddon Estuary Ramsar site either 'alone' or 'in-combination' with other plans and projects.
45. 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

46. The NCA, dated 9 December 2019, should be read alongside the HRA. 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

HRA. Relevant to this report is the South Walney & Piel Channel Flats SSSI. 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.

47. 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

48. 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 way on foot. The inclusion of an Optional Alternative Route for use at times of high tides as a modification to the trail alignment may go some way to addressing the concerns of the objectors although the sea defence appears to lie within the land which has been dedicated for public access. Although an alternative route has been suggested by the objectors, it would fail to discharge the coastal access duty in respect of the relevant considerations. As such I do not consider that the proposals fail to strike a fair balance.

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 within paragraphs 3(3)(a), (b), (c), (d) and (e) of Schedule 1A to the 1949 Act.
50. I also conclude that should the Secretary of State consider the proposed modification to show an Optional Alternative Route between the southern end of SCS-3-S039FP and SCS-3-S043FW on Roa Island Road, such a modification would also not fail to strike a fair balance in respect of the matters raised.
51. I therefore recommend that the Secretary of State makes a determination to this effect.

Alan Beckett

APPOINTED PERSON