
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

Objections by [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Silecroft to Silverdale

Report SCS 4 Newbiggin to Greenodd Footbridge

SCS-4-S016 to SCS-4-S018 and SCS-4-S024 to SCS-4-S029

Site visit made on 28 June 2021

File Ref: MCA/SCS4/01

Objection Reference: MCA/SCS4/01 Land at Aldingham

- 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 SCS4. The objection is dated 9 March 2020 and is made under paragraphs 3(3)(a), (b), and (c) 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.
- In addition to the objection, a total of seven representations were made in relation to the SCS4 report. Of these representations, those made on behalf of the Ramblers' (R6) and the Open Spaces Society (R7) refer specifically to those sections subject to the objection. In addition to making objections to the proposal, the objectors also made representations (R5) in relation to the sections considered in this report.
- I carried out an inspection of the proposed line of SCS-4-S016 to SCS-4-S018 and SCS-S024 to SCS-4-S029 accompanied by the objectors together 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 SCS4. 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. 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.
 8. 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

9. The trail, subject to the SCS4 report, runs from Newbiggin (SD 2705 6937) to Greenodd Footbridge (SD 3163 8257) as shown on maps SCS 4a to SCS 4j (points SCS-4-S001 to SCS-4-S122FP). The trail generally follows existing walked routes, including public rights of way and a section of linear open access land and in the main follows the coastline quite closely and maintains good views of the sea.
10. The trail includes seven sections of new path; one of those sections is the subject of the objections considered in this report.

The case for the objectors

11. The objectors submit that the trail would be safer for pedestrians if it followed the shore which has been used for generations. Two of the fields over which the trail is proposed to run are subject to seasonal flooding. Between Ladycroft Cottage and Moat Farm it is proposed to route the trail along the seaward edge of two arable fields when there is a well-used path along the beach between these two properties.
12. Aligning the trail on the seaward edge of the field north of Aldingham church would give rise to safety risks to path users as the fields are

regularly cropped and have heavy agricultural machinery operating within them. A fair balance would be struck between NE, the public and the landowner if the trail was aligned over the existing walked route along the beach and shore; many people use that route now and have enjoyed that route for many generations.

13. Concerns are also expressed with regard to the risks to livestock health posed by the introduction of dogs to fields which are used for grazing and the production of silage. Neosporosis is a disease amongst livestock caused by the ingestion of feed contaminated by dog faeces; worrying of cattle by dogs is likely to occur where dogs are not kept on a leash.
14. The cost of establishing the trail on the seaward edges of fields will be borne by the taxpayer; Cumbria County Council does not have sufficient funds to adequately maintain existing public rights of way. Failure to maintain any new structures may lead to cattle escaping from fields and causing accidents on adjacent roads. The costs of establishing the proposed route can be avoided by routing the path along the beach between Moat Farm and Leythey Lane.

Representation by Messrs [redacted] (R5)

15. Health and safety issues for both people and livestock are a major concern as is the public liability arising from the proposal. There are shooting rights on the affected land. The fields are all cropped and large agricultural machinery is present in the fields. The cost of stiles and gates will be passed to the taxpayer; lack of maintenance by Cumbria due to insufficient funds will lead to cattle straying. Two of the fields proposed for the trail flood; users will experience the same issues as they do with high tides. A field edge route will cause erosion. There is a flat beach between Moat Farm and Ladycroft Cottage which is suitable for the trail. Where objections have been made to other sections of the trail it has been re-routed. A fair balance will be struck by routing the trail along the beach; a suitable route is already in use and has been used for generations.

16. Representation by the Ramblers (R6) and Open Spaces Society (R7)

17. Support is given to the principle and reasoning behind NE's decision to adopt Option 2 (page 27 of the SCS Overview Report) to establish a trail around the estuarial waters of the Leven and to cross the Leven at Greenodd footbridge.
18. However, the route in total needs significant revision to provide a route over substrates suitable for those with minor mobility issues, and to redesign parts of the route which will prove unwalkable during certain parts of the year. Consideration should be given to the revision of the route of SCS-4-S019 to SCS-4-S055 to provide a route more suitable for users.
19. As regards SCS-4-S012 to SCS-4-S018, the Ramblers and OSS strongly oppose this route on the grounds that 'the rocky shore is considered unsuitable underfoot for a national trail'. This part of the route would

discriminate against those with restricted mobility since there are alternative alignments possible.

20. Support is given to the proposals for SCS-4-S019 to SCS-4-S027, but objection is made to SCS-4-S028 to SCS-4-S029 on the same grounds as those raised against SCS-4-S012 to SCS-4-S018. The rocky and stony foreshores of parts of the route of the trail are tiring and uncomfortable to walk on. Additionally, concentration on the placing of the foot is necessary on such surfaces which negates the value of being in such locations. Alternative routes to such stretches are available and moving the trail to the seaward edge of adjacent fields would produce a more suitable route.

The response by Natural England

The objection

21. NE is aware of the popularity of the foreshore in this area especially for general recreation and dog walking. This popularity is partly due to a large car park at Aldingham. However, further south as the trail passes Ladycroft Cottage the foreshore becomes increasingly difficult to walk on due to shingle and boulders. This may not be a problem on a short walk but is less suitable as part of a national trail to be used by long distance walkers.
22. The Scheme (section 7.12.4) notes that for this reason the trail would not be aligned on a shingle beach unless there are available and viable options and section 4.1.1 imposes a duty to provide a long-distance trail which is as safe and convenient as possible, and which minimises disruption for walkers. A route which is available year-round and at all stages of the tide would satisfy the coastal access duty. In this location, a viable alternative is on the seaward edge of the fields above the shoreline.
23. It is known that the northern side of the field through which SCS-4-S018 passes is prone to flooding during heavy rains when the A5087 Coast Road floods; the flooding within the field arises from heavy rainfall and not inundation by the tide. NE considers that the proposed route avoids the areas within the field which is prone to flooding. However, if the proposed route for the trail were to be flooded following rainfall, then users could follow the route on the foreshore (subject to the tide) which would be part of the coastal margin.
24. The foreshore north of Ladycroft Cottage is highly unsuitable for the route of a National Trail, both in terms of its rocky nature and the fact that it is impassable at high tides. The physical characteristics of the foreshore north of Aldingham church are such that the only viable route which would satisfy the provisions of the Scheme is on the seaward edge of the fields closest to the Edge Bank cliffs.
25. Given that the land which is subject to shooting rights is located between a busy public road and the foreshore already visited by the public, shooting can only realistically take place at this location when there is certainty of safety for the public. It may be possible to manage

any potential conflict by informal means without needing to exclude access by direction.

26. It is reasonably common for the trail to pass through fields grazed by livestock; in line with the provisions of 8.2.11 of the Scheme, the proposed route follows the seaward edge of the fields. With regard to occupier's liability, the 2009 Act specifically reduces the occupier's liability in relation to land where coastal access rights apply.
27. Whilst the concerns regarding dogs are noted, advice from the Animal and Plant Health Agency is that walker's dogs pose a lower risk of transmitting neosporosis as they are generally fed on processed food. Funding for the trail is guaranteed by HM Government; it is accepted that establishment costs will be greater where new paths are being created, but the estimated establishment costs in this area are not particularly high when compared with other parts of Cumbria.

The response to the representations

Representation R5

28. NE acknowledges that many people walk along the foreshore in this location. However, it is not believed that this is the best option, given the nature of the foreshore underfoot, tidal inundation and the existence of a more suitable route on land above the foreshore; such a route would be consistent with the Scheme.
29. The cost of establishing the trail will be met entirely by NE, and funds will be released for ongoing management. Houses and gardens constitute excepted land, and the trail will be aligned seaward of such land where possible, but otherwise on the landward side.
30. As regards the transmission of disease from dogs to livestock, advice from the Animal and Plant Health Agency suggests that the risk is low from walkers' dogs due to the processes involved in the production of commercial dog food.

Representations R6 and R7

31. Whilst the trail will not normally be aligned on the foreshore, especially where the surface is unsuitable, there are sometime no better options available. This is the case just north of Moat Farm. Any other route would involve two additional road crossings in unsuitable areas which are not supported by Cumbria Highways. There are various locations on this length where the proposed route nominally sits on the top of the foreshore, often on an existing walked route. NE believes that these sections are suitable as part of the trail and are generally unaffected by the tide. Any new route inland above the foreshore in these locations would be unlikely to be considered to strike a fair balance, given the existence of a foreshore-top route nearby.
32. It is accepted that some parts of the main route may occasionally be impacted by high tides. Other, better options mitigate this risk, but where there are no other options, Optional Alternative Routes are

suggested and signed. Such action is consistent with the criteria and approach set out in the Scheme.

Conclusions

33. The objections concern two distinct but related parcels of land. Those sections of the proposed route SCS-4-S017 to SCS-4-S018 would run on the seaward edge of two arable fields owned and cultivated by the objectors. The establishment of this section of the trail would require the construction of a new sleeper bridge at the northern end of SCS-4-S018, the erection of a kissing gate at the field boundary and the construction of a flight of steps and a kissing gate at the southern end of SCS-4-S017.
34. The objectors point to the existence of a well-walked path along the top of the foreshore as the route currently in use by members of the public who chose to visit the coast near Aldingham. This section of the foreshore would be bypassed by SCS-4-S017 and SCS-4-S018 although it would connect with the continuation of the trail over the foreshore both north and south of these sections.
35. The reasons given by NE for proposing that this section of the trail should run within the seaward margin of the fields is that shingle is not a coastal land form over which the trail should run if there are other available and viable options; the field edge route is considered to be a viable option.
36. At this location there is a distinct wear line within the shingle which shows the route taken by many users when walking around the coast in the vicinity of Ladycroft Cottage and this wear line may reflect the preferences of dog walkers and other occasional visitors who have parked on the foreshore or adjacent to St Cuthbert's church. The worn line in the shingle suggests that many visitors to the beach do not find this feature inconvenient.
37. In response to my query as to why the field edge route had been chosen in preference to the route along the foreshore, NE replied that the lowest point of any route along the foreshore was 5.5m above OS datum and that parts of the foreshore would be inundated by a 10.4 metre tide (with no other atmospheric influences) around 10 times per year, and a 9.5m tide with adverse weather and atmospheric conditions would cover the foreshore around 40 days of the year.
38. The modelling undertaken by NE suggests that there would be a number of occasions during the year where the foreshore route would be unavailable; however, the proposed route along the seaward edge of the fields would remain available at all stages of the tide and would accord with paragraphs 4.4.2 and 4.7.3 of the Scheme. The proposal also accords with paragraph 7.12.4 of the Scheme where shingle is not considered to be a suitable surface for a long-distance trail where there are other viable alternatives available.
39. I acknowledge that the existing foreshore route is likely to remain in use by those who visit this area for dog walking and who park their cars

nearby. I also acknowledge that at periods of low tide, it is highly likely that those following the trail may also continue along the foreshore route. However, the trail should remain available for use at all stages of the tide, and this would be achieved by its alignment along the seaward edge of the fields in question.

40. As regards the sections of the trail north of Aldingham church (SCS-4-S024 to SCS-4-S029), NE are of the view that the trail has been aligned on the seaward edge of fields to avoid disturbance to assemblages of feeding and roosting non-breeding water birds which use the foreshore; to avoid a rocky shingle foreshore unsuitable for a national trail and to avoid a section of the coast which is unavailable at high tides. The objectors suggest that the available foreshore route has been used for many years by many people for a journey between Aldingham and Maskel Point, and that the trail should follow that route.
41. As part of my site visit, I made a journey along the foreshore under Edge Bank cliffs and whilst the shingle beach immediately north-east of St. Cuthbert's church was not dissimilar to that present in the vicinity of SCS-4-S16 to SCS-4-S018, the section immediately under the Edge Bank cliffs (SCS-4-S028 to SCS-4-S029) was strewn with large rocks and boulders which required more careful negotiation. It is sections of foreshore with these conditions underfoot which the Ramblers and Open Spaces Society refer to as 'tiring and uncomfortable' to walk on. Whilst it was evident that some people did walk over this section of the foreshore, it is not suitable for inclusion as part of a national trail.
42. The proposed route on the seaward edge of fields (SCS-4-S024 to S029) is close to the sea in that it follows the periphery of the coast but does not provide views of the coast for much of its length due to the hedge located at the boundary of the field with the cliffs. It is said that the field edges are also wet for periods of the year and would be as problematic to walk through as the foreshore route.
43. At the time of my site visit, the field edge route was dry underfoot and passable although ground conditions experienced on a late June afternoon may not be representative of the conditions which may be prevalent during the winter months. The need for remedial works along this section to address the problems caused by poor drainage of the land is recognised in paragraph 4.2.39 of report SCS4 which notes that drainage and path surfacing of the route east of Aldingham will require upgrading. The precise nature of any required works is a matter for NE and the access authority to discuss with the objectors as part of the establishment of the trail.
44. The concerns expressed by the objectors regarding the transmission of disease from walkers' dogs to livestock is recognised. Whilst there can be no guarantee that walker's dogs would not spread neosporosis, the advice given by the Animal and Plant Health Agency is that the risk posed to livestock would be low. There is a requirement for dogs to be kept on leads at all times in the presence of livestock; a direction to that effect on these sections would have no effect. In terms of management of the trail, consideration could also be given to the provision of

information signs reminding trail users of their responsibilities and obligations (including the removal of dog faeces).

Habitats Regulations Assessment (HRA)

45. 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.
46. The HRA dated 7 October 2020 provides information to inform the Competent Authority's AA. The 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 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); Morecambe Bay Ramsar site; and Duddon Estuary Ramsar site. The HRA has identified the relevant sites affected by the proposals.
47. 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 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.
48. 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 Morecambe Bay and Duddon Estuary SPA, Morecambe Bay SAC, Morecambe Bay Ramsar site and Duddon Estuary Ramsar site, this relates to the entirety of the SCS and SDC section of the trail and not just the section of SCS4 to which this report relates.
49. 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:

- 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 zonation of vegetation; and
- 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.

50. 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 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.
51. 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 proposal (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on Morecambe Bay and Duddon Estuary SPA, Morecambe Bay SAC, Morecambe Bay Ramsar site or Duddon Estuary Ramsar site either 'alone' or 'in-combination' with other plans and projects.
52. 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 sites' 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)

53. The NCA, 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. There are no SSSI's MCZs or LPOs relevant

to that section of the trail which is the subject of this report. 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, consistent with the proper exercise of their functions.

54. 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.

Whether the proposal strikes a fair balance

55. In relation to SCS-4-S024 to S019, the proposed route of the trail is likely to have an adverse effect upon the land crossed by it as the fields are not currently subject to a public right of access on foot. An alternative would be to route the trail along Coast Road and Leythey Lane, however this would result in all non-excepted land seaward of the road being drawn into the coastal margin. Aligning the trail along Coast Road would result in coastal access rights being created over the whole of the objector's field as opposed to being limited to the seaward margins of those fields.
56. Given that the foreshore route is unsuitable for use as a national trail and is interrupted by being inundated during periods of high tides, the proposed route on the seaward side of the fields appears to be the best fit with the requirements of the Scheme and would provide trail users with an uninterrupted route along the periphery of the coast, albeit with limited views of the sea on that part of the trail north of Aldingham Hall. Overall, I do not consider that the proposal fails to strike a fair balance.

Recommendation

57. 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) and (c) 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