



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

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Date 4 July 2022

Marine and Coastal Access Act 2009

Objection by [redacted], Derektwar Ltd

Regarding Coastal Access Proposals by Natural England

Relating to Mablethorpe to Humber Bridge

Site visit made on 8 February 2022

File Refs: MCA/MHB2/0/1

**Objection Ref: MCA/MHB2/0/1
[redacted], Derektwar Limited**

- On 12 May 2021 Natural England submitted four Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 12 June 2021 to Report MHB2, Saltfleet Haven to Humberston, has been made by [redacted] of Derektwar Limited. The land in the Report to which the objection relates is route section MHB-2-A005 (Map 2e).
- The objection is made under **paragraph 3(3)(a)** of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report MHB2, specifically in relation to alternative route section MHB-2-A005, subject to the suggested minor modifications, do not fail to strike a fair balance.

Procedural and Preliminary Matters

1. The Coastal Access Reports (MHB1 to 4), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between Mablethorpe and Humber Bridge.
2. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to Mablethorpe to Humber Bridge might have an adverse impact on the Saltfleetby – Theddlethorpe Dunes & Gibraltar Point Special Area of Conservation (SAC), Greater Wash Special Protection Area (SPA), Humber Estuary SPA, Humber Estuary Ramsar site and Humber Estuary SAC. It has also produced a Nature Conservation Assessment (NCA) that should be read alongside the HRA.
3. The period for making formal representations and objections to the Reports closed on 7 July 2021. In relation to the four reports, one admissible objection in relation to report MHB2 was received within the specified timescale. I have been appointed to report to the Secretary of State on this objection (reference MCA/MHB2/0/1/MHB0114). In addition to the objection, in relation to the four reports sixteen representations were received. Three of these representations relate to report MHB2 and are considered where relevant.
4. I carried out a site visit on 8 February 2022 accompanied by the objector and a representative of NE, Lincolnshire County Council Highway Authority (HA) and the Ministry of Defence's Infrastructure Organisation (MoD).

Main Issues

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

This is referred to in the Act as the English coastal route, but for ease of reference is referred to as 'the trail' in this report.

7. The second objective is that, in association with the trail a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
8. Section 297 of the 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 the trail 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 the trail are kept to a minimum.
9. 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.
10. 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.
11. NE's Approved Scheme 2013 ("the Scheme") was approved by the Secretary of State in 2013. It sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
12. My role is to consider whether or not a fair balance has been struck by NE between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

13. North of Mablethorpe the coast, in locations such as Theddlethorpe to Saltfleetby, is open and wild with extensive sand dunes and large beaches. When the south shore of the Humber estuary is reached the scenery changes with extensive areas of soft mud exposed at low tide. Together with coastal saline lagoons and reedbeds these features provide important coastal habitats. These habitats include those that support a wide range of overwintering and migratory seabirds as well as a large colony of breeding grey seals at Donna Nook. Almost the entire length of the proposed trail between Mablethorpe and Humber Bridge lies within the edge of designated areas of nature conservation (e.g. Greater Wash SPA, Humber Estuary SPA, SAC and Ramsar).
14. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Humber. On this basis it proposes that the trail should follow the River Humber westwards as far as the first bridge across the estuary, which is the Humber Bridge.

15. The objection relates to the proposed alternative route between proposed trail sections MHB-2-S012 and MHB-2-S017. To avoid disturbance to seals during the pupping season it is proposed that an alternative route would be in use from 1 October to 31 January each year. The section of the proposed alternative route objected to is MHB-2-A005. Given that all sections of the route referred to in this report have the prefix MHB-2, for ease of reference, I have referred to the trail section by the S0 / A0 number only.
16. The proposed route, which would be in use for the majority of the year, is located along the back edge of the foreshore. The proposed alternative route section A005 would be located on the seaward slope of the sandbank parallel to the foreshore but setback several metres from it. Both routes provide clear views of the sea. In order to create the alternative route section the trail would need to be cut through dense blackthorn bushes that have colonised the sandbank.

The Objection

17. The objection has been made on the basis that the proposal in the report fails to strike a fair balance in relation to paragraph 3(3)(a) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 as a result of the position of part of the route.
18. The position of trail section A005, and the adjacent fence which would be erected, would obstruct a private right of way from Donna Nook Road to the foreshore which serves land owned by Derektwar Limited and Dunes Cottages. A modification is sought that inserts a field gate into the fence line of this trail section at the point that it meets the private right of way.

Representations

19. The Environment Agency (EA) notes that the majority of the proposed trail is situated on flood banks and walls which are Flood and Coastal Risk Management Assets. Such assets may move over time and will require maintenance and improvement which on occasion will require temporary diversion of the trail. Ongoing dialogue between NE and EA will therefore be necessary.
20. Permits will be required from the EA for the construction of new structures or the alteration of existing structures close to sea or river defences. Reports MHB 2 and MHB 4 need to be updated to include details of sections of the trail where roll back may be needed to manage the realignment of the trail.
21. North Somercotes Parish Council notes an apparent mapping inaccuracy showing Public Right of Way (PROW) NS18 affected by the long term access exclusion illustrated on Map MHB 2E. The Parish Council supports the main trail and seasonal alternative route between S012 and S019. However, it advises that it will act to safeguard PROW NS28 and the access it provides to the beach and foreshore by applying for a Definitive Map Modification Order.
22. The Ramblers Association is in full support of the proposed route of the trail.

Natural England's comments on the objections and representations

23. The trail section S015 follows the seaward edge of the sand bank / dune. NE has proposed route section A005 as part of a seasonal alternative route to separate walkers and their dogs from breeding seals from 1 October to 31 January each year. On the seaward side of route section A005 a dog proof fence would be

erected to prevent dogs accessing the seal breeding areas. The alignment of the main and alternative route of the proposed trail and the associated fence are all on land owned by the MoD.

24. When NE met [redacted] NE were not made aware of any vehicle access rights. The MoD say that they know of no vehicular right of access at this point. NE would install a field gate if space allows and would pursue this solution with the MoD. However, in the absence of any known access rights in the area they would be within their rights to decline.
25. In relation to the EA's representations, NE recognises that flood banks require maintenance and use of the available tools would be made to manage the trail route to accommodate this. Where new structures are to be built, or existing structures are to be altered, the necessary permits would be applied for.
26. In order to confirm in relation to Report MHB 2 that roll back is proposed and our likely approach to this issue, NE propose modifications to table 2.3.1 of this report and the insertion of a new table, table 2.3.3. Similar modifications are also proposed in relation to Report MHB 4.
27. With regard to North Somercotes Parish Council, NE apologise for the mapping discrepancies in relation to PROW NS18. This was caused by an inaccuracy in the Department for Environment, Food and Rural Affairs PROW mapping layer. The proposed long term public access exclusion to protect sensitive wildlife would not result in any restrictions or limitations on the use of PROW NS18. The actions of the Parish Council in relation to PROW NS28 are noted.

Discussion and Conclusions

28. The modification sought would insert a field gate in the fence line that would be erected along the proposed alternative trail section A005. This would occur at the point that the alternative trail section crosses what is stated to be a private right of way from Donna Nook Road that passes across the sandbank to the foreshore. This way is associated with Dunes Cottages and Derektwar Limited.
29. On the basis of the submitted evidence, although not recently used by vehicles, I find that the route from Dunes Cottages to the foreshore is a private right of way by virtue of its use from the middle of the nineteenth century onwards by the coastguard and occupiers of the cottages to provide vehicular access to the beach for boats and equipment. Although the coastguard ceased operations and surrendered its lease to Derektwar Limited in 1993, this does not alter the existence of the private right of way.
30. As the fence along the seaward side of the proposed alternative route section A005 would obstruct this private right of way, the objection is warranted. As a result, in order to enable the private right of way to be used, the modification sought by the objector of the insertion of a field gate into the fence line at the point it crosses the right of way is necessary. In practice vehicular access to the foreshore is subject to restrictions relating to its protected wildlife status and by military byelaws. However, these are separate matters for any users of the private right of way to address with NE and the MoD respectively.
31. NE confirmed in writing after the site visit that they are willing to install the field gate and this minor change has the support of all other parties with a legal interest in the affected land, namely the MoD and the HA. NE have submitted a revised

Map MHB 2e that inserts a field gate at the appropriate location. This map is included as Annex A to this report. This modification has not been advertised. However, as it is very minor and all those with a legal interest in the land and the route, namely the objector, MoD and HA are supportive of it no party would be prejudiced if this modification was considered as part of this report.

32. In relation to the EA's representations regarding the trail in report MHB2, the tables referred to in NE's response of August 2021 include changes that clarify where it is likely that roll back will be needed as a result of coastal processes. In such circumstances, the route of the proposed trail will probably be adjusted to follow the new coastal defences. The new table 'Roll-back implementation – more complex situations' is referred to as table 2.3.3 by NE and in column 4 of its amendments to table 2.3.1. However, as a table with the reference 2.3.3 already exists it should be referred to as table 2.3.4. The amendments to table 2.3.1 and table 2.3.3 (which should correctly be referred to as 2.3.4) are provided in Annex B to this report. These minor modifications have not been advertised. However, as they provide clarity and any proposed route alteration would be subject to prior consultation with all who have a relevant interest in affected land, no party would be prejudiced if this modification was considered as part of this report.
33. North Somercotes Parish Council's representation does not relate to the section of the proposed trail that is the subject of the objection. As such it raises issues that are not directly before the Secretary of State. This representation and the comments of NE in relation to it are set out for information above.
34. The HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. Annex C provides information on this matter. The conclusion of the HRA is not contested by the objector or in any of the representations received.
35. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals, subject to the minor modifications referred to in paragraphs 31 and 32 above, do not fail to strike a fair balance in relation to the matters raised in relation to the objection.

Overall Conclusion

36. For the reasons given above, having regard to these and all other matters raised, I conclude that the proposals, subject to the very minor changes agreed, where relevant, with all interested parties described above, do not fail to strike a fair balance as a result of the matters raised in relation to the objection.

Recommendation

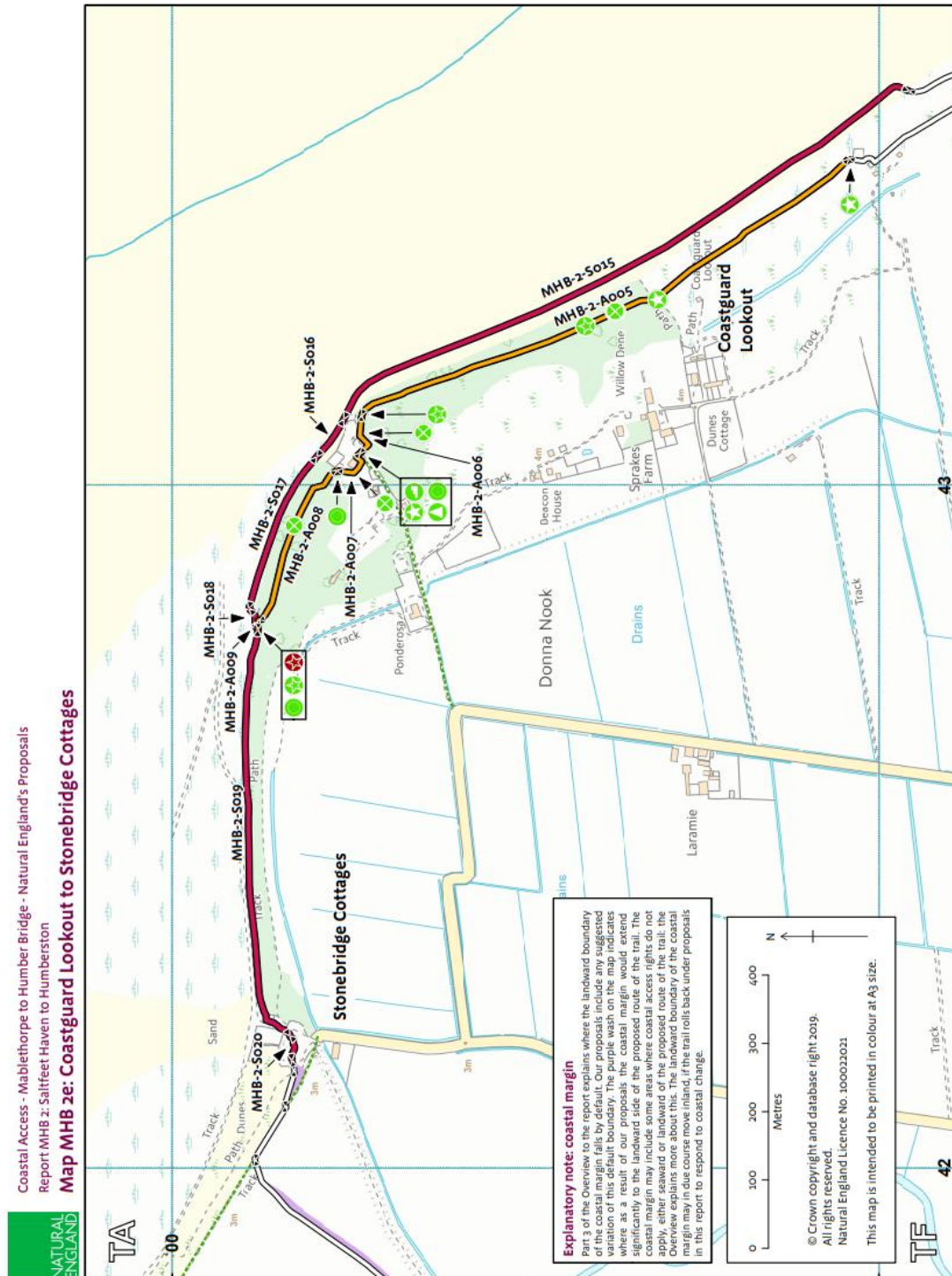
37. I recommend that the Secretary of State makes a determination to the same effect as my conclusion.

Ian Radcliffe

APPOINTED PERSON

ANNEX A

Map MHB 2e: Coastguard Lookout to Stonebridge Cottages



ANNEX B

As requested, NE propose that table 2.3.1 in report MHB 2 is modified and table 2.3.3 be inserted to propose roll-back potential in reference to map MHB 2j. **We ask the Secretary of State to note this change and to approve the proposals as modified.**

1	2	3	4	5a	5b	5c	6
Map(s)	Route section number(s)	Current status of route section(s)	Roll-back proposed? (See Part 7 of Overview)	Landward margin contains coastal land type?	Proposal to specify landward boundary of margin (See maps)	Reason for landward boundary proposal	Explanatory notes
MHB 2i and Map 2j	MHB-2-S035 to MHB-2-S038	Other existing walked route	Yes- see table 2.3.3	Yes - bank			
MHB 2j	MHB-2-S039	Other existing walked route	Yes- see table 2.3.3	Yes - bank	Path	Clarity and cohesion	
MHB 2j	MHB-2-S040	Other existing walked route	Yes- see table 2.3.3	Yes - bank	Track	Clarity and cohesion	

2.3.3 Roll-back implementation – more complex situations: Map MHB 2i to MHB 2j: North Coates

Map(s)	Route section number(s)	Feature(s) or site(s) potentially affected	Our likely approach to roll-back
MHB 2i to MHB 4j	MHB-2-S035 to MHB-2-S040	North Coates Point Managed Realignment	Managed realignment is under consideration in the area. The trail is likely to be adjusted to follow the new coastal defences.

ANNEX C: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT

Habitats Regulation Assessment

1. 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).
2. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
3. A 'shadow' HRA, dated 12 May 2021, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and is recorded separately in the suite of reports. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation. The HRA considered the potential impacts of the coastal access proposals on the following European sites: Saltfleetby – Theddlethorpe Dunes & Gibraltar Point Special Area of Conservation (SAC), Greater Wash Special Protection Area (SPA), Humber Estuary SPA, Humber Estuary Ramsar site and Humber Estuary SAC. The HRA is considered to have identified the relevant sites affected by the proposals. The proposals are not directly connected to or necessary to the management of the European sites, therefore a HRA is required.
4. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone'. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
5. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur, and the impact-effect pathways considered. Table 37 sets out the assessment of AEoI for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
6. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEoI from the proposals alone to determine whether they could give rise to an AEoI in combination with other plans or projects. In these circumstances, no AEoI was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the

- European sites considered either alone or in combination with other plans and projects.
7. The assessment of AEoI for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal. The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEoI in light of the sites' conservation objectives.
 8. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
 - Minimal loss of sand dune habitat for *Hippophae rhamnoides* as a result of scrub clearance at Donna Nook to create the seasonal alternative trail.
 - Disturbance to SPA waterbirds and SPA waterbirds assemblage as a result of the access proposal, which could lead to reduced fitness, breeding success and population and/or contraction in the distribution of Qualifying Features within the site.
 9. The Royal Society for the Protection of Birds has expressed concerns regarding the impact of the trail between Mablethorpe and Humber Bridge on water birds. These concerns have been considered in coming to a view on the HRA conclusions.
 10. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Mablethorpe and Humber Bridge 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 Coastal Access: NE's Approved Scheme 2013. 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.
 11. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment (NCA)

12. The NCA, dated 5 May 2021, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), a Marine Conservation Zone (MCZ) and a cricket which are not subject to consideration in the HRA.
13. Relevant to this report are the Humber Estuary SSSI, Saltfleetby-Theddlethorpe Dunes SSSI, North Killingholme Haven Pitts SSSI, The Lagoons SSSI, Holderness Inshore MCZ and Roesel's bush-cricket. NE are satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between Mablethorpe and Humber Bridge are fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs and that the access proposal is the one that is least likely to hinder the achievement of the conservation objective for the MCZ.
14. In respect of the sites and features listed above, as well as the species identified, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.