



The Planning Inspectorate

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

by Alan Beckett BA MSc MIPROW

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

Date 15 August 2022

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Silverdale to Cleveleys

Site visit made on 22 March 2022

File Ref: MCA/SDC1/01

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<https://www.gov.uk/planning-inspectorate>

**Objection ref: MCA/SDC1/01**  
**Land at Gibraltar Farm, Silverdale**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to report SDC 1, Cove Well, Silverdale to Wild Duck Hall, Bolton-le-Sands was made by [redacted] on 1 March 2020. The land in the report to which the objection relates is route section SDC-1-S008 to SDC-1-S020 shown on Map SDC 1a.
- The objection is made under paragraphs 3 (3) (a), (b), (c) and (e) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.**

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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 4 admissible objections to report SDC1. The three other objections are considered separately. A representation (R4) was made by [redacted] in addition to the objection considered below; the representation and objection raised identical issues. The Ramblers' (R13), the Open Spaces Society (R14) were broadly supportive of the proposals in relation to SDC-1-S001 to SDC-1-S023. Silverdale Parish Council (R7) made a representation which specifically refers to the sections considered in this report. Other representations made refer to the section of the trail considered in Report SDC3, but none of those comments are specific to the sections considered in this report.
3. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by [redacted] and representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE, the objections made to that report, NE's comments on objections and representations, the clarifications Inspector [redacted] sought from NE arising from matters raised at the site visit and NE's responses to those questions. I undertook a site inspection on 22 March 2022 accompanied by [redacted] and representatives of NE.

## **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 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.
6. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
7. 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 that route adhering to the periphery of the coast and providing views of the sea,
  - (c) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
8. 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.
9. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

## **The Coastal Route**

11. The trail, subject to SDC 1 of the CA Report, runs from Cove Well, Silverdale (Grid reference SD 4567 7551) to Wild Duck Hall, Bolton-le-Sands (grid reference SD 4798 6867) as shown on maps 1a to 1g (points SDC-S-S001 to SDC-1-S083 FP). The trail follows existing walked routes, including public rights of way and minor roads and in the main follows the coastline quite closely and maintains good views of the sea.
12. The coastal route would follow a rocky cliff path between Shore Road (SDC-1-S005 to SDC-1-SDC-1-S020). It is proposed that the coastal route between SDC-1-S008 and SDC-1-S020 will follow the seaward side of an existing limestone wall which separates [redacted]'s fields from Morecambe Bay. At two points (SDC-1-S009 and SDC-1-S011) it is proposed that the coastal route will enter [redacted]'s fields by means of pedestrian gates with the coastal route

running in a fenced corridor and physically separated from [redacted]'s grazing cattle. An option alternative route (SDC-1-OA001RD – SDC-1-OA003) avoiding the rocky cliff path would run between SDC-1-S004RD and SDC-1-S020.

#### **The case for the objector (and representation R4)**

13. [redacted] states that his land is used as a mixed dairy, beef, and sheep farm with the land at the farm being crucial to the effective husbandry of the dairy herd, the fields being close to the farm buildings. The fields are grazed on a rotation with cows being present in a different field each day. The fields are used for grazing and lambing of sheep during the winter months. In addition to the dairy, beef, and sheep business, on farm diversification has led to the development of a licensed caravan and camping site which provides a significant financial input to the overall business at Gibraltar Farm.
14. Those sections of the farm affected by the coastal path (SDC-1-S009 and SDC-1-S011) are some distance from the farm buildings and this gives rise to concerns about interference and disturbance to calving cows by path users and their dogs. [redacted] contends that fences are insufficient to mitigate the risks posed by the public and their dogs, as fences can be climbed or cut. In addition, the proposed in-field route at SDC-1-S011 would provide trail users with a direct view of the caravan site at Gibraltar Farm; concerns were expressed that trail users may seek to take a short cut over the fields to the farm to access the facilities at the farm or to find a route to the Wolfhouse café on Hollins Lane. The cliff top at SDC-1-S011 would be suitable for the trail if an engineered solution such as the flight of steps proposed in Cows Close Wood could be provided at the northern end of the section.
15. In addition to a risk to the public being posed by livestock, [redacted] also has concerns regarding his livestock being worried by visitors' dogs. It is stated that people ignore 'dogs on leads' signs; whilst enforcement of such rules is possible with those dog owners who are camping or caravanning on site, it would not be possible to enforce those rules on coastal path users who would be some distance from the farm buildings. Where gates are proposed to provide access to his fields, [redacted] requires kissing gates to be installed rather than pedestrian gates.
16. The coastal route being imposed on the landward side of the sea wall would prevent the current grazing regime from being followed which would have a negative impact upon the profitability and viability of the farm. As compensation is not provided for under the legislation, the only way a fair balance could be struck is by excluding dogs from this section of the coast during the main cattle grazing and lambing season of 1 February to 31 October. Path users accompanied by dogs would be able to follow the Optional Alternative route.
17. [redacted]'s current practice is to run a dairy bull with the herd at certain times of the year; this would not be possible within those fields crossed by the coastal route. The result would be a change to current practice with implications for increased costs through artificial insemination or penning the bull in.
18. [redacted] contends that the proposed route between SDC-1-S015 and SDC-1-S020 lies within his woodland which has served as a safe recreational space for visitors to the camping and caravanning site. The site is also used by local school

groups for education and instruction. The woodlands should be excepted land in the same way that school playing fields are. If the land were not excepted, then fencing the coastal route in would be the only way of maintaining separation between camp site users and the general public walking the coastal route. Having the path located landward of the sea wall would have a significant adverse impact upon the camping and caravanning business.

19. Objection is also made to the proposed roll-back of the coastal path between SDC-1-S013 and SDC-1-S020 as that would bring the path to the edge of the campsite. This would render eight caravan pitches being unusable with a corresponding reduction in income. The staircase to be built should be constructed to link SDC-1-S015 to SDC-1-S021 and the report should be modified to exclude roll-back from this section.

### **Representation R7 (Silverdale Parish Council)**

20. There are a number of significant concerns regarding section SDC-1-S005 to SDC-1-S020. It is considered that at some locations the trail along an exposed sea cliff would be hazardous and, in some circumstances, dangerous. The optional alternative route along Lindeth Road would route walkers along a tarmac highway sufficiently inland that sight and sound of the coast would be lost. This is considered to be a poor alternative and efforts should be made to develop a robust solution which would provide a route available at all states of the tide; usable by family groups who may have mobility impairments; and, available when accretion or erosion causes the foreshore to be unwalkable.

### **The response by Natural England**

#### *The objection (and representation R4)*

21. NE does not consider that a direction to ban dogs is necessary; those parts of the coastal route within current grazed enclosures will run within fenced corridors. The fence will be constructed to a suitable specification to ensure that walkers and their dogs are completely separated from the adjacent grazed areas at all times. The fence will be designed in consultation with [redacted] and as it is considered to be an essential piece of path infrastructure, the ongoing maintenance of the fence will lie with Lancashire County Council as the access authority.
22. The remaining part of the coastal route on this section is seaward of the limestone wall and as path users on all sections of the coastal would be completely segregated from livestock there is no requirement for a restriction on dogs.
23. The proposal regarding the construction of a fence at sections SDC-1-S009 and SDC-1-S011 would not prevent [redacted] from continuing with his established practice of running a dairy bull with his cows. The fence would allow for the complete segregation of livestock and path users.
24. As regards SDC-1-S015 to SDC-1-S020, the most favourable route between Cow Close Wood and Jack Scout was identified as considerably further north than the currently proposed location. The current proposal was arrived at in consultation with [redacted] to maintain a greater separation from the coastal route and the camping area. It is not agreed that the proposed route poses a significant risk to

users of the camp site; there is a well-used path from the campsite to the small beach and much of the proposed route is already in use by walkers. A fence is not necessary, other than between the landward edge of Cow Close Wood and the camp site.

25. Roll-back is proposed on this section of path as the path sits on the edge of low limestone cliffs. Given the character of the land at this location, any requirement for roll-back is likely to be for small changes in response to limited and localised cliff fall. The extent and nature of roll-back is also complicated by the existence of protected sites along this section.
26. Self-closing pedestrian gates have been proposed to prevent any livestock which accidentally gets through the proposed fence escaping on to the cliff top. Self-closing pedestrian gates take up less space than the kissing gates suggested [redacted].

#### *Representation R7*

27. NE considers that the proposals made for the trail at Gibraltar Farm is the best available that provides a fair balance for walkers and landowners. It is acknowledged that some walkers may not feel comfortable with some aspects of the trail (width, elevation, and exposure); however, the alternative route along Lindeth Road would always be available.

#### **Further information sought by the Inspector following the August 2020 site visit**

28. The inspector queried whether it would be possible for the coastal route at SDC-1-S009 and SDC-1-S011 to avoid [redacted]'s fields entirely and run on the cliff top on the seaward side of the field boundary wall as was proposed on the remainder of this section. In the alternative, it was also queried whether the coastal route could follow the foreshore at these locations. Additional information was sought regarding the frequency and duration of exceptionally high tides at this point and whether these would result in the foreshore at SDC-1-S009 and SDC-1-S011 being inundated. In respect of the proposed roll-back, the Inspector queried whether roll-back was necessary or appropriate in relation to SDC-1-S016 to SDC-1-S020 and the basis on which roll-back was considered necessary in relation to the steps to be created at SDC-1-015.

#### **Natural England's response to the Inspector**

29. At SDC-1-S009 and SDC-1-S011 there is no viable alternative path seaward of the boundary wall. The sea cliffs on this section of the coastal route are a Biological Heritage Site and are Landscape Character Type D: Coastal Limestone Pasture which is considered to have very limited capacity to accommodate the type of change to vegetation and the rock surface which would be required for the coastal route to run seaward of the boundary wall at these locations. The constraints posed by the limited physical space between the boundary wall and the cliff face, by the topography of the site and the landscape and nature conservation requirements of the Arnside & Silverdale Area of Outstanding Natural Beauty ('AONB') rule out the construction of a reasonably safe and convenient means of negotiating the hazardous changes of levels at these sections of the coast.

30. As regards SDC-1-S009 a path on the seaward side of the boundary wall could not be created without removing or compromising the wind-sculpted protected trees at the top of the sea cliff. It has not been possible to design a path on the seaward side of the wall to the satisfaction of the AONB. Whilst the strip of land at the top of the cliff at SDC-1-S009 is wide enough to accommodate the path, the presence of the wind-sculpted trees and the protection they enjoy precludes this option.
31. With regard to SCS-1-S011, the advice received from the AONB following consultation was that the installation of medium to large scale infrastructure such as bridges or walkways on the exposed cliff edge should be avoided. Any modifications to the cliff top and edge should be kept to an absolute minimum to prevent disturbance and damage to the underlying geology and cliff top flora. It is NE's view that only very minor and localised removal of rock would be permitted to prevent significant adverse impact upon the visual appearance and natural character of the cliff in these locations; it is considered highly unlikely that the necessary permissions would be forthcoming for the introduction of steps or a staircase at the northern end of SDC-1-S011.
32. NE is of the view that the proposed routes at SDC-1-S009 and SDC-1-S011 would reduce the impact upon [redacted]'s agricultural and other activities to the absolute minimum extent possible; the proposed mitigation by means of a stock proof fence would prevent interaction between walkers and livestock.
33. As regards tidal inundation, the foreshore alongside SDC-1-S009 is below 5m elevation. The available tide chart data suggests that the foreshore would be covered by the highest tides for a minimum of 161 days per year. However, based on observations on the ground, it is expected that this estimate is more likely to be around 282 days of the year for up to 3 hours at a time.
34. For SDC-1-S011, the elevation of the foreshore varies between 6 and 7.5 metres, with tide chart data suggesting that the lowest section of the foreshore would be cut off for a minimum of 31 days per year but is more likely to be cut off by the tide for 161 days of the year for up to two hours at a time.
35. The foreshore at these locations makes for difficult walking and walkers are likely to be cut off by rising tides in the bays either side of the two sections at issue when walking a route along the foreshore. NE submits that there is not possible to create a safe and convenient route along the foreshore or along the sea cliff between SDC-1-S008 and SDC-1-S012 taking into account local topography and the recommendations of the AONB.
36. As regards roll-back, it was important to ensure that the proposal covers all route sections that might be impacted by the need to move part of the route inland, not only those parts of the route directly affected by a coastal change itself. This was required to ensure that the coastal route would remain available at times of coastal change.
37. In relation to Gibraltar Farm, it is conceivable that some parts of the proposed route between SDC-1-S009 and SDC-1-S013 may be impacted by coastal change which would disrupt the availability of the current route. It is expected that such changes that occur are likely to be small and highly localised and of the magnitude of a metre or less. However, if it were not possible to reconstruct the

coastal route on the seaward side of the boundary wall, all options would need to be considered with affected landowners. Whilst it is unlikely that SDC-1-S017 to SDC-1-S020 would be required to change, the inclusion of the whole section would allow for a range of options to be considered with affected landowners.

38. In relation to the proposed steps at SDC-1-S015, if planning permission for the steps was not granted, a separate Variation Report with associated consultation would be required; the proposed alignment involving steps could not be altered under roll-back provisions as a coastal erosion 'trigger' event would not have occurred.

## **Discussion and Conclusions**

39. The trail in the vicinity of Gibraltar Farm would in the main run along the seaward boundary of the wall which separates the farm fields from the sea at this part of Morecambe Bay. The route proposed by NE is reasonably close to the sea, would be available at all states of the tide, and save for those sections SDC-1-009 and SDC-1-S011, would offer views of the sea. The route therefore satisfies the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.
40. The topography of the site at SDC-1-S009 and SDC-1-S011, together with the constraints imposed by the AONB in regard of the nature conservation interest in the sea cliffs and their environs preclude the coastal route from continuing along the sea cliff at this location. The cliff face seaward of the wall at SDC-1-S011 is accessible other than at the northern end of the section by utilising a route along the foreshore to circumvent the need to scale the sea cliff at this point. However, the route along the foreshore would be unavailable during high tides and the only means of providing access to the top of the cliff would be either by the creation of steps within the cliff face by the removal of parts of the rock face, or some other engineered solution such as a staircase; such intrusive works would be contrary to the advice given by the AONB.
41. A route along the foreshore at these locations would not satisfy the criteria set out in the Scheme as there would be periods of time when that route would be inundated by the tide. Although the proposed route at SDC-1-S009 and SDC-1-S011 would be on the landward side of the boundary wall and views of the sea would be limited, the route would adhere to the periphery of the coast whilst also being safe and convenient for the public to use.
42. Paragraphs 8.2.11 and 8.4.9 of the Scheme provide that the trail may cross land grazed by cattle or sheep if it is the most convenient route along the coast and that it will normally follow the seaward edge of the field. Paragraphs 8.2.13 and 8.4.11 provide that exceptionally the trail may be aligned so that it avoids a field or enclosure in which cattle or sheep are usually kept even if it is the most convenient route if the field is so small that it would be impossible for the cattle or sheep and access users to avoid each other. The fields through which it is proposed to route the trail are of a size where the scope for interaction between trail users and livestock is reduced. The proposed route along the seaward edge of the fields at SDC-1-S009 and SDC-1-S011 therefore accords with the provisions of the Scheme.
43. In this case the concerns raised by [redacted] with regard to the public and their dogs being in proximity to livestock are recognised by the proposal to erect and



subsequently maintain a suitable stock proof fence to provide a corridor on the seaward edge of the fields to prevent path users from coming into contact with livestock. Whilst the erection of fencing should not be undertaken lightly as this interferes with [redacted]'s ability to utilise his land, the installation of a fence at these locations is required to address to concerns raised by [redacted] and to mitigate the impact the trail would have on his land. The erection of a stock-proof fence also would negate the need for a direction to be given to prohibit dogs from SDC-1-S005 to SDC-1-S020.

44. As the proposed route is to be securely fenced to prevent path users having access to [redacted]'s field, it is unlikely that a gate would be required to prevent egress of livestock onto the cliff top. The fences to be provided should be designed and constructed to a standard which would prevent livestock from having access to the fenced corridor in addition to preventing path users having access to the grazing field. The provision of self-closing pedestrian gates would have the added benefit of preventing any livestock which manage to access the fenced section of the trail escaping onto the cliff top.
45. Fencing is also proposed between the landward edge of Cow Close Wood and [redacted]'s caravan site to limit the opportunity for path users to stray off the line of the proposed route. The creation of the proposed route between SDC-1-S016 and SDC-1-S020 is dependent upon the necessary permissions being obtained for the creation of a flight of steps at SDC-1-S015; it is for NE to obtain all the permissions necessary to enable to creation of the coastal route. Should such permissions not be forthcoming, then NE would have to prepare a Variation Report to describe an alternative route at this location.
46. The physical characteristics of the coast at this point suggest that coastal erosion events are likely to be limited in number and extent. NE have identified those parts of the proposed route which may be subject to erosion; there may be implications for the continued availability of the proposed route south and east of these areas if the roll-back provisions were not available. Given the topography and landform of sections SDC-1-S015 to SCS-1-S020, it would appear that the likelihood of roll-back being required at this location would be minimal; there is therefore unlikely to be any significant impact upon the number of caravan pitches currently established on site.

### **Habitats Regulations Assessment ('HRA')**

47. 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 National Site Network.

48. 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.
49. 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.
50. 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 SDC1 to which this report relates.
51. 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.
52. 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.
53. 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.

54. 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.
55. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)***

56. 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. Jack Scout SSSI is located to the east of those parts of the trail subject to the objection but would not be impacted directly by the proposals for the trail at this location.
57. The trail is aligned through Heald Brow LPO for approximately 1.5Km between Gibraltar Farm and Quaker's Stang. The level of public access is expected to increase in this area as a result of the proposals with some infrastructure being installed (plastic steps bolted to the rock at Jack Scout, long backfilled steps at Heald Brow); NE were satisfied that the infrastructure works can be installed without causing the removal or disturbance of limestone pavement at these locations and the necessary permissions will be sought for such works.
58. The trail is also aligned through the Silverdale Shore and Jack Scout Local Geodiversity Site ('LGS'). The removal of some rock is proposed as part of the establishment of the trail for which the necessary planning permissions will be sought. Advice of rock removal methods and the appropriate tools to be used has been sought from GeoLancashire, which has indicated that the planned route will not adversely affect the LGS.
59. Approximately 140m of the trail is aligned through Cow Close Wood ancient woodland. Some infrastructure works are required; signage; 35m of revetment and surfacing; and the bolting of a set of plastic steps to the cliff between Cow Close Wood and Jack Scout SSSI. The proposals will not have an impact upon the

trees within the ancient woodland and will have minimal impact upon ground flora.

60. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.
61. 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**

62. In conclusion, I consider that the proposals made by NE are consistent with the advice in the Scheme. The legitimate concerns of [redacted] regarding the potential for interaction between the public, their dogs and his livestock are addressed by the proposal to erect and maintain a suitable fence to contain path users within a defined corridor and should not require a direction prohibiting dogs from this section of the coastal route. However, this situation should be kept under review in case such measures become necessary.

### **Recommendation**

63. Having regard to these and all other matters raised, I conclude that, with stock proof fencing and pedestrian gates as mitigating measures, the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

Appointed Person



The Planning Inspectorate

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# 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

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Marine and Coastal Access Act 2009

Objection by [redacted] of [redacted] on behalf of [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Silverdale to Cleveleys

**File Ref: MCA/SDC1/03**  
**Land at Quaker's Stang**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to report SDC 1, Cove Well, Silverdale to Wild Duck Hall, Bolton-le-Sands was made by [redacted] of [redacted] on behalf of [redacted] on 4 March 2020. The land in the report to which the objection relates is route section SDC-1-S029 to SDC-1-S031 shown on Map SDC 1b.
- The objection is made under paragraphs 3 (3) (a), (d) and (e) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that the Secretary of State makes a determination that, subject to a modification of the original proposals as suggested by NE, the proposals set out in the report do not fail to strike a fair balance.**

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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 4 admissible objections to report SDC1. The three other objections are considered separately. The representations made by the Ramblers and the Open Spaces Society offer comment on various parts of the proposed route and make specific points in relation to SDC-1-S029.
3. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by a representative of [redacted], representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE, the objections made to that report, NE's comments on objections and representations, the clarifications Inspector [redacted] sought from NE arising from matters raised at the site visit and NE's responses to those questions. I undertook a site inspection on 22 March 2022 accompanied by [redacted] (for [redacted]) and representatives of NE.

**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 a route for the whole of the English coast which
  - (c) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and

- (d) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
  7. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
    - (d) the safety and convenience of those using the trail,
    - (e) the desirability of that route adhering to the periphery of the coast and providing views of the sea,
    - (f) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
  8. 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.
  9. NE's Approved Scheme 2013<sup>1</sup> (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
  10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

11. The trail, subject to SDC 1 of the CA Report, runs from Cove Well, Silverdale (Grid reference SD 4567 7551) to Wild Duck Hall, Bolton-le-Sands (grid reference SD 4798 6867) as shown on maps 1a to 1g (points SDC-S-S001 to SDC-1-S083 FP). The trail follows existing walked routes, including public rights of way and minor roads and in the main follows the coastline quite closely and in general maintains good views of the sea.
12. It is proposed that the coastal route at this section will follow in part an existing public footpath which runs through woodland which forms part of [redacted] (SDC-1-S029 FP). West of the section the trail would run landward of the marsh and to the north of Brown's Houses. To the east of section SDC-1-S029 FP, the trail would run over a raised flood embankment to the north of Quicksands Pool to the car park at Quaker's Stang. There is an existing public right of way along the foreshore which runs between SDC-1-S023 and SDC-1-S030; it is not proposed that the trail follows this foreshore route.

### **The objection**

13. On behalf of [redacted], it is submitted that the creation of SDC-1-S028 and SDC-1-S029FP would result in the woodland to the south of the coastal route

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<sup>1</sup> Approved by the Secretary of State on 9 July 2013

- being included as coastal margin. This woodland is currently private land and there is no public access to or through it, other than along the public footpath running from Hollins Lane to Quaker's Stang. Although no objection is made to the coastal path itself, the inclusion of the woodland within the coastal margin and the public right of access thus created does not strike a fair balance.
14. As regards SDC-1-S030, similar concerns regarding the impact the proposal would have upon the land to the south of the proposed route. The land to the south of SDC-1-S030 which would become coastal margin is grazing land and which generates considerable income for [redacted] from the sale of fishing rights. The proposal would entitle the public to openly access this area over which there are currently no public rights of access and to entitle them to bring fishing equipment on to the land to fish as a result of the inclusion of the land as coastal margin.
  15. It is submitted that the land is subject to many environmental designations and increased public access arising from the land being included as coastal margin will have a detrimental impact upon the habitats and species present on the land. Concern is also expressed that ownership of the land south of the proposed route would be lost as a result of the land being designated as coastal margin.
  16. The negative implications for the landowner in terms of increased public access, loss of fishing rights, loss of ownership, loss of income and environmental impact are considered not to strike a fair balance between the competing interests of the public and the owner of the land.
  17. [redacted] suggest that the coastal route should utilise the existing footpath to the south-east of the woodland to prevent the woodland being included as part of the coastal margin. An alternative solution would be to designate the land to the south of SDC-1-S029FP and the land seaward of SDC-1-S030 as being subject to long term access exclusion on land management grounds.

### **The response by Natural England**

18. NE submits that the coastal margin, as defined by the enabling legislation, extends from the seaward extent of the foreshore to the coastal route by default; in certain circumstances that margin may extend inland from the coastal route. NE also says that it has no discretion over the extent of the coastal margin although it is able to propose that the boundary of the coastal margin landward of the trail might correspond to a particular feature.
19. Ownership of the land is unaffected by the proposal; the designation of land as 'coastal margin' relates solely to a new right of access under the legislation and does not affect ownership, current land management or existing access.
20. The footpath on the landward edge of the saltmarsh was considered as an option for the coastal route, but it is regularly inundated by high tides. The route on land above the foreshore was developed taking into account the popularity of the area with the public and the lack of any reasonably convenient Optional Alternative Route. An alternative route through the woodland to link to the proposed junction of SDC-1-S029 and SDC-1-S030 was considered but not taken forward due to terrain and tree cover.



21. NE submits that no evidence has been produced to suggest that the inclusion of part of the woodland in the coastal margin would interfere with land management within the woodland. However, should such evidence arise, further consideration can be given to this matter and additional restrictions can be imposed, if required, post commencement.
22. As regards the coastal margin on SDC-1-S030, no new right to fish is created, only a right of access carrying fishing tackle to areas where there is already a public right to fish. NE states that it is not aware that such rights would impinge upon the rights or land management of the owner. Directions to restrict access within the coastal margin may only apply to rights granted under the 2009 Act; it is not possible to restrict other pre-existing rights such as fishing, where these rights already exist. NE has not seen any evidence which suggests there would be a negative financial impact upon the landowner arising from the proposal.
23. The Habitats Regulations Assessment ('HRA') and Nature Conservation Assessment ('NCA') give details of NE conclusions in relation to the potential impacts of the coastal route on sensitive and protected sites. NE state that where risks have been highlighted, modifications to proposals have been made.

#### **Representation by Lancashire County Council**

24. Although the representation by Lancashire County Council (LCC) relates to SDC-1-S023 to SDC-1-S028, the comments relating to those sections bear upon a consideration of the objection made to SDC-1-S029 and SDC-1-S030 and the matters set out in paragraphs 33 and 34 below.
25. LCC contend that the footpath along the shoreline from Brown's Houses is not inundated with every tide, only Spring tides and then for only a short time. LCC draw a comparison with other parts of the English Coast Path in Cumbria which require users to wait for a seasonal ferry or a wait of up to an hour for a train to continue their journey. Furthermore, LCC notes that a similar section of limestone pavement at Bazil Point is impassable at high tide but has been deemed acceptable as the route of the coastal path and has been included in the proposal. LCC considers that EN is inconsistent in considering it unreasonable for users to wait a short period of time for the foreshore to the east of Brown's Houses to clear.
26. The foreshore footpath is low risk as there are no cliffs present and the distance is short; sloping limestone outcrops are present onto which path users could retreat. The proposed route to the rear of Brown's Houses involves a steep climb at either end and is away from the sea and in places not in sight of it. The proposed route east of Brown's Houses involves crossing fields with the potential for grazing which often gives rise to conflict between livestock and path users with dogs.
27. Aligning the coastal route along footpath 14 would avoid the necessity to take the path away from the coast along SDC-1-S022 to SDC-1-S029. It has always been LCCs recommendation that the foreshore footpath formed the coastal route between Brown's Houses and SDC-1-S029. Improvements to the walked line of the footpath could be made with the installation of sections of boardwalk and sleeper bridges.

28. LCC are of the view that the proposed coastal path will see little use; the foreshore route or a route to the rear of Brown's Houses and then along the foreshore will be easier to use, more obvious and will keep users close to the coast with good views of it and is already a public right of way. The proposed coastal route will incur higher infrastructure costs to implement and maintain.

### **Response by Natural England**

29. It is not disputed that many walkers will continue to use the existing public footpath along the foreshore, tides permitting. Had a suitable nearby Optional Alternative Route been available, the footpath along the foreshore is likely to have been proposed. NE is of the view that any inundation by the tide is likely to inconvenience path users, given the popularity of the area; it is more appropriate to promote a route which is available at all states of the tide, but which does not preclude use of the foreshore route when it is available.
30. Although the cost of future maintenance is a valid consideration, NE does not consider this should take precedence over all other considerations.

### **Representation by the Ramblers and Open Spaces Society**

31. Sections of the proposed route SDC-1-S028 and SDC-1-S029 are unsatisfactory and should be reconsidered. Concerns are expressed about the steep elevated sections of the proposed route which will require engineering to create a flight of steps to overcome the steep slope. An alternative route at a lower level through the open fields and then through the wood to meet the junction of SDC-1-S029 and SDC-1-S030 should be considered.

### **Response by Natural England**

32. The desire for the coastal route to remain close to the foreshore was noted, although NE's assessment was that the ground in the woodland was too steep to support a new path.

### **Further information sought by the Inspector following the August 2020 site visit**

33. The Inspector queried whether the public footpath from Brown's Houses between SDC-1-S022 RD and SDC-1-S030 could serve as the coastal route. Utilising this footpath would avoid the steep incline and the need for steps on the proposed route which headed inland from the sea and had limited views of the sea. In contrast, the public footpath along the shoreline had excellent views of the sea, although it was wet underfoot and prone to being affected by high tides in some locations. The Inspector sought the view of NE as to whether it may be possible for the existing path along the foreshore to join the proposed route at SC-1-S030 and serve as the coastal route.
34. A second issue was raised in relation to the boundaries of the directions proposed seaward of SDC-1-S030 in the light of the landowners concerns over loss of income through the sale of licences to fish in Quicksands Pool. NE's view was sought on extending the direction under section 25A shown in Directions Map SDC 1F to include it.

### **Natural England's response to the Inspector**

35. A route similar to that queried by the Inspector had been suggested by LCC which at the north-eastern end would utilise the landward sloping limestone outcrop to avoid the particularly wet area of ground. NE puts forward a number of reasons for not taking this route forward. First, the route near Brown's Houses would require users to negotiate an area of shingle beach or to walk over a sloping limestone pavement during high tides. Tide chart data suggests that at a minimum the shingle would be covered at high tide on 81 days per year, rising to 222 days with the shingle being covered for 2 hours per day.
36. The land near to the junction of SDC-1-S029 FP and SDC-1-S030 is between 5.5 and 5.8 m above mean low water and is unlikely to be available at any state of the tide. To overcome the tidal creeks which intersect this route would require boardwalks or other infrastructure which would not greatly increase the elevation of the path and would be unavailable at some times during high tides.
37. The compromise suggested by RA/OSS of using the footpath from SDC-1-S029/SDC-1-S030 to the proposed route at the rear of Brown's Houses would avoid the shingle and limestone pavement at Brown's Houses but would not address the inundation of the eastern part of the footpath by the tide.
38. An informal but existing path could be used to avoid the wet area southwest of the SDC-1-S029 FP / SDC-1-S030 junction, but this would involve negotiating an area of sloping limestone pavement which would be hazardous to cross when wet.
39. An Optional Alternative Route using existing public roads and ways which would be reasonably direct and convenient is not available at this location; the only possible option would require a substantial inland detour, disproportionate to the length of path affected by the tide. Furthermore, the entirety of the suggested route at the foreshore is covered by a Limestone Pavement Order ('LPO') preventing any works being undertaken which might damage the bedrock whether exposed or buried.
40. The proposed route is the most seaward route which would avoid the issues present along the shoreline between Brown's Houses and the junction of SDC-1-S029 FP and SDC-1-S030. Although NE acknowledge that the shoreline route is likely to be used when it is not affected by the tide, the proposed route would be available irrespective of the state of the tide and would accord with the Scheme.
41. NE considers that the concerns expressed by [redacted] in relation to fishing are unlikely to be realised, nonetheless consideration has been given to the current landward boundary of the proposed direction. The proposed direction seaward of Quicksands Pool has been made in part under s26 of the Countryside and Rights of Way Act 2000 ('the 2000 Act') to prevent disturbance to protected bird species and in part under s25A as the land is considered unsuitable for public access.
42. Having reviewed these matters, NE considers that whilst a strong case could be made for excluding access to the narrow strip of land between the fences enclosing Quicksands Pool under s25A of the 2000 Act, that would lead to a narrow strip of land being excluded. For clarity and ease of understanding, an

extension of the proposed direction under s26 northward to include Quicksands Pool would have the same effect.

### **Discussion and conclusions**

43. The proposed route subject of the objection would run within an area of woodland before following an existing access track over a raised flood embankment to the RSPB car park at Quaker's Strang. The proposed route is steep, and the installation of steps would be required to negotiate the gradient. Views of the sea from the proposed route would be limited from within the woodland although they would be available from SDC-1-S030. Whilst part of SDC-1-S028 and SDC-1-S029 FP take the coastal route inland away from the sea and views of the coast would be limited, the proposed route would adhere to the periphery of the coast and would be available year-round at all stages of the tide. The route therefore satisfies some of the criteria set out in the Approved Scheme.
44. However, it is acknowledged by all parties that users are likely to follow the public right of way that exists along the foreshore from Brown's Houses to the junction of SDC-1-S029 FP and SDC-1-S030 when the tide permits. Whilst this route would appear to satisfy the provisions of the Scheme as it would be reasonably close to the sea and offer consistent and extensive views of it, the periodic inundation of that route would mean it was not available at all stages of the tide without the provision of additional infrastructure as suggested by LCC.
45. No additional infrastructure had been installed by LCC along the route of footpath 14 at the time of my site visit, and it is likely that were such infrastructure installed (assuming such works would not be contrary to the LPO), it may also be inundated by high tides. It would be possible to avoid the lowest-lying parts of footpath 14 by walking above the strandline, although this would require trail users to negotiate a sloping limestone pavement which may present its own hazards in wet or stormy conditions.
46. That part of footpath 14 which runs over the shingle immediately to the east of Brown's Houses would also be affected by periodic inundation by the tide. Whilst footpath 14 may have been dedicated to public use subject to its periodic inundation, the fact that the route would not be available at all states of the tide makes it unsuitable as the normal route for the trail, particularly in the absence of any reasonably convenient Optional Alternative Route.
47. Although the foreshore route following footpath 14 or any of the available deviations from may not be fully available at all states of the tide, it would remain possible for trail users to follow this route when conditions permit should they choose to do so. The proposed route to the rear of Brown's Houses and through the woods is inland from the coast and provides only limited views towards the coast, although it would be available year-round. Neither the foreshore footpath nor the proposed coastal route fully accords with the provisions of the Scheme.
48. With regard to the woodland through which SDC-1-S029 FP would run if the coastal route were to be aligned as proposed, the woodland is not an excepted land type, and the land seaward of the coastal route would fall into the coastal

margin by default. Although the landowner has requested that the woodland seaward of the trail should be subject to a direction under s24 of the 2000 Act, no evidence has been submitted to demonstrate how the inclusion of the woodland south of the trail would adversely impact upon current land management practices. Although it does not appear that there are grounds for a direction that the coastal margin should not apply to the woodland south of the proposed route, this situation should be kept under review in case such measures become necessary.

49. The landowner also considers that the land south of SDC-1-S030 should be subject to a direction under s24 of the 2000 Act. The land between the trail and Quicksands Pool is grazed saltmarsh and an existing permissive path runs along the elevated sea defence at this point. Given that the proposed trail route coincides with an already walked route which does not appear to have previously given rise to conflicts in relation to land management, it is unlikely that designation of an existing route as the trail would give rise to such conflicts in the future. However, the impact of the coastal margin on the land between the trail and the drain can be kept under review and consideration to a direction can be given should such measures be considered necessary.
50. [redacted] sells a number of fishing permits to control access to Quicksands Pool. Fishing takes place within the confines of the drain which is securely fenced. Although the landowner has proposed that access to this fenced strip of land should be excluded for land management purposes, NE has proposed that access rights should be excluded under s26 of the 2000 Act. This proposed amendment is shown in Appendix 1 (Direction Map SDC1 (Revised): Scout Crag to Cotestones, and Warton Sands).
51. The legitimate concerns of [redacted] regarding control over access to Quicksands Pool would be addressed by the extension of the proposed direction under s26 to include the land between the fences. The minor adverse effects upon [redacted] woodland do not outweigh the public's interest in having access to coastal land, although it is acknowledged that when tidal conditions are favourable, the majority of trail users are likely to follow a route along the foreshore.
52. In conclusion, the proposals made by NE, subject to the proposed extension of the restriction of public access from Quicksands Pool as shown in Appendix 1, would be consistent with the advice in the Scheme. Subject to the modification proposed by NE, the proposals would not fail to strike a fair balance.

### **Habitats Regulations Assessment ('HRA')**

53. 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 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 National Site Network.

54. 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.
55. 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.
56. 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 SDC1 to which this report relates.
57. 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.
58. 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.
59. 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.

60. 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.
61. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)***

62. 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. Jack Scout SSSI is located to the east of those parts of the trail subject to the objection but would not be impacted directly by the proposals for the trail at this location.
63. The trail is aligned through Heald Brow LPO for approximately 1.5Km between Gibraltar Farm and Quaker's Stang. The level of public access is expected to increase in this area as a result of the proposals with some infrastructure being installed (plastic steps bolted to the rock at Jack Scout, long backfilled steps at Heald Brow); NE were satisfied that the infrastructure works can be installed without causing the removal or disturbance of limestone pavement at these locations and the necessary permissions will be sought for such works. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.
64. 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.

## **Recommendation**

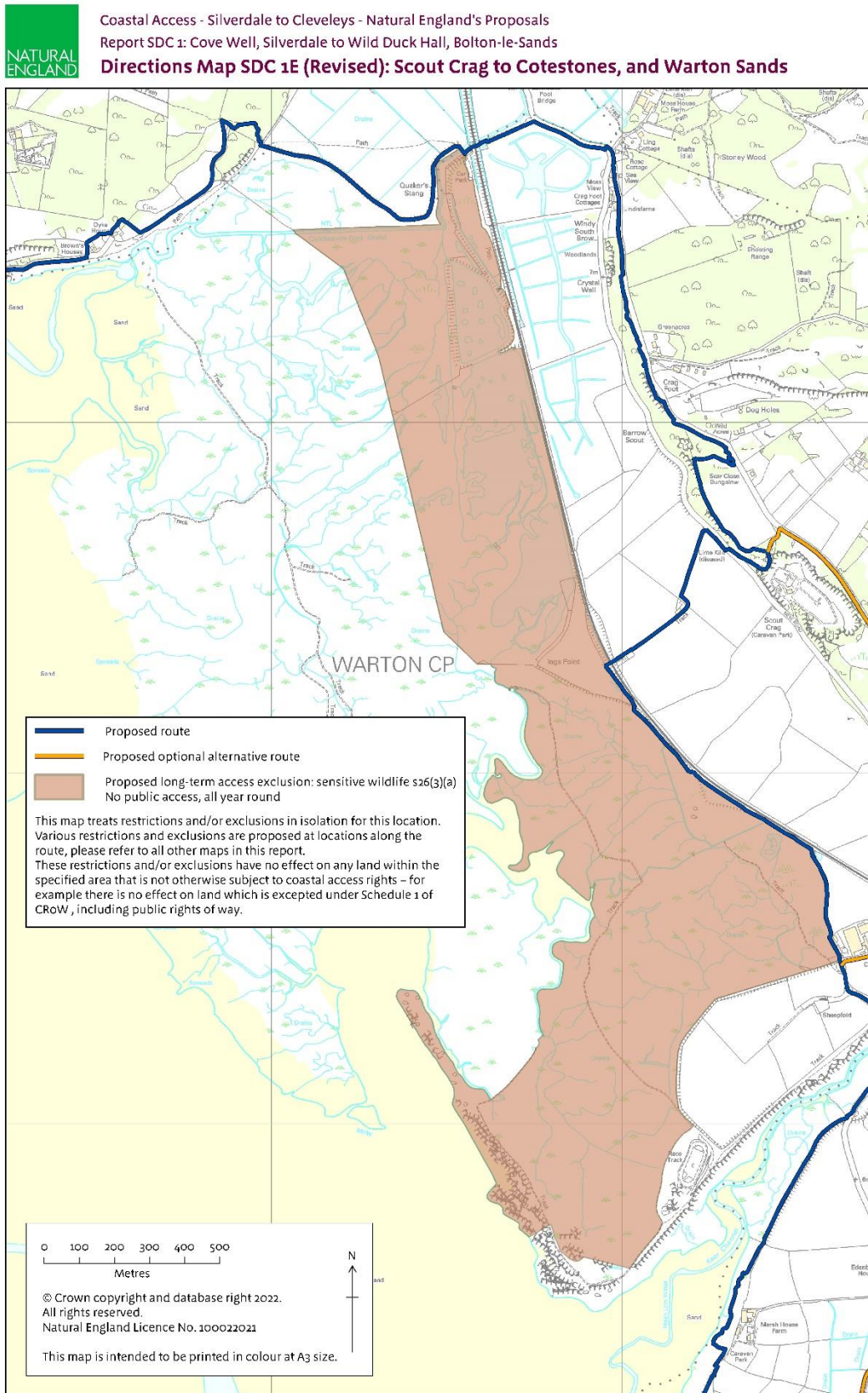
65. An extension of the s26 Direction to include Quicksands Pool has been proposed by NE; this proposal is illustrated on the map at Appendix 1. No new potential objectors have been identified in consequence of this minor modification. It does not appear that any modification to the text or tables within the report would be required in relation to the proposed modification.
66. With this minor modification, I conclude that the proposals would not fail to strike a fair balance. I therefore recommend that the Secretary of State makes a determination to this effect in relation to the Report SDC1, making use of the revised map attached as Appendix 1.

*Alan Beckett*

Appointed Person



APPENDIX 1



Directions Map SDC 1E (Revised): Scout Crag to Cotestones, and Warton Sands



The Planning Inspectorate

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# 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 4 November 2022

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Marine and Coastal Access Act 2009  
Objection by [redacted] on behalf of [redacted]  
Regarding Coastal Access proposals by Natural England  
Relating to Silverdale to Cleveleys

**File Ref: MCA/SDC1/04**  
**Land at Warton Marsh**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection to report SDC 1, Cove Well, Silverdale to Wild Duck Hall, Bolton-le-Sands was made by [redacted] on behalf of [redacted] on 4 March 2020. The land in the report to which the objection relates is route section SDC-1-S029 to SDC-1-S031 shown on Map SDC 1b.
- The objection is made under paragraphs 3 (3) (a), (d) and (e) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.**

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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 4 admissible objections to report SDC1. The three other objections are considered separately. There are various representations which refer to the sections of the trail considered in this report and are generally supportive of the proposals with regard to this section. Representations from The Ramblers' and the Open Spaces Society are supportive of the proposed route from SDC-1-S055 to SDC-1-S071.
3. A site inspection was undertaken in August 2020 accompanied by a representative of Leighton Hall Estates, representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE, the objections made to that report, NE's comments on objections and representations, the clarifications Inspector Lea sought from NE arising from matters raised at the site visit and NE's responses to those questions. I undertook a site inspection on 22 March 2022 accompanied by representatives of the Morecambe Bay Wildfowler's Association and representatives of NE.

**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 a route for the whole of the English coast which
  - (e) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and

- (f) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
7. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (g) the safety and convenience of those using the trail,
- (h) the desirability of that route adhering to the periphery of the coast and providing views of the sea,
- (i) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
8. 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.
9. NE's Approved Scheme 2013<sup>2</sup> ("the Approved Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

11. The trail, subject to SDC 1 of the CA Report, runs from Cove Well, Silverdale (Grid reference SD 4567 7551) to Wild Duck Hall, Bolton-le-Sands (grid reference SD 4798 6867) as shown on maps 1a to 1g (points SDC-S-S001 to SDC-1-S083 FP). The trail would follow existing walked routes, including public rights of way and minor roads and in the main would follow the coastline quite closely and in general would maintain good views of the sea.
12. The objection relates to the section of the proposed coastal route between SDC-1-S056 and SDC-1-S060. It is proposed that the coastal route at this section will run seaward of the railway line and to the south-west of Cotestones Farm along the north-eastern edge of Warton Marsh.

### **The objection**

13. The proposal will erode the rights of the Association's right to shoot on and within Warton Marsh and will be detrimental to wildfowling due to disturbance. Warton Marsh has the same Site of Special Scientific Interest (SSSI), RAMSAR and Special Area of Conservation (SAC) designation as Leighton Moss. Disturbance by people and dogs would have an adverse impact upon ground nesting species such as Marsh Harrier, Teal, Shoveler and Pintail on open water

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<sup>2</sup> Approved by the Secretary of State on 9 July 2013

and in reed beds where birds can be flushed from cover by people or dogs. Repeated disturbance to foraging or resting non-breeding birds would lead to reduced fitness and a reduction in population numbers.

14. The coastal route has been routed inland to avoid disturbance to birdlife over land owned by the RSPB. Similar consideration should be given to the land at Warton Marsh for the same reasons. The Association requests that the coastal route should be revised to follow the 'Optional Alternative Route' from SDC-1-S049 to SDC-1-S065 as shown in Maps SDC 1d & SDC 1e.

### **The response by Natural England**

15. The proposals include multi-strand fencing between the trail and the marsh alongside sections SDC-1-S056 & SDC-1-S057 and again alongside section SDC-1-S059. Section SDC-1-S058 is within a field with an existing boundary between the field and the wider marsh. The bulk of the marsh, including those areas seaward of the trail will be the subject of a direction to exclude access all year round. The exclusion has been proposed as a response to the Habitats Regulations Assessment and the Nature Conservation Assessment and are designed to ensure that there would be no significant disturbance to key bird species roosting and nesting in the vicinity.
16. The segregation of walkers and dogs from the area of concern is adequate to ensure that no new disturbance to wildfowling activities or to bird life arises as a result of the proposal.

### **Further information sought by the Inspector following the site visit**

17. The Inspector noted that the proposed route would divert inland around Leighton Moss Nature Reserve and part of the saltmarsh at Warton to take account of key nature conservation concerns, such as the avoidance of disturbance to internationally important populations of birds. The trail between SDC-1-S030 and SDC-1-S054 is aligned to avoid sensitive areas of saltmarsh to reduce the risk of disturbance to feeding and roosting non-breeding water birds and ground nesting birds.
18. It is also noted that the Morecambe Bay Habitats Regulations Assessment states that the establishment of a new path between Ings Point and Cotestones will increase recreational activity along part of the saltmarsh used by breeding Redshank and will create a new access point to the marsh at Ings Point close to the important breeding areas at Inner Marsh.
19. The Inspector sought clarification from Natural England as to any difference in the presence of and likely impacts upon feeding, roosting and ground nesting birds of the areas of saltmarsh avoided by SDC-1-S030 to SDC-1-S054 and those crossed by SDC-1-S055 to SDC-1-S060.

### **Natural England's response to the Inspector**

20. With regard to the area between Quakers Stang to Ings Point, the area known as Inner Marsh between Warton Common, and the railway line comprises saltmarsh and large brackish pools which have been designed and created as a habitat for birds; it is one of the most important sites within the SSSI and Special Protection Area (SPA). The pools at Inner Marsh have been designed so

- that large numbers of birds can roost or feed there in addition to the shoreline of the pools found on the open saltmarsh. The water level in the pools is managed by sluices so that the pools are available for use at all stages of the tide.
21. The creation of a route adjacent to the railway at Inner Marsh would remove around 750m<sup>2</sup> of SPA/SAC foraging habitat (due to having to engineer a path by raising the ground level to avoid inundation) and would result in disturbance over a wide area of SPA intensively used by waders, waterfowl, and seabirds.
  22. Inner Marsh forms part of the Leighton Moss National Nature Reserve (NNR) to which access is carefully managed to avoid excessive disturbance. Aligning the coastal route within this area would result in unacceptable disturbance which would fail the Integrity Test of the Appropriate Assessment, due to the loss of SPA foraging habitat, SAC habitat and disturbance to bird species.
  23. The site at Inner Marsh is one of the few locations in Morecambe Bay which is actively managed to provide suitable habitat for breeding birds. Given the large number of waterbirds using Inner Marsh throughout the year and at all stages of the tide, increasing the level of disturbance would have a significant impact upon the avian population. The coastal route could not be created through this area without significant disturbance to roosting, feeding, and breeding birds.
  24. In contrast, the proposed route between Ings Point and Cotestones would run over saltmarsh and traditional grassland. In this location there are no known roost sites close to the proposed route, the closest being Carnforth Marsh which is approximately 550m seawards of the proposed trail. A survey carried out by the RSPB during the ECP planning stage showed that the area was not used by large numbers of roosting birds on a spring tide. The presence of taller vegetation immediately seawards of the proposed route minimised the risk of disturbance to any birds using this area, particularly as walkers and their dogs would be prevented from leaving the path by means of the proposed fence. There would be no significant loss of SAC habitat as there are no proposals for surfacing or other engineering works to bring the coastal route into being.
  25. Carnforth Marsh is an important location for breeding waders and supports 86% of the breeding redshank within Morecambe Bay. The proposed route between Ings Point and Cotestones will increase recreational activity alongside part of the marsh used by breeding redshank. However, the vegetation provides some cover for breeding birds and the impact from people is likely to be minimal. Dogs off-lead in this area or having access to this area would cause significantly more disturbance.
  26. It is recognised that the creation of a new access at Ings Point may lead to informal circular walks developing which could lead to increased disturbance on Carnforth Marsh and Inner Marsh. The concerns in this area were less about disturbance to roosting birds in the immediate vicinity of the coastal route and more about reducing the risk of disturbance to birds breeding close to the path and about preventing desire lines developing over the wider saltmarsh.
  27. These concerns are mitigated by the proposed fence seaward of the coastal route which will guide walkers along the route and prevent their dogs from entering the areas used by breeding redshank. The combination of a fenced

access corridor, improved signage and suitable access restrictions would not affect the integrity of the SPA and tackle the existing impacts from disturbance over the area.

28. The proposed route between Ings Point and Cotestones is at all times above 6m and would be less likely to be subject to tidal inundation than the route seaward of the railway between Quakers Stang and Ings Point which had been considered.

### **Discussion and conclusions**

29. The proposed route from SDC-1-S055 would run on the seaward side of the railway line landward of Warton Marsh. It is proposed to create a fenced corridor within which the coastal path would run at those points where the proposed route would not be segregated from the adjacent marsh by established field boundaries. The proposed fence would guide path users along the route and would mitigate disturbance to birds roosting or feeding on Carnforth Marsh and would prevent the creation of informal desire line paths over Carnforth and Inner Marshes.
30. The proposed route would be direct and obvious on the ground, demarcated by the proposed post and wire fence and would run for the most part adjacent to the railway. The proposed route would be at the furthest point landward of the marsh to mitigate impact upon feeding and roosting birds.
31. The proposed fence would be erected partly on registered common land. Consent for the erection of fencing on common land would have to be sought from the Secretary of State under the provisions of sections 38 and 39 of the Commons Act 2006.
32. As the proposed fence is essential mitigation for the proposed alignment of the trail, establishment of the trail in this location would not be possible until such consent has been obtained. No details of the specification of the proposed fence have been provided, and at this stage it is not necessary for consideration to be given to the detail of the fence. What is being sought by the proposal is the 'in-principal' approval for the trail to be established on the proposed route, subject to all other necessary consents being obtained.

### **Habitats Regulations Assessment ('HRA')**

33. 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 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 National Site Network.

34. 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 SPA; the Morecambe Bay SAC; Morecambe Bay Ramsar site; and Duddon Estuary Ramsar site. The HRA has identified the relevant sites affected by the proposals.
35. 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.
36. 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 SDC1 to which this report relates.
37. 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.
38. 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.
39. 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.

40. 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.
41. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)***

42. The NCA, 9 December 2019, should be read alongside the HRA. The NCA covers matters relating to SSSI's, Marine Conservation Zones, Limestone Pavement Orders (LPO) and undesignated but locally important sites and features, which are not already addressed in the HRA.
43. Warton Crag and Grizedale Wood LPO lies to the north east of that part of the trail subject to the objection but will not be directly affected by this part of the trail. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.
44. 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**

45. The proposed route would adhere to the periphery of the coast, offer views of the sea and would be available at all stages of the tide. The proposed route would therefore satisfy the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.
46. The proposed route has been aligned adjacent to the railway on the landward edge of the marsh to mitigate disturbance to roosting and feeding birds; a fence on the seaward side of the path would be essential mitigation to prevent trail users from having access to the wider marsh which may give rise to

greater disturbance which would be contrary to the objectors' interests. Aligning the trail within a fenced corridor would enable a fair balance to be struck.

47. In conclusion, I consider that the proposed route is consistent with the advice in the Approved Scheme. The proposed route would be safe and convenient, and the proposals do not fail to strike a fair balance.

**Recommendation**

48. 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 in the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

Appointed Person



The Planning Inspectorate

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

**by Alison Lea MA (Cantab) Solicitor**

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

**Date**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Silverdale to Cleveleys

This report was completed by the Appointed Person, [redacted], prior to leaving the Planning Inspectorate. Other reports on this stretch (Silverdale to Cleveleys) have been transferred to a new Appointed Person, who will restart the process on the relevant sections.

Site visit made on 11 August 2020

File Ref: MCA/SDC1/0/2

**Objection Ref: MCA/SDC1/0/2**

**Bath Cottage, 16 Shore Cottages, Silverdale**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to Report SDC1, Cove Well, Silverdale to Wild Duck Hall, Bolton-le-Sands, was made by [redacted] ('the objectors') on 3 March 2020. The land in the report to which the objection relates is route sections SDC-1-S005 and SDC-1-S006 shown on Map 1a.
- The objection is made under paragraphs 3(3)(a) and 3(3)(b) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.

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## Procedural Matters

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 4 admissible objections to report SDC1. The other 3 objections are considered separately. There are various representations which refer to the sections of the trail considered in this report, but none of the comments are specific to these sections. Representations from The Ramblers' and the Open Spaces Society are supportive of the proposed route from SDC-1-S001 to SDC-1-S022.
3. I carried out a site inspection on 11 August accompanied by representatives from NE and a representative from Lancashire County Council. The objectors were invited to the site visit but did not respond to the invitation and did not attend.

## Main Issues

4. 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 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.
5. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
6. 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 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.
7. 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.
8. NE's Approved Scheme 2013<sup>3</sup> ("the Approved Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
9. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

10. It is proposed that the trail will follow Shore Road and then, before meeting the shore car park, turn along a gravel path to meet the existing walked route south along the shore.

### **The Objection**

11. The objectors state that the proposed route is along a precarious narrow gravel path which was originally used to get access to a drainage pipe. They state that NE had agreed that it was not the most suitable route as it was subject to alteration by tides and by the landowner.
12. The objectors suggest that a more robust, safer and cheaper route would be to continue along the paved road a few metres to the shore car park and then turn south. They state that this had been agreed with the NE representatives. They also state that the storms of February 2020 washed out part of the route and that remedial works to the shore/cliff face will further remove it.

### **The response by Natural England**

13. In practice, there is little difference between NE's proposed route and the suggested modification. The proposed route is clearly a popular existing path,

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<sup>3</sup> Approved by the Secretary of State on 9 July 2013

taking the most direct route possible from the access to the shore area in the direction followed by the proposed trail. In discussions the objector has suggested that he may decide to develop the small area of grass, across which the most northerly part of SDC-1-S006 passes. NE has assured the objector that if this were the case, NE would be obliged to discuss a small variation to the approved route, if necessary.

14. NE considers that the majority of walkers will continue to follow the existing path (which NE has proposed as the trail), even if the approved trail were to follow the objector's preferred alignment. On the most recent inspection NE found the proposed route to be safe and suitable as part of the England Coast Path.

### **Discussion and Conclusions**

15. The proposed route is direct and obvious on the ground. At the time of my site visit there was no evidence of damage to it. Nor did I have any concerns about safety. It is clearly well used and I agree with NE that, even if the objectors' preferred route became part of the trail, the route which has been proposed by NE would continue to be used by walkers wishing to continue along the trail.
16. I note that the objector may have plans to develop the small area of grass crossed by the proposed route. I agree with NE that, if it became necessary, it would be possible for the route to be varied, and that such a variation could be discussed at the time.
17. I consider that the proposed route is safe and convenient and that the proposals do not fail to strike a fair balance.

### **Recommendation**

18. 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 objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alison Lea*

### **APPOINTED PERSON**



The Planning Inspectorate

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# 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 18 November 2022

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Marine and Coastal Access Act 2009

Objection by [redacted] on behalf of

[redacted] and [redacted]

Regarding Coastal Access proposals by Natural England

Relating to Silverdale to Cleveleys

**File Ref: MCA/SDC3/01**  
**Land at Trailholme Farm, Overton**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection to report SDC 3 Ocean Edge Caravan Park, Heysham to Carlisle Bridge, Lancaster was made by [redacted] on behalf of [redacted] and [redacted], the freeholders of Trailholme Farm, Overton on 24 February 2020. The land in the report to which the objection relates is route section SDC-3-S047 to SDC-3-S049 shown on Map SDC 3c and 3d.
- The objection is made under paragraphs 3 (3) (a) and (e) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that the Secretary of State makes a determination that, subject to a modification of the original proposals as suggested by NE, the proposals set out in the report do not fail to strike a fair balance.**

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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 6 admissible objections to report SDC3. The five other objections are considered separately. Representations from The Ramblers' and the Open Spaces Society are supportive of the proposed route from SDC-3-S028 to SDC-3-S055.
3. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by [redacted], representatives of NE, and a representative of Lancashire County Council. The Inspector subsequently resigned without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE, the objections made to that report, NE's comments on objections and representations, the clarifications Inspector [redacted] sought from NE arising from matters raised at the site visit and NE's responses to those questions. I undertook a site inspection on 23 March 2022 accompanied by [redacted] and representatives of NE.

**Main Issues**

5. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which
  - (g) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and



- (h) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route (“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 coastal route or otherwise. This is referred to as the coastal margin.
  7. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
    - (j) the safety and convenience of those using the trail,
    - (k) the desirability of that route adhering to the periphery of the coast and providing views of the sea,
    - (l) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
  8. 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.
  9. NE’s Approved Scheme 2013<sup>4</sup> (‘the Scheme’) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
  10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

11. The trail, subject to SDC 3 of the CA Report, runs from Ocean Edge Caravan Park, Heysham (grid reference SD 4041 5912) to Carlisle Bridge, Lancaster (grid reference SD 4716 6236) as shown on maps 3a to 3j (points SDC-3-S001 to SDC-3-S095 FP). The trail follows existing walked routes, including public rights of way and in the main follows the coastline quite closely and in general maintains good views of the sea. This section of the coastal route would include six new sections of path; one of those new sections is over land adjacent to Lades Marsh and is land subject to this objection.
12. The objection relates to the section of the proposed coastal route between SDC-3-S047 and SDC-3-S049. It is proposed that the coastal route at this section will run on the enclosed flood embankment adjacent to Lades Marsh.

### **The objection**

13. The proposed route does not make use of the existing inland track that passes through Trailholme Farm and the public road. Instead, the proposed route would run along the flood embankment which is used for the grazing of pedigree sheep and would create an unreasonable risk to livestock from disease and attacks by dogs.

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<sup>4</sup> Approved by the Secretary of State on 9 July 2013

14. The route could follow the existing footpath which runs to the west of Woodbridge Pool and adjacent to the farm and then along the road to re-join the proposed route at the northern end of SDC-3-S049.

### **The response by Natural England**

15. The alternative route proposed by the objectors was considered at the planning stages of the coastal route but was not proposed as it would not meet the criteria laid down in the Scheme in that the alternative route suggested would not be in close proximity to the coast nor would it provide views of the coast.
16. A route aligned on the tidal road, or on the edge of the saltmarsh was also considered but discounted both of these due to the regular tidal inundation and the consequent risk to path users which would arise.
17. The proposed route would follow a prominent flood embankment is consistent with the detailed approach set out in 8.21.4 and 8.4.9 of the Approved Scheme. The proposed route is close to the coast (immediately above the tidal saltmarsh) and provides excellent views out to the coast.
18. During discussions on site with the objector, NE was made aware of concerns around sheep grazing within enclosed areas on the embankment. NE remains committed to taking all reasonable steps to ensure that new access rights can be managed effectively alongside stock grazing. Further discussions with the landowner prior to any establishment works being undertaken may cover the detailed design of any fencing and other infrastructure that may be required at this location.

### **Further information sought by the Inspector following the August 2020 site visit**

19. In relation to the decision not to route the trail along the public road over Lades Marsh, could information / evidence relating to the frequency and speed of inundation of the road which was taken into consideration be provided.
20. In addition, it was noted that the road over Lades Marsh would remain available for use by pedestrians even if it didn't form part of the coastal route. It is also noted that paragraph 4.4.2 of the Approved Scheme provides that where there are no other viable options a route subject to tidal encroachment may be considered and that, in the case of islands, the legislation allows the trail to cross tidal causeways. The alternative suggested by the landowner is also noted.
21. In the light of these matters, a view was sought on the possibility of aligning the trail along the road through Lades Marsh with an optional alternative route along the route suggested by the objector.

### **Natural England's response to the Inspector**

22. The elevation data available shows that most of the southern half of the tidal road is below 4m (above mean low water 'AMLW') and is around 3.25m in places. The lowest point would appear to be around Lades Bridge where some parts may be less than 1m AMLW. Based on calculations from the Heysham tidal datum, a tide of 6m and above would affect Lades Bridge; a tide of 8m

- would impact numerous sections of the road and a tide of 9m would see the whole road inundated.
23. If atmospheric and meteorological influences are taken into account, then tides may be up to 1m greater than those predicted, as has been recorded at Silverdale. Therefore, the road may be impassable on tides of between 7m and 8m and inundated on tides of between 8m and 9m. Local and professional advice is that the road can be inundated on tides of around 7.4m. The published tide data suggests that the road will be impassable for many hours on the highest tides between 344 and 361 days per year and inundated on the highest tides between 172 and 297 days of the year.
  24. Officers from Lancashire County Council (LCC) (from both highways maintenance and public rights of way) consider that the tides can be unpredictable with the sea coming in very fast and very high. The road is at a lower elevation than the surrounding marsh; LCC's view is that the tidal road is unsuitable as part of the coastal route.
  25. The experience from residents is that the tide covers the road in 3 weeks out of 4 and can be on the road for several hours before and after high tide. The RNLI notes that around 15% of call outs from Morecambe Station are to incidents of road users being cut off on the tidal road and advises against any formal use of the tidal road as part of the trail on grounds of public safety.
  26. In determining whether or not to propose an alignment which would be subject to tidal inundation, various factors are taken into account. These include the length of sections affected and the likely time required to traverse them; the visibility of the affected section from either end; the extent to which a rising tide would be obvious to walkers approaching or following affected sections; the ease of escape to safety if caught by a rising tide; regularity of inundation; the availability of another alignment which meets the scheme criteria and the availability or otherwise of a suitable, reasonably convenient Optional Alternative Route. Only where a route may be described as safe for walkers and only in the absence of a better, non-tidal option would such a route be proposed as part of the coastal path.
  27. The road across Lades Marsh is unsuitable for inclusion as part of the trail. The road is bounded by saltmarsh rather than salt flats and is at a lower level than the surrounding saltmarsh for much of its length. Consequently, the road is likely to be inundated by the rising tide earlier than the surrounding land. Whilst walkers may seek to escape from the inundated road by crossing the saltmarsh, walkers are likely to face additional hazards from the various creeks which cross it. Furthermore, the western edge of the saltmarsh is bounded by an embankment surmounted by a barbed wire fence. These factors would make it extremely difficult for walkers to escape to safety from the tidal road. Given the regularity of the inundation of the tidal road, any Optional Alternative Route would be required on the majority of days during the year.
  28. It is acknowledged that the Approved Scheme allows for a proposal that the coastal route should follow a tidal causeway to provide access to an island. NE will follow such an approach if that suggestion is supported by the local authority and other agencies and there is no other suitable option (such as a

bridge) available. That is not the case with regard to the road through Lades Marsh.

29. At this location there is a more appropriate alignment for the coastal path along the top of the flood embankment as has been proposed. This proposal accords with the advice in paragraph 4.2.2 of the Approved Scheme. It is accepted that there would be an impact upon current agricultural practices, however, it is considered that the proposal is proportionate to the benefits of not requiring walkers to traverse the marsh or a route further inland.

**Matters arising from the March 2022 site visit.**

30. The flood embankment is fenced on either side and provides additional grazing for [redacted]'s livestock. The flood embankment is around 6 to 7 metres in width overall, with a relatively narrow flat section on top of the embankment's slopes. It is understood that grazing of the flood embankment takes place between April and September each year with the livestock being rotated between the compartments created by fencing and gates at various points across the embankment.
31. At the site visit, NE acknowledged the existing seasonal use of the embankment for grazing and considered that it would be possible to accommodate that practice by proposing a seasonal closure of the main trail between April and September with an Alternative Route utilising the existing public footpath network from SDC-3-S043 to the farm access track at Trailholme to link to SDC-3-S050.
32. NE has engaged in a consultation exercise regarding the proposed seasonal closure with those parties consulted over the original proposals and with those landowners whose land is crossed by those public rights of way which would serve as the seasonal alternative route between 1 October and 31 March. Four responses were received to that consultation; two from local residents and two from user organisations.
33. One resident noted that stiles and a broken and unstable footbridge were present along the line of the proposed seasonal alternative route which would require attention but raised no objection to NE's proposal. A second resident queried whether it would be possible to erect a second fence along the flood embankment to segregate walkers from grazing sheep; it was also noted that the proposed seasonal alternative route followed a narrow lane which was used by agricultural vehicles.
34. The Rambler's submitted that the proposed seasonal alternative route was not coastal and could be difficult to negotiate in very wet weather; the proposed alternative did not appear to accord with the spirit of the 2009 Act. The route along the flood embankment was considered superior due to the views over the Lune estuary and towards Cockerham and the Forest of Bowland. Consideration should be given to providing a wider strip of ground for grazing at the time the embankment fences are renewed so that walkers could pass along the embankment year-round without having an adverse impact upon grazing sheep.
35. The Disabled Ramblers had no objection to the seasonal alternative route as proposed but queried whether it would be possible to ensure that the

alternative would be made available to all-terrain mobility scooters with adjustments made where infrastructure was required as part of any establishment works.

### **Discussion and conclusions**

36. Routing the trail along the tidal road would satisfy some of the criteria set out in paragraph 7 above in that the trail would follow the periphery of the coast and provide views of the sea. However, both the Highway Authority and the RNLI advise against this as being unsafe. The road is lower than the surrounding saltmarsh and I saw that at high tide the road becomes inundated before the adjacent saltmarsh. Although the tide at the time of my site visit was not particularly high, access along the road was not possible when the tide was in.
37. Given that the road to Sunderland Point (in whole or in part) is likely to be inundated on most days of the year, the suggested alternative route would be likely to serve as the *de facto* trail. This route would be available at any state of the tide but would not be on the periphery of the coast and would only provide limited views of the sea. The route proposed by NE along the top of the flood embankment is however consistent with the requirements of the Scheme as regard the coastal access duty; as such it would provide an appropriate alignment for the trail.
38. The trail as proposed would run over a flood embankment which is fenced on both the landward and seaward sides. The fences, together with gates at a number of points on the embankment provide grazing for the objector's flock during the growing season. The objector raises concerns regarding walkers and their dogs being in proximity to his sheep in an enclosed space. The enclosed nature of the flood embankment means that there would be no refuge within that enclosed space where sheep could avoid contact with walkers and their dogs.
39. Further segregation by the erection of additional fencing would be impractical due to the limited width of the level area at the top of the embankment and would not address the objector's concerns regarding the impact of the presence of dogs on his sheep in an enclosed space. Additional fencing on the embankment would further restrict the quantity of grazing that would be available. It would also not be practical for walkers to leave the embankment on the landward side to avoid those parts being grazed and then re-join the embankment further along; to prevent dogs from accessing the adjacent fields would require additional fencing and gates and would result in the loss of productive agricultural land.
40. Paragraph 8.4.11 of the Scheme states that the trail may avoid an enclosure in which sheep are usually kept even if it appears to be the most appropriate route, and that this option may be considered if the field is so small that it would be impossible for sheep and trail users to avoid each other. The enclosures along the flood embankment are of insufficient size for sheep and trail users not to come into contact with each other. The proposal to route the trail along the flood embankment is unlikely to strike a fair balance at this location as there would be a disruption to and interference with the objector's current agricultural practices which could not be effectively mitigated.

41. Without mitigation, the objector would be faced with having to forgo the use of the embankment as additional grazing for his flock or run the risk of harm to his sheep due to the proximity of trail users and dogs within their narrow enclosures.
42. In recognition of the difficulties of routing the trail at this location, NE have proposed a seasonal closure of the trail during 1 April to 30 September (inclusive) during which time the public would be excluded from the embankment. An alternative route (similar to that originally proposed by the objector) for use during that closed period would utilise existing public rights of way between Sunderland and Marsh Lea along with a section of access road to Trailholme Farm. The route of the proposed alternative route is shown on the Plan SDC3 3d (revised) (see Appendix 1). NE proposes to effect this alternative route by means of a direction made under section 24 (1B) (b) of the 2000 Act; this direction is illustrated on the plan 'Extent of directions: Sunderland to Overton' (see Appendix 2).
43. This proposal would provide a compromise solution whereby trail users could use the embankment route for the six months of the year when the embankment was not required for sheep grazing. The compromise solution suggested by NE would, in my view, result in a fair balance being struck between the interests of the landowner and the public.
44. In conclusion, the proposals made by NE, subject to a direction for the seasonal closure of SDC-3-S044 to SDC-3-S049 between 1 April and 30 September (inclusive) and the provision of a seasonal alternative route as shown in the plan at Appendix 1, would be consistent with the advice in the Scheme. Subject to the modification proposed by NE, the proposals would not fail to strike a fair balance.

### **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 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 UK National Site Network.
46. The HRA 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); 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 SDC3 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.
50. 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.
51. 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.
52. 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.

53. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)**

54. 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.
55. The trail abuts the boundary of the Lune Estuary SSSI. The NCA concludes that with the mitigation proposed as part of the works to establish the trail, the proposals will not have a significant impact upon breeding ground nesting birds within the SSSI.
56. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.
57. 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.

### **Recommendation**

58. A seasonal closure (April 1 to 30 September inclusive) of the trail between SCS-3-S044 to SCS-3-S049 with an alternative route (SDC-3-A001FP to SDC-3-A009) being used during that period, has been proposed by NE; this proposal is illustrated on map at appendix 1. NE submits that the proposal could be effected by a direction to that effect under section 24 of the 2000 Act (see the map at appendix 2).
59. The proposed modifications would require the insertion of additional paragraphs (3.2.25A and 3.2.25B) into Report SDC3. These new paragraphs should read "3.2.25A *The narrow strip of land on which trail sections SDC-3-S044 to SDC-3-S049 are aligned is grazed annually by livestock, during the summer months. The topography and width of the embankment here, within the close confines of the*



*fencing, would make it impossible for grazing to be maintained alongside new public access rights. Therefore, the following exclusion is proposed:*

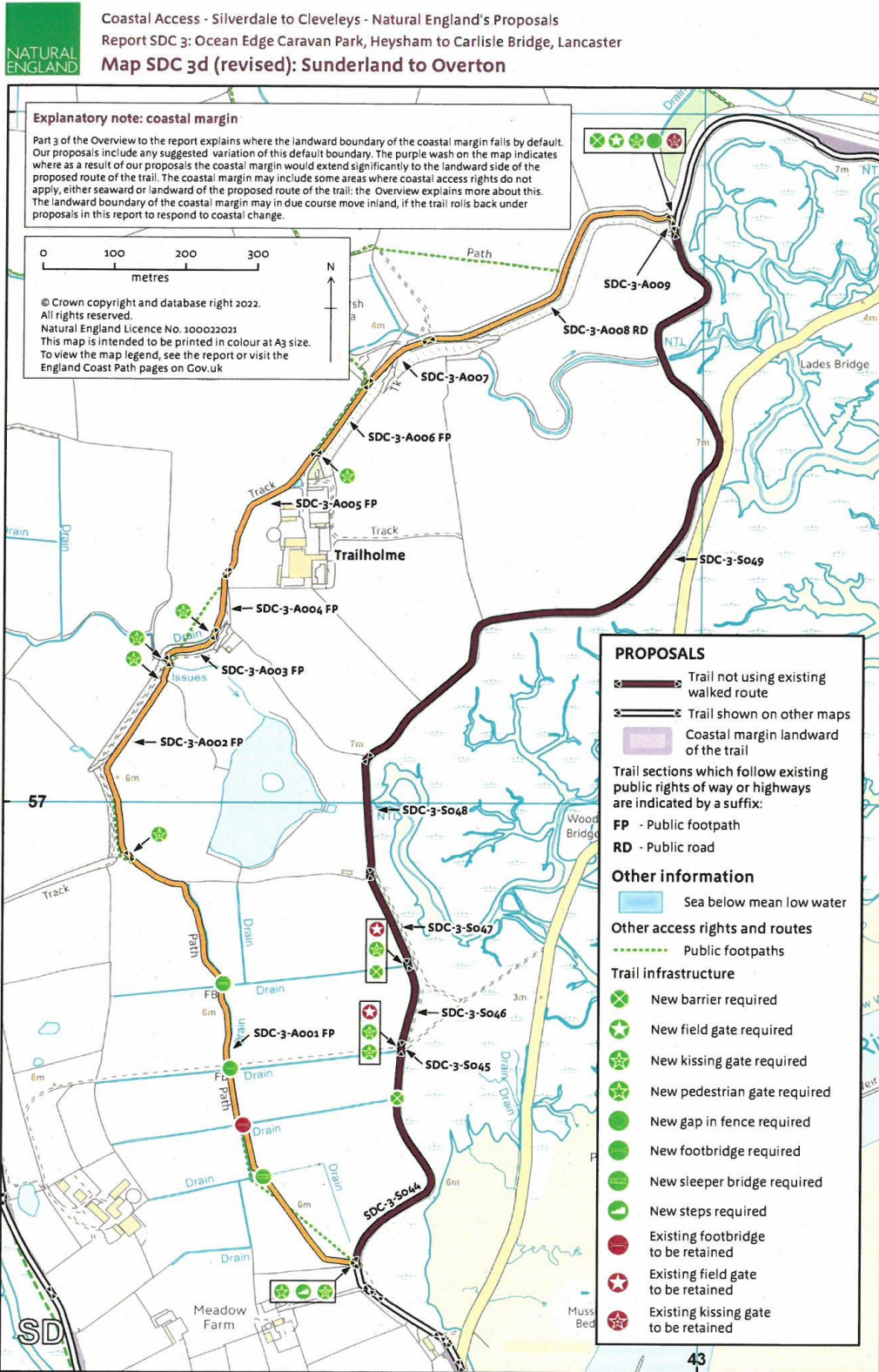
*3.2.25B Access to the line of the England Coast Path, between Sunderland and Overton, on route sections SDC-3-S044 to SDC-3-S049, is excluded between April 1<sup>st</sup> and September 30<sup>th</sup> each year, by direction under section 24 of the Countryside and Rights of Way Act (2000), for the purposes of land management. The exclusion will have no legal effect on land where coastal access rights do not apply. An alternative route will be provided during the times that access along the main route is excluded. See map entitled 'Extent of Directions: Sunderland to Overton'.*

60. It does not appear that any modification of the details in Table 3.3.1 'Section details: Maps SDC 3a to SDC 3j – Ocean Edge Caravan Park, Heysham to Carlisle Bridge, Lancaster' would be required in relation to the proposed modification.
61. Consultation on the proposal has been carried out by NE and the points raised in relation to the proposed modifications have been considered.
62. With these modifications, I conclude that the proposals would not fail to strike a fair balance. I therefore recommend that the Secretary of State makes a determination to this effect in relation to this part of Report SDC3 making use of the revised mapping attached in the Appendices, to clarify matters in relation to this section.

*Alan Beckett*

Appointed Person

Appendix 1







The Planning Inspectorate

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# 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 15 August 2022

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Marine and Coastal Access Act 2009

Objection by [redacted] on behalf of

[redacted] and [redacted]

Regarding Coastal Access proposals by Natural England

Relating to Silverdale to Cleveleys

**File Ref: MCA/SDC3/O2**  
**Land at Heaton Hall Farm, Heaton**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection to report SDC 3 Ocean Edge Caravan Park, Heysham to Carlisle Bridge, Lancaster was made by [redacted] on behalf of [redacted] and [redacted], the freeholders of Heaton Hall Farm, Heaton on 24 February 2020. The land in the report to which the objection relates is route section SDC-3-S083 to SDC-3-S085 shown on Map SDC 3g.
- The objection is made under paragraphs 3 (3) (a) and (c) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.**

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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 6 admissible objections to report SDC3. The five other objections are considered separately. Representations from The Ramblers' and the Open Spaces Society are generally supportive of the proposed route but made specific representations regarding sections SDC-3-S085 to SDC-3-S087.
3. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by [redacted], representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE; the objections made to that report; NE's comments on objections and representations; the clarifications Inspector [redacted] sought from NE arising from matters raised at the site visit; and NE's responses to those questions. I undertook a site inspection on 23 March 2022 accompanied by [redacted] and representatives of NE.

**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 a route for the whole of the English coast which
  - (i) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and

Site visit made on 23 March 2022

File Ref: MCA/SDC3/04

- (j) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route (“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 coastal route or otherwise. This is referred to as the coastal margin.
7. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (m) the safety and convenience of those using the trail,
- (n) the desirability of that route adhering to the periphery of the coast and providing views of the sea,
- (o) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
8. 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.
9. NE’s Approved Scheme 2013<sup>5</sup> (“the Approved Scheme”) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

11. The trail, subject to SDC 3 of the CA Report, runs from Ocean Edge Caravan Park, Heysham (grid reference SD 4041 5912) to Carlisle Bridge, Lancaster (grid reference SD 4716 6236) as shown on maps 3a to 3j (points SDC-3-S001 to SDC-3-S095 FP). The trail follows existing walked routes, including public rights of way and in the main follows the coastline quite closely and in general maintains good views of the sea. This section of the coastal route would include six new sections of path; one of those new sections is over land adjacent to Heaton Marsh and is land subject to this objection.
12. The objection relates to the section of the proposed coastal route between SDC-3-S083 and SDC-3-S085. It is proposed that the coastal route at this section will run on the flood embankment adjacent to Heath Marsh.

### **The objection**

13. The proposed route goes through the middle of the farm along a flood embankment which sits between pasture fields used for cattle and sheep and Heath Marsh which is used for sheep and cattle grazing. The trail will have a negative impact upon husbandry, affecting what livestock can be grazed in the

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<sup>5</sup> Approved by the Secretary of State on 9 July 2013

fields. The route would increase the risk of dog attacks on high value pedigree livestock. No mention has been made of fencing to mitigate these impacts.

### **The response by Natural England**

14. There are no existing footpaths or other walked routes in close proximity to the coast in this area; what has been proposed is considered to be the most appropriate route for the trail. At this location, the trail would follow a low embankment at the seaward edge of the most intensively managed areas of farmland. The alignment is consistent with the relevant parts of the scheme; section 4.1.1; 8.21.4; 8.2.11; and 8.4.9.
15. It was not possible to propose a more seaward route as the marsh is considered to be unsuitable for a public right of access and would be subject to an exclusion under s25A.
16. It is believed that the proposal strikes a fair balance between the interests of the landowner and the public; the proposal minimises the area of farmed land that would fall into the coastal margin.
17. The trail would be separated from the fields to the west by an existing fence on the landward side of the embankment; it is understood that bulls only graze the landward fields and not the marsh. Fencing has not been proposed seaward of the embankment as this would prevent free movement of livestock to and from the marsh.
18. It is proposed that dogs be kept on leads year-round on this trail section to prevent disturbance to sensitive wildlife; national restrictions also require dogs to be on leads in the vicinity of livestock.

### **Further information sought by the Inspector following the August 2020 site visit**

19. NE were asked to clarify whether the proposed route would be located on top of the embankment or on the landward base adjacent to the existing fence line. If located on the landward base, NEs view was sought on the landowner's suggestion that the trail should be fenced on the seaward side, thereby creating a fenced corridor.

### **Natural England's response to the Inspector**

20. As proposed, the trail would be aligned atop the low embankment, along slightly higher, and therefore drier, ground. It is acknowledged that it would be possible to route the trail along the seaward side of the existing fence. As the ground is likely to be wetter in this location, some surfacing would be required to make a path of an acceptable standard; a survey would be required to determine whether the required surfacing would be localised or over the entire length of SDC-3-S083. Based on previous experience, the cost of such works are likely to be in the region of £24,000.
21. Construction of the paths should be to a standard which would not be susceptible to damage by cattle; this being the case it would not be necessary to install additional fencing on the seaward side of this new route. Should it prove necessary to fence the seaward side of the path, the estimated cost would be £4,000.

22. One benefit of this suggested change would be a simplified and more effective junction of SDC-3-S083/84/85 where the path turns sharply inland. All proposed works on the ground would require a comprehensive survey along with further discussions with the objector to determine the precise alignment and the most appropriate location for fencing and gates.

### **Discussion and conclusions**

23. The trail would run along the low flood embankment which separates the pasture fields of Heaton Hall Farm from Heaton Marsh. The route proposed by NE is reasonably close to the sea, would be available at all states of the tide and would offer views of the sea. The route therefore satisfies the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.
24. Along the section of the trail to which the objection relates, a direction is proposed under s26 (3) (a) that requires dogs to be kept on leads at all times. Whilst this direction is proposed to limit disturbance to sensitive wildlife in the vicinity of Heaton Marsh, it will mitigate the impact of public access with dogs on the objector's livestock.
25. The objector expresses concern that his grazing cattle make use of the embankment both for grazing and as a means of access to and from water troughs in the vicinity of the junction of SDC-3-S084 and SDC-3-S085. It may be necessary to segregate trail users from the general area of the water troughs by fencing, gates and by the creation of a path surface that would be resilient to the ground being poached by cattle. Such works could be undertaken as part of the proposal to create a suitably surfaced path along the landward edge of the embankment. Taken collectively, these works are likely to further mitigate any adverse impact the trail may have upon livestock management.
26. The precise alignment of the route in this location will be a matter for detailed design in consultation with the objector. The mitigations proposed should limit the need to constrain section SDC-3-S083 between fences; aligning the trail on the landward side of the embankment would reduce the interaction between the public and livestock travelling to and from the marsh.
27. The proposal appears to be consistent with sections 8.2.11 and 8.4.9 of the Scheme which advise that the trail may pass over land where cattle and sheep are grazed if it is the most convenient route. Heaton Marsh is not suitable for public access and to route the trail further inland would result in the land around Heaton Hall Farm becoming coastal margin by default.
28. Aligning the trail on the flood embankment or on the landward side of it would provide a safe and convenient route for the public to access the coast on foot.
29. In conclusion, I consider that the proposed route is consistent with the advice in the Scheme. With the implementation of the mitigation measures described above, the proposed route would be safe and convenient for the public and would not fail to strike a fair balance.



## Habitats Regulations Assessment ('HRA')

30. 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 National Site Network.
31. 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.
32. 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.
33. 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 SDC1 to which this report relates.
34. 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.
35. 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.
36. 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.
37. 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.
38. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)***

39. 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.
40. The trail abuts the boundary of the Lune Estuary SSSI. The NCA concludes that with the mitigation proposed as part of the works to establish the trail, the proposals will not have a significant impact upon breeding ground nesting birds within the SSSI.
41. The trail at this location is located to the north of the Wyre Lune MCZ. The NCA concludes that the access proposals would not have any effect upon the feature for which the MCZ has been designated.

42. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.
43. 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.

**Recommendation**

44. Having regard to these and all other matters raised, I conclude that with suitable mitigation in the form of fences, gates and a suitable surface, the proposals would not fail to strike a fair balance as a result of the matters raised in the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

Appointed Person



The Planning Inspectorate

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# 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 15 August 2022

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Marine and Coastal Access Act 2009

Objection by [redacted] & [redacted]

Regarding Coastal Access proposals by Natural England

Relating to Silverdale to Cleveleys

**File Ref: MCA/SDC3/04**  
**Land at Bazil Lane, Overton**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
  - An objection to report SDC 3 Ocean Edge Caravan Park, Heysham to Carlisle Bridge, Lancaster was made by [redacted], the freeholders of Riverside, Bazil Lane, Overton on 29 February 2020. The land in the report to which the objection relates is route section SDC-3-S065 shown on Map SDC 3e.
  - The objection is made under paragraphs 3 (3) (a) (c) and (c) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.
  - **Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.**
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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 6 admissible objections to report SDC3. The five other objections are considered separately. Representations from The Ramblers' (R2) and the Open Spaces Society (R3) were generally supportive of the proposed route but made specific representations regarding sections SDC-3-S056 to SDC-3-S065. A representation was also made by [redacted] (R1).
3. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by [redacted], representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE; the objections made to that report; NE's comments on objections and representations; the clarifications Inspector [redacted] sought from NE arising from matters raised at the site visit; and NE's responses to those questions. I undertook a site inspection on 23 March 2022 accompanied by [redacted] and representatives of NE.

**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 a route for the whole of the English coast which
  - (k) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and

- (l) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route (“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 coastal route or otherwise. This is referred to as the coastal margin.
7. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (p) the safety and convenience of those using the trail,
- (q) the desirability of that route adhering to the periphery of the coast and providing views of the sea,
- (r) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
8. 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.
9. NE’s Approved Scheme 2013<sup>6</sup> (“the Approved Scheme”) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

11. The trail, subject to SDC 3 of the CA Report, runs from Ocean Edge Caravan Park, Heysham (grid reference SD 4041 5912) to Carlisle Bridge, Lancaster (grid reference SD 4716 6236) as shown on maps 3a to 3j (points SDC-3-S001 to SDC-3-S095 FP). The trail follows existing walked routes, including public rights of way and in the main follows the coastline quite closely and in general maintains good views of the sea. This section of the coastal route would include six new sections of path; one of those new sections is over land adjacent to Heaton Marsh and is land subject to this objection.
12. The objection relates to the section of the proposed coastal route SDC-3-S065. It is proposed that the coastal route at this section will run on the seaward edge of a field above Chapel Pool.

### **The objection**

13. The proposed route would give rise to the potential for walkers and their dogs to enter the private gardens of Riverside and Riverview which are accessible from the field in question if the fencing proposed was not installed or maintained.

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<sup>6</sup> Approved by the Secretary of State on 9 July 2013

14. The stretch of foreshore below the field is rarely covered by the tide nor vulnerable to extreme wet weather conditions and walking along the foreshore is easier than at Bazil Point. Routing the path along the foreshore will not prevent use of the marsh by feeding birds; the main feeding areas are further out away from the shore.
15. The cost of 3 additional gates, fencing and maintenance to bring the coast path into use appears unnecessary when the trail can continue along the foreshore as it is currently used. Of particular concern is that the local authority will be responsible for future maintenance of this infrastructure.
16. It is suggested that the route be modified to run along the foreshore adjacent to the objectors' field to link the public footpath that leads to Overton church; the objectors contend that the foreshore is rarely covered by the tide. If this proposal was adopted, the trail could run from Bazil Point to Overton Church without diverting into adjacent fields.

### **Representation by [redacted] (R1)**

17. The path between the public footpath and access to the shore east of Bazil Point should run along the foreshore to make a continuous path from Bazil Point to the footpath to Overton church.

### **Representations by the Ramblers (R2) and Open Spaces Society (R3)**

18. Strong representations against SDC-3-S056 to SDC-3-S065 are made as this tidally affected route is unsuitable and sometimes difficult to walk. A route on the seaward edge of adjacent fields should be considered. A route inland of Ferry Cottage and SDC-3-S060 to SDC-3-S093 would be preferred as there is an inland track which is available.

### **The response by Natural England**

#### *The objection*

19. Route section SDC-3-S065 crosses the seaward edge of the objector's field. At its closest point the trail would run approximately 100m from the nearest corner of the garden at Riverview. It is not considered that there is any significant likelihood of walkers leaving the path and trespassing in private gardens. It is proposed that a fenced corridor be created to fully segregate trail users from the remainder of the objector's field with future maintenance being the responsibility of the objector.
20. Adjoining sections of the route (S063, S064 and S066) are all on land above the foreshore, rather than on the adjacent saltmarsh in accordance with 7.8.2 and 7.15.2 of the Scheme. Although tidal inundation may not be regular, the Scheme seeks to avoid routing the trail on coastal marsh, unless there is no other reasonable alternative. The marsh in this area can be wet and heavily poached by cattle; at Bazil Point the trail follows an existing public footpath and is less affected by ground conditions.
21. There are records of breeding birds in the area and although an exclusion on nature conservation grounds has not been proposed, if the proposed s25A direction was removed or relaxed, consideration would be given to a direction under s26 on nature conservation grounds. Access along the foreshore may

- have an adverse impact upon feeding birds, and the presence of breeding and feeding birds would favour the trail being on the landward edge of the marsh.
22. The estimated establishment costs for this stretch of the trail are within the normal expected range for creation of the ECP. The cost of the establishment of the trail will be met by NE, with a substantial contribution being made to Access authorities for continued maintenance.
23. The proposed modification is not supported. The proposed route is predominantly on land above the foreshore, which is considered the most appropriate option, continuing the alignment to the immediate southwest. The suggested alternative can be subject to tidal inundation, wet and difficult to walk on.

#### *Representation R1*

24. It is acknowledged that there is an existing desire line at the landward edge of the land above the foreshore, however this area is occasionally inundated by high tides. In accordance with paragraph 7.2.8 of the Scheme, a new route has been identified in a slightly more elevated position which should be available at all states of the tide.

#### *Representation R2 and R3*

25. NE is grateful for the general support for the proposals. The proposed route follows an existing public footpath for sections SDC-3-S057 to SDC-3-S059 which is believed to be suitable. The path then continues for a short distance at the top of the foreshore before turning to run at the landward edge of fields SDC-3-S064 to SDC-3-S065.

#### **Further information sought by the Inspector following the August 2020 site visit**

26. It was noted that the report stated that consideration was given to aligning the trail from SDC-3-S063 to SDC-3-S072 on the marsh edge but opted for the proposed route due to frequent and rapid tidal inundation with the marsh being poached and difficult to walk on. In contrast, the objectors submit that the foreshore is rarely covered by tides. NE was asked to clarify the basis on which it had concluded that the trail should not be aligned on the marsh edge on SDC-3-S064 and SDC-3-S065.
27. It was also noted that at times of exceptional high tides it would be possible for walkers to leave the trail at SDC-3-S062 by means of the existing public footpath over Bazil Lane and use the Optional alternative Route to reach the trail in Overton at SDC-3-S069RD. NE was also asked for its view on routing the trail along the foreshore at SDC-3-S064 to SDC-3-S065 and the provision of an optional alternative route along Bazil Lane.

#### **Natural England's response to the Inspector**

28. Various factors were taken into consideration in determining that the trail should not be aligned on the marsh. First, tidal data suggests that the marsh seaward of the fields is between 4.5 and 5m above mean low water and would be impacted by tides of 9.4m or higher. A route of the foreshore would be impacted around 77 days of the year. It is predicted that atmospheric



- conditions and prevailing winds would result in 8.5m tides impacting the route; this is likely to occur on the highest tides around 237 days each year.
29. Secondly, a direction is proposed to exclude access from the entirety of Colloway Marsh including the area adjacent to SDC-3-S054 and SDC-3-S065 under s25A of the 2000 Act. Even in the hot weather at the time of the site visit in August 2020, the foreshore at SDC-3-S065 was wet and muddy. Between Fiskes Point and SDC-3-S066 the marsh is extremely narrow which concentrates cattle movements in a relatively small area; this results in the ground being heavily poached.
30. Thirdly, the poor ground conditions would make it necessary to surface a route over the marsh, which would lead to the loss of saltmarsh habitat. It may also be necessary to erect a fence seaward of the route to prevent cattle from congregating or walking along the surfaced section. Consent to such works would have to be obtained as the marsh is registered common land with no guarantee that such consent would be forthcoming. The costs of establishing a route in the foreshore are likely to be greater than that expected for the establishment of the proposed route.
31. Finally, paragraph 7.15.2 of the Scheme advises that the trail would not normally be aligned on saltmarsh where there is a safer, more convenient option to landward. NE considers that to be the case here, and that no real evidence has been provided to the contrary.
32. The saltmarsh also provides suitable conditions for redshank and shelduck to breed. Encouraging access on the saltmarsh could cause disturbance to ground nesting birds breeding in the vicinity; undisturbed saltmarsh habitat of good nesting quality is uncommon within the Morecambe Bay and Duddon Estuary Special Protection Area (SPA). Furthermore, birds roost in large numbers on the eastern side of Colloway Marsh. Although users of a route along the foreshore are unlikely to disturb birds roosting on the eastern side of the marsh, a rising tide will concentrate bird numbers on the fringes of the marsh where the risk of disturbance would be greater.
33. Whilst the provision of an Optional Alternative Route along Bazil Lane would be feasible, such a route is not required at this location as the proposed alignment of SDC-3-S064 and SDC-3-S065 is compliant with the criteria set out in the scheme and would provide a better experience for trail users. The proposed route would always be available whereas the marsh foreshore would be unpleasant and difficult to traverse at most times of the year in the absence of a surfaced path.

### **Discussion and conclusions**

34. It is proposed to route the trail on the seaward edge of the objector's field to raise the path above the level of the tidal foreshore. The route proposed by NE is reasonably close to the sea, would be available at all states of the tide and would offer views of the sea. The route therefore satisfies the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.
35. The objector's suggest that the trail should be aligned along the foreshore between Fiskes Point and the path leading from the shore to Overton church to avoid encroaching on their land. I saw that there was a reasonably prominent

- wear line along the landward side of the foreshore and that it was evident that this was a route which already saw some degree of use by the public. The foreshore route would not however, be available at all times due to the nature of the tides and, although relatively dry at the time of my site visit, will be wet and prove difficult to walk on at other times.
36. Paragraph 7.15.2 of the Scheme states that the trail will not normally be aligned on saltmarsh, and that there are generally safer, more convenient alternatives to landward. The proposed route would provide a convenient alternative to walking on the saltmarsh; would provide users with a route with as few interruptions as possible and which would be available irrespective of the state of the tide.
37. I heard that the objector's field is currently let for silage or hay making, although the increasing size of agricultural machinery may render such use impractical, and thought has been given to grazing the land with sheep. The principal concern of the objectors appears to be the possibility that walkers and their dogs may trespass from the trail and enter the private gardens of their house and that of their neighbour.
38. The trail would run for approximately 50m across the south-eastern edge of the field and would be approximately 100 metres from the objectors' garden at the nearest point. NE consider it unlikely that trail users would trespass in this manner but have proposed a fence on the landward side of the trail to mitigate such a possibility. The nature and specification of any fence would be a matter for discussion between NE, the Access Authority and the objector at the time of establishment of the trail, but the segregation of users from adjacent land is likely to address the concerns of the objectors regarding trespass away from the trail.
39. It would be possible to align the trail along the foreshore and make use of the public footpath along Bazil Lane as an optional route at times of high tide. However, a route along the foreshore would not be safe and convenient for the public to use, would be contrary to paragraph 7.15.2 of the Scheme, and would be contrary to the proposed exclusion of coastal access rights from Colloway Marsh on the grounds that the marsh unsuitable for public access. These are all factors which weigh against the trail being aligned on the foreshore at this point.
40. Aligning the trail at this point on the seaward edge of fields adjacent to the foreshore would provide a safe and convenient route for the public to access the coast on foot. I consider that the proposal is consistent with the Scheme. The creation of a fenced corridor for SDC-3-S065 would mitigate the potential adverse impacts the trail would have upon the objectors' property.

### **Habitats Regulations Assessment ('HRA')**

41. 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 National Site Network.

42. 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 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.
43. 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.
44. 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 SDC1 to which this report relates.
45. 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.
46. 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.

47. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' 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.
48. 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.
49. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)***

50. 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, and undesignated but locally important sites and features, which are not already addressed in the HRA.
51. The trail abuts the boundary of the Lune Estuary SSSI. The NCA concludes that with the mitigation proposed as part of the works to establish the trail, the proposals will not have a significant impact upon breeding ground nesting birds within the SSSI.
52. The trail at this location is located to the west of the Wyre Lune MCZ. The NCA concludes that the access proposals would not have any effect upon the feature for which the MCZ has been designated.
53. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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 conclusion, I consider that the proposals made by NE are consistent with the advice in the Scheme. The legitimate concerns of the objectors regarding the potential for trespass over other land are addressed by the proposal to erect a suitable fence to contain path users within a defined corridor. Subject to this mitigation measure, the proposals do not fail to strike a fair balance.

### **Recommendation**

56. 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 the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

Appointed Person



The Planning Inspectorate

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# **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 15 August 2022**

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Marine and Coastal Access Act 2009  
Objection by [redacted] and [redacted]  
Regarding Coastal Access Proposals by Natural England  
Relating to Silverdale to Cleveleys

**File Ref: MCA/SDC3/O6 and O5 (part)**  
**Land at Sunderland Point**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection to report SDC 3 Ocean Edge Caravan Park, Heysham to Carlisle Bridge, Lancaster was made on 3 March 2020 by [redacted], the freeholders of the land at Sunderland Point. An objection was also made on 2 March 2020 by [redacted] as the tenant of the land. The land in the report to which the objections relate is route section SDC-3-S026 to SDC-3-S027 shown on Map SDC 3c.
- The objection is made under paragraphs 3 (3) (a) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.**

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**Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 6 admissible objections to report SDC3. The five other objections are considered separately, however part of objection O5 relates to the same land as objection O6, and it is appropriate to consider these objections within the same report. The other matters raised by [redacted] in objection O5 are considered in a separate report. Representations from The Ramblers' and the Open Spaces Society made particular reference to SDC-3-S025 to SDC-3-S027.
3. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by [redacted], representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
4. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE, the objections made to that report, NE's comments on objections and representations, the clarifications Inspector [redacted] sought from NE arising from matters raised at the August 2020 site visit and NE's responses to those questions. I undertook a site inspection on 23 March 2022 accompanied by [redacted], [redacted], [redacted], and representatives of NE.

**Main Issues**

5. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys

- on foot or by ferry, and (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
  7. 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 that route adhering to the periphery of the coast and providing views of the sea,
    - (c) and the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
  8. 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.
  9. NE's Approved Scheme 2013 ('the Approved Scheme') is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
  10. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

11. The trail, subject to SDC 3 of the CA Report, runs from Ocean Edge Caravan Park, Heysham (grid reference SD 4041 5912) to Carlisle Bridge, Lancaster (grid reference SD 4716 6236) as shown on maps 3a to 3j (points SDC-3-S001 to SDC-3-S095 FP). The trail follows existing walked routes, including public rights of way and in the main follows the coastline quite closely and in general maintains good views of the sea. This section of the coastal route would include six new sections of path; one of those new sections is over land at Sunderland Point and is land subject to this objection.
12. The objection relates to the sections of the proposed coastal route SDC-3-S026 and SDC-3-S027. It is proposed that the coastal route at this section will run, in part, on the seaward side of the fence which encloses the agricultural fields at Sunderland Point (SDC-3-S027) and in part on the landward side of that fence (SDC-3-S027).

### **Objection O6**

13. There is a regularly used permissive route along the foreshore at Sunderland Point which has been in use for decades. The objectors understand that NE's position is that this well-used route is unsuitable for the trail due to the nature of the terrain. However, it is proposed to route the trail along the foreshore at Bazil Point following an existing public footpath which runs over similar terrain to that found at Sunderland Point. Both Bazil and Sunderland Points are tidal, and



although it was suggested that the route at Sunderland Point would provide better views of the coast, this criterium does not appear to have been applied at Bazil Point.

14. The objectors propose that the trail should follow the existing permissive route along the foreshore at Sunderland Point; this route would meet the criteria of the Scheme in that the trail would be close to the sea and provide good views of it. Routing the trail on the foreshore would mean that the fields at Sunderland Point could continue to be used by the tenant former for the rearing of livestock.

#### **Objection O5**

15. The proposed route would run through land tenanted by the objector and used for the rearing of suckler cattle. The cattle calve in the field and graze with their offspring. The field is valuable for such purposes as there is no public access and as such the cattle are unlikely to contract neosporosis, nor pose a threat to the public when protecting their offspring as there are no dogs in the vicinity.
16. The coastal path should follow the existing permissive route around the Point on the shoreline which has been in use for many years; this route is in close proximity to the coast.

#### **Representation R2 (Ramblers) and R3 (Open Spaces Society)**

17. The proposals put forward are generally welcomed as this stretch of the coast has historically been difficult for walkers to access, and the proposals go some way to meeting the needs of a range of users of National Trails. With regard to SDC-3-S025 to SDC-3-S027 the proposal should be reconsidered so that the trail would be located on the seaward edge of the field and not outside the fence line at the top of the cliff.

#### **The response by Natural England**

##### *The objections*

18. During initial planning of the trail, a route on the foreshore around Sunderland Point had been considered but was discounted as the foreshore is a particularly important feeding area for key species of wading birds. NE considers that the existing access is causing disturbance to those birds and cannot put forward proposals which would worsen the situation. It is proposed that the new access rights should be excluded from the foreshore for this reason; the exclusion, together with the trail being routed away from the foreshore should ensure that additional disturbance arising from use of the trail would be minimised.
19. Furthermore, paragraph 7.12.45 does not advise alignment of the route along areas of shingle unless there are no viable options. The shingle at Sunderland Point would not provide a suitable surface for a long-distance trail; there is wear line evidence which suggests that those currently walking around Sunderland Point do so closer to the low water mark to avoid the difficult walking over the shingle of the foreshore. This increases the level of disturbance to feeding bird populations.
20. Regular tidal inundations at Sunderland Point would also present a risk of trail users being unable to escape a rising tide due to the rock armour present around the point.

21. NE does not accept that a comparison with the proposed trail at Bazil point is valid. At Bazil Point there is an existing public footpath at the top of the foreshore which provides an acceptable surface for trail users. The risk of tidal inundation is also much lower at Bazil Point than that present at Sunderland Point.
22. Where a route can be identified which avoid the use of land grazed by livestock, that route will be proposed for the trail. The initial proposal was for the trail to run outside the field fence at SDC-3-S026 above the rock armour flood defence. However, the landowners expressed concerns about erosion and damage to the rock armour, and so an in-field route on the seaward edge of the field was proposed.
23. As regards SDC-3-S027, the field fence is very close to the top of the rock armour; given the circumstances, there was no viable option other than to route the trail in-field on its seaward edge.
24. It is not considered that it is strictly necessary to fully segregate walkers and livestock at this location, as a gesture of goodwill and to address the concerns of the landowner and tenant, NE would be prepared to reinstate the existing perimeter fence slightly landward of its current position; it would also be possible to realign SDC-3-S026 seaward of the field if the concerns about livestock outweighed the concerns about erosion.

#### *Representations R2 and R3*

25. NE is grateful for the general support for the proposals given by the Ramblers and the Open Spaces Society. In relation to SCS-3-S026 and SCS-3-S027, the proposed route would see the trail run over higher ground providing good views of the sea.

#### **Further information sought by the Inspector following the August 2020 site visit**

26. Report SDC3 gives the reasons for not proposing the foreshore route as it being rocky with an unsuitable surface and that the views of the coastline would be better from the field edge route due to its elevated position. In response to the objectors' submission that the trail should follow the foreshore route, NE referred to disturbance to bird life and regular tidal inundation; neither of which were specified in the report as reasons for not promoting the foreshore route. Additional information was sought with the regard to the evidence / information which NE relied on to arrive at its conclusion that the foreshore route was unsuitable.
27. Reference is made to page 163 of the Morecambe Bay Habitats Regulations Assessment ('HRA'); this page appears to relate predominantly to Middleton Marsh. Reference is made to the mud and skears at Sunderland Point in relation to feeding waders but not in relation to breeding birds. Paragraphs 3.2.22 and 3.2.24 of the Report refers to land at Sunderland Point being used by breeding ground nesting waders and to shingle banks being used year-round by feeding water birds. If the reference in the HRA to feeding non-breeding birds means that the birds are not present for part of the year, a view is sought on aligning the trail on the foreshore but with a direction excluding access at certain times of the year when the Optional Alternative Route could be used.

28. It appears that the proposed route has been aligned inside the grazing field following the objector's concerns about erosion and consequential damage to the rock armour. NE was asked to confirm whether it considered that part of the route would have to be located within the field even if part of the route were located seaward above the rock armour.

### **Natural England's response to the Inspector**

29. The 'other options considered' section of the Report is intended to provide a 'high level' view of the options and the more obvious reasons why these options were not pursued. The absence of reference to the likely impact on bird populations was an oversight and is a key reason to avoid increased access over the foreshore, in addition to the other factors stated in the Report. This is reflected by the proposed direction to exclude access year-round under s26 (3) (a).
30. Whilst parts of the foreshore from the base of the rock armour to the seashore are relatively easy to walk over, there are areas where the ground is covered with rocks and small boulders, which when wet are difficult to walk over. The nature of the area is such that at low tide, trail users and others are likely to walk further down the foreshore which is likely to result in increased disturbance to bird life.
31. LIDAR data shows the base of the rock armour to be between 4.0 and 4.8 metres above mean low water. The available tide data suggests that the foreshore would be inundated by tides of 8.9 metres and above; modelling suggests is likely to occur on 172 days per year and may be greater depending on atmospheric conditions.
32. A further consideration is that most trail users would find it difficult to escape an incoming tide by scrambling up the rock armour. Whilst the distances involved are not great, the lack of a clear view of the entire section at issue would reduce the ability to make an informed decision as to whether to continue with a journey in the face of an incoming tide.
33. Waders nest at Middleton Marsh, but the foreshore around Sunderland Point is rich in invertebrates and is used year-round by feeding waterbirds. The HRA notes that the area is used by large numbers of feeding waders during the winter months, and ringed plover and dunlin roost at the Point during high tides. The rich feeding grounds are also important for passage periods, providing food for migratory species such as ringed plover, dunlin, sanderling, black tailed godwit, and bar-tailed godwit. Sunderland Point is also an important refuge for juvenile and moulting birds. Moulting requires high energy expenditure, with large number of moulting redshank found at the Point in July/August. Egrets nesting at Ashton Hall also use the Point for feeding and there are shelduck and eider creches off Sunderland Point during the breeding season.
34. Given the importance of the Point as a food resource, it is not considered possible to establish a route on the foreshore in a way that would satisfy NE's obligations under the Habitats Regulations. The proposed route above the foreshore would limit disturbance to feeding populations; people are clearly willing to negotiate a route around the Point along the foreshore as there is no other option; it is considered that many of these users would utilise the proposed route which would be available irrespective of the state of the tide.

35. It seems likely that most, if not all of SDC-3-S026 might be accommodated on the strip of land between the existing fence and the landward edge of the rock armour without having to move the fence. As regards SDC-3-S027, the fence is close to the edge of the rock armour and what space there is covered by scrub; it is likely that the boundary fence would have to be repositioned if it is necessary to physically segregate walkers and dogs from grazing livestock. Any such fencing would be fully funded by NE using qualified contractors.

### **Response by objector O6 to NE's comments to the Inspector**

36. The modelling of the impact of tides may be misleading as although atmospheric conditions may result in an 8-metre tide affecting the shoreline, if such a tide occurred at times of high pressure, the tide would not reach the base of the rock armour.
37. It is considered that even if the new route is aligned within the fields, people will still walk on the foreshore, as that is what they have been doing for many years.
38. If the trail cannot be aligned on the foreshore, the objectors do not want any part of it on the seaward side of the field fence. The rock armour was privately funded as Sunderland Point is in an area of 'no active intervention'; coastal protection work is undertaken at the objector's expense. The owners and tenant are agreed that if the foreshore route is unacceptable, then the trail should be on the seaward edge of the field and fully segregated by corridor fencing. If NE will not pay for this, then it will be privately funded by the objectors as a fenced corridor is preferable to the risk of a footpath on the cliff edge causing erosion on the landward side of the rock armour.

### **Discussion and Conclusions**

39. The proposed trail around Sunderland Point as shown on map 3c does not make it clear that SDC-3-S026 will run outside the existing perimeter fence and that SDC-3-S027 would run on the seaward edge of the field on the landward side of the perimeter fence. I saw from my site visit that there was sufficient space for a footpath to run on the seaward side the fence for almost the entirety of SDC-3-S026, but that the width between the fence and the top of the rock armour along SDC-3-S027 was insufficient for that purpose, and that the trail at this location would have to run in-field.
40. The route proposed by NE is in close proximity to the sea, would provide excellent views of the sea and coastline and would be available at all states of the tide. The route therefore would satisfy the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.
41. The topography of the foreshore, frequency of tidal inundation, the risk posed by the rock armour of walkers being unable to reach safe ground with an incoming tide and together with the obligations under the HRA as regard feeding, roosting, and nesting birds at Sunderland Point, preclude the coastal route from continuing along the foreshore.
42. It is recognised that members of the public can currently undertake a walk around Sunderland Point using a route along the foreshore; the wear lines found on site in those parts where the shingle and rocks were small and easily negotiated provides evidence of the popularity of such a walk and the frequency

at which such walks appear to be undertaken. The objector submits that even if the trail were to run in the field, people would still walk the foreshore route. Although NE suggest that the trail route would be preferable for the reasons it gives, I concur with the objectors that the foreshore route is likely to remain attractive to many people.

43. The foreshore route is however subject to periodic inundation by the tide and although there is a dispute between NE and the objectors as to whether an 8 metres tide would always flood the foreshore, given the nature of the tides at Sunderland Point it is highly likely that the foreshore route will be inundated many times during the year at high tide. As one of the objectives of the Scheme is to secure a coastal route which is available at all stages of the tide, a route which is regularly inundated would not satisfy one of the Scheme's criteria.
44. Whilst acknowledging that there is likely to be continued use of the foreshore route when the tide is favourable, the establishment of the trail should not seek to add to or give rise to further disturbance to feeding and roosting bird populations present in the vicinity of the point. Aligning the trail on the field above the rock armour would remove trail users from the foreshore and would ensure that any disturbance already experienced by bird populations is not increased as trail users would be at a greater distance from the feeding and roosting grounds.
45. Whilst it would be possible to route the trail seaward of the existing fence on section SDC-3-S026, this would not address the objectors' concerns about the possible erosion of the landward edge of the rock armour and the consequent implications for the privately funded sea defences. To address the objectors' concerns regarding the rock armour, the trail at SDC-3-S026 would have to run on the seaward edge of the field as would SDC-3-S027. NE does not consider it strictly necessary to separate trail users from livestock at this location but would be prepared to reposition the existing fence landward of the trail to provide the required segregation.
46. Paragraphs 8.2.11 and 8.4.9 of the Scheme provide that the trail may cross land grazed by cattle or sheep if it is the most convenient route along the coast and that it will normally follow the seaward edge of the field. Paragraphs 8.2.13 and 8.4.11 provide that exceptionally the trail may be aligned so that it avoids a field or enclosure in which cattle or sheep are usually kept even if it is the most convenient route if the field is so small that it would be impossible for the cattle or sheep and access users to avoid each other. The fields through which it is proposed to route the trail are of a size where the scope for interaction between trail users and livestock would be reduced. The proposed route along the seaward edge of the fields at SDC-3-S026 and SDC-3-S027 therefore accords with the provisions of the Scheme.
47. The proposed repositioning of the existing fence would not however address the objectors concerns about possible erosion and damage to the rock armour. The removal of the existing fence from the seaward edge of the field would allow the public access to the top of the rock armour. Whilst the repositioning of the fence may alleviate the objectors concerns regarding the public interacting with grazing cattle and followers, it would not address the objectors' other concerns regarding erosion.

48. In addition to any repositioning of the existing fence undertaken by NE to accommodate the trail, the objectors will consider erecting their own fence landward of the trail to create a corridor on the seaward edge of the fields to prevent path users having access to the top of the rock armour and to prevent users from coming into contact with livestock.

### **Habitats Regulations Assessment ('HRA')**

49. 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 National Site Network.
50. 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.
51. 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.
52. 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 SDC3 to which this report relates.
53. 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.

54. Those relevant to this report where there is some residual risk of insignificant impacts are: (a) 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 (b) 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.
55. 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.
56. 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.
57. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)***

58. 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, and undesignated but locally important sites and features, which are not already addressed in the HRA. Lune Estuary SSSI is adjacent to those parts of the trail subject to the objection; with the mitigation described in the NCA in place, the access proposals would not have a significant impact upon breeding birds.

59. The trail is aligned adjacent to Wyre Lune MCZ. Smelt have been recorded as spawning in the River Wyre. Although spawning could be adversely affected by changes in access provision as smelt are sensitive to disturbance by dogs running in shallow water among the spawning gravel banks, the River Wyre is unaffected by the access proposals. In the Lune Estuary, the access proposals are unlikely to increase access to gravel banks suitable for spawning. The MCZ will be unaffected by the proposals.
60. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.
61. 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**

62. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights. The proposed route will create a right of access over land at Sunderland Point which is let for the calving and rearing of cattle. The impact of the trail will be mitigated by the repositioning of the existing boundary fence to provide segregation between the public and livestock. Should the objectors wish to fence the trail into a corridor, they will be at liberty to do so. Any adverse effects do not in my view 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**

63. Having regard to these and all other matters raised, I conclude that, with the mitigation proposed, the proposals would not fail to strike a fair balance as a result of the matters raised in relation to the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

Appointed Person





The Planning Inspectorate

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# **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 4 November 2022**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal access Proposals by Natural England

Relating to Silverdale to Cleveleys

## **File Ref: MCA/SDC5/02 and 03 Land at Sandside, Cockerham**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
- Two objections to report SDC 5 Glasson Dock Swing Bridge to Fluke Hall Lane Car Park, Pilling were made on 24 February 2020 by [redacted] the freeholder of the land at Sandside. The land in the report to which the objections relate are route sections SDC-5-S042 and SDC-5-SA002RD to SDC-5-A004 as shown on Map SDC 5f, 5g and 5l.
- Objection 03 is made under paragraph 3 (3) (e) of Schedule 1a to the 1949 Act. Objection 02 is made under paragraph 3 (3) (a) of Schedule 1a to the 1949 Act. Both objections are made on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

**Summary of Recommendation: I recommend that that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.**

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### **Procedural Matters**

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 2 admissible objections to report SDC5. As both objections were made by the same individual and relate to the same landholding, it is appropriate that the objections are considered in a single report. I set out below summary details of both objections as discrete items to assist the Secretary of State in making a determination on both of them.
3. In addition to his objections, [redacted] also made representations (MCA/SDC5/R4) in relation to the proposals. Representations made by the Lancashire Local Access Forum (MCA/SDC5/R5); Lancashire County Council (MCA/SDC5/R7); Ramblers (MCA/SDC5/R9); Open Spaces Society (MCA/SDC5/R10); and Brian Fisher (MCA/SDC5/R2) made particular reference to SDC-5-S042.
4. A site inspection was undertaken by Inspector [redacted] in August 2020 accompanied by [redacted], representatives of NE and a representative of Lancashire County Council. The Inspector subsequently left the Planning Inspectorate without completing a report to the Secretary of State on the objection.
5. I have been appointed to consider these matters and make recommendations to the Secretary of State. I have had access to the report prepared by NE, the objections made to that report, NE's comments on objections and representations, the clarifications Inspector [redacted] sought from NE arising from matters raised at the August 2020 site visit and NE's responses to those questions. I undertook a site inspection on 23 March 2022 accompanied by [redacted] and representatives of NE.

## **Main Issues**

6. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
7. The second objective is that, in association with the English coastal route ("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 coastal route 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 that route adhering to the periphery of the coast and providing views of the sea,
  - (c) and the desirability of ensuring that so far as reasonably practicable interruptions to that route 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. NE's Approved Scheme 2013 ('the Approved Scheme') is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
11. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

## **The Coastal Route**

12. The trail, subject to SDC 5 of the CA Report, runs from Glasson Dock Swing Bridge (grid reference SD 4451 5609) to Fluke Hall Lane car park, Pilling (grid reference SD 3892 5001) as shown on maps 5a to 5l (points SDC-5-S001 FW to SDC-5-S051). The trail generally follows existing walked routes, including public rights of way and minor roads, mainly follows the coastline quite closely and maintains good views of the sea. The proposal would include several sections of new path between Cocker Bridge to Fluke Hall car park.
13. Objection 03 relates to the sections of the proposed coastal route SDC-5-S042 where it is proposed that the trail will run over land not currently open for public access on the landward side of the flood embankment. Objection 02 relates to the proposed seasonal alternative route alongside Wrampool Brook with an alternative proposal being put forward.

## **Objection 03 (and Representation R4)**

14. On section SDC-5-S042 at House Pool drain and at a point further east at a track leading to Sand Villa access is required for grazing cattle and sheep to be able to

- access existing freshwater troughs and handling pens. Access is also required for agricultural vehicles and the emergency services. It is proposed that a series of kissing and field gates should be erected at these locations to facilitate agricultural activities. Reassurance was required with regard to the continuing maintenance of the fencing being proposed as mitigation.
15. The proposal envisages the Morecambe Bay Wildfowlers Association managing the locked gate access for the alternative winter route. As agricultural access through these locked gates would be required year-round to manage livestock grazing the marsh, a fair balance would be struck by the management of the gates lying with the freehold owner of the land.
  16. Dog waste bins should also be installed at Cocker Bridge (at SDC-5-S039) and where the trail crosses the A588 where those bins would be readily accessible for clearance by the local authority. The provision of dog waste bins would assist in striking a fair balance as some owners leave waste hanging in trees or on fences which is unsightly and can be a means whereby diseases such as Neospora can be spread.
  17. Concern was expressed as to how enforcement of the seasonal requirement for dogs to be on leads was to be achieved. The protection of livestock from irresponsible dog walkers is of high importance to all farmers and such protection is required in order for a fair balance to be struck.

## **Objection 02**

18. The proposed alternative route between SDC-5-S042 and SDC-5-A002RD alongside Wrampool Brook floods regularly between 1<sup>st</sup> September and 31<sup>st</sup> March making this route inaccessible and potentially dangerous. Pedestrians making use of this route are likely to spread out over the adjacent silage field to avoid standing water, which would adversely affect the productive capacity of the field. Photographs taken in winter 2020 at various points along the alternative route were submitted to illustrate the extent of flooding adjacent to the brook. The proposed alternative route would also incorporate Gulf Lane which is a busy rural road serving numerous properties.
19. An alternative route is proposed whereby trail users would use the existing hardstanding track adjacent to House Pool, crossing the A588 at Mill House Bridge, travelling to Gulf Lane via the public bridleway to Mill House and the access track from Mill House to access Gulf Lane at a safer point. The existing hard standing track is not prone to flooding, would require less maintenance and runs in a straight line from the flood embankment to the A588. Kissing gates would be required at field boundaries where there are existing field gates, but additional fencing would not be required.

## **Representation R5**

20. The Local Access Forum (LAF) considered the proposed exclusion between 1<sup>st</sup> September and 31<sup>st</sup> March to be excessive; there does not appear to be any well-researched evidence in the Report to support such a lengthy exclusion.

## **Representation R7**

21. Fencing and gates are proposed to mitigate the impact of the proposals on landowners. In the absence of a maintenance agreement with the Access Authority, consideration has to be given as to who will be responsible for the locking and unlocking of gates and the ongoing maintenance of the fence.

## **Representations R9 and R10**

22. The Ramblers are strongly opposed to the proposed route of SDC-5-S038 to SDC-5-S045 not being on the top of the flood defence embankment. The embankment was built by the predecessors of the Environment Agency who promised that public access to the top of the embankment would follow once construction had finished in 1981.
23. Since that date, no access has been permitted by the landowners and Environment Agency. It is not considered that unevidenced claims of disturbance to wildlife or interference with wildfowling are appropriate reasons for the trail to be diverted away from the embankment.
24. The proposed route, running between fences landward of the embankment will offer no views of the sea. Furthermore, for some time of the year, users will have to follow an arduous alternative route which is divorced from the coast. The alternative route involves extensive road walking for which risk assessments have not been produced.
25. It is noted that wildfowling will be allowed on the marsh to shoot those same birds which the diversion of the trail seeks to avoid disturbing. The route sought by the Ramblers and Open Spaces Society along the embankment is currently in use, and the proposals put forward by NE restricts trail users to a greater extent than the current informal access.
26. Feeding birds (geese particularly) may feed during daylight hours in the fields adjacent to the trail and may be prone to disturbance when the trail is being used. However, during darker winter hours those birds roosting on the salt marsh are unlikely to be disturbed by trail users. It is considered that access ought to be allowed to the top of the embankment from where good views of the sea would be available.

## **Representation R2**

27. Concerns were expressed regarding the routing of the trail landward of the flood defence embankment rather than on its top. Concerns were also expressed about the proposed direction for dogs to be on leads when the normal course of the trail was open for use.

## **The response by Natural England**

### *Objection 03 (and Representation R4)*

28. NE's proposal is for the trail to run on the landward side of the flood embankment, with a seasonal closure between 1st September and 31<sup>st</sup> March each year; during those dates access between SDC-5-S038 and SDC-5-S042 would be excluded with users following an alternative route. The proposal also

- includes directions to exclude access over the whole of the default coastal margin (embankment, saltmarsh, and flats).
29. New fencing is proposed seaward of SDC-5-S040, SDC-5-S041 and SDC-5-S043 to direct walkers along the trail and discourage access to the top of the embankment. The new fencing would not extend along SDC-5-S042 and would not prevent the movement of grazing livestock to and from the marsh. In discussions prior to the submission of the report, the objector had expressed reluctance to the installation of a new fence along SDC-5-S042.
  30. It is not intended to hinder agricultural access through existing field gates, or between fields and the saltmarsh. The type of infrastructure required will be the subject of further discussion with the objector prior to implementation, as will the future responsibility for the locking / unlocking of gates.
  31. The Access Authority will have powers in relation to the management of the trail once established and may choose to install dog waste bins as suggested as part of the ongoing management of the trail. As regards enforcement of the dogs on leads direction, it is considered that education and the influencing of behaviours of trail users is key. Information panels at Lane Ends Amenity Area will advise that the trail west of the Amenity Area is more suitable for dog walking than the route to the east.

#### *Objection 02*

32. NE's proposal regarding the route parallel to the Wrampool Brook includes the slight repositioning of the existing fence to create a corridor adjacent to the brook which would negate the need for trail users to enter the adjacent field. It is acknowledged that the proposed alternative route may be liable to localised flooding, but the surrounding land is all low-lying and any route chosen is likely to be prone to flooding to a greater or lesser degree.
33. The Highway Authority has expressed a preference for any crossing of the A588 to be at a point where sight lines are maximised; the proposed crossing point directly opposite the northern end of Gulf Lane provides just such sight lines.
34. The proposed direction to exclude access for part of the year arises from the findings of the Habitats Regulations Assessment (HRA) and seeks to minimise disturbance to bird species feeding and roosting in the vicinity of the trail. Comprehensive records exist of protected species which use the fields either side of the proposed alternative along the House Pool drain; it is unlikely that sufficient mitigation can be put in place to allow this track to be used as part of the alternative route without involving unreasonable cost or impact upon land management.
35. Morecambe Bay Wildfowlers hold rights to shoot over the marsh and the fields landward of the embankment between 1<sup>st</sup> September and 20 February each year. The seasonal closure of the trail would maintain public safety and would not compromise the ability of wildfowlers to engage in lawful activity on the land.
36. The proposed modification to route the alternative route alongside House Pool drain is resisted on the grounds of the likely impact on protected bird species; the likely impact upon wildfowling; and safety concerns regarding crossing the A588.

#### *Representation R5*

37. The proposed exclusion is necessary to protect those birds feeding and roosting in the vicinity of the trail and represents the least restrictive mitigation against disturbance. Those sections of the trail subject to the direction are also affected at certain times of the year by shooting activities. If the current nature conservation considerations ever gave rise to a review of the direction, consideration would have to be given to what mitigation might be needed to prevent danger to the public or to mitigate disturbance to a legitimate use of the land.

#### *Representation R7*

38. The locking and unlocking of gates is expected to be managed by the Access Authority in conjunction with the affected landowners. It is hoped that it would be possible to create a maintenance agreement of the kind suggested by the Access Authority.

#### *Representations R9 and R10*

39. It is acknowledged that the preferred route for the trail would have been on the top of the embankment rather than on its landward side. This was not possible due to the expected significant impact upon protected bird species. The alternative route is the best solution available and largely follows the existing Lancashire Way although it is accepted that it is not particularly convenient or direct.
40. Wildfowling in this area involves the hunting of non-protected species. Work will be ongoing with interested parties to ensure that disruption to walkers and wildfowlers will be kept to a minimum.
41. The enforcement of legal restrictions is likely to be difficult, but those restrictions proposed are the least restrictive option in relation to known hazards and potential impacts. It is hoped that additional information and publicity together with proportionate restrictions will improve compliance.
42. Route alignment and the restrictions proposed are based on the conclusions drawn from the HRA and Nature Conservation Assessments (NCA) already undertaken.

#### *Representation R2*

43. Many options were considered for the alignment of the trail at this location, including a route along the top of the embankment. The marsh seaward of the embankment is very important for a number of protected species of birds which roost on the seaward flank of the embankment. The proposals have been made in the light of the conclusions reached in the HRA and NCA which were that to route the trail on top of the embankment would present a significant risk of disturbance to those protected species.

#### **Further information sought by the Inspector following the August 2020 site visit**

44. With regard to the objector's proposal to use an existing track between SDC-5-S042 and the A588 crossing the road at Mill House Bridge, an assessment of road

safety at this point was sought from the Highway Authority. NE's views were also sought on the proposed route past Mill House and on to Gulf Lane at Moss House Farm. Would any consequences arise from the objector's proposal for the alternative route to join the main route at a different position from that proposed by NE?

45. Reference is made by NE to comprehensive records of protected species roosting and feeding either side of the track from SDC-5-S042 to Mill House Bridge. Details of these records were sought with reference to the HRA.

### **Natural England's response to the Inspector**

46. The Highway Authority had undertaken a road safety audit (RSA) which records the Highway Authorities concerns regarding obscured vision along the A588 for pedestrians wishing to cross the road north to south. The RSA is light on detail in terms of mitigation and management which may be required to address those concerns. A request has been made of the Highway Authority to confirm whether the findings of the audit are accepted and whether roadside vegetation would be managed as mitigation; no such confirmation has been received.
47. From the perspective of the trail user, the route proposed by the objector may be slightly preferable; the northerly part follows an agricultural track which is relatively firm underfoot. A walk-through survey of the bridleway to the south of the A588 revealed that it was in reasonable condition being also a vehicular access to property. A nature conservation assessment of the bridleway and access track has not been undertaken but NE is unaware of any reasons why the route would be problematic in this regard. There are concerns however about the nature conservation impacts of the westerly part of the route alongside House Pool drain.
48. Information regarding the use of the fields adjacent to House Pool drain is set out in the HRA on page 169. This evidence was collated by the Fylde Bird Club and the data set comprises winter counts of non-breeding birds using the area between Lane Ends Amenity Area and Cockerham over the period 1997 – 2016. Two of these counts are directly relevant to the track from SDC-5-S042 to Mill House Bridge and record Mute Swan, whooper swan, pink footed goose, Russian white fronted goose, tundra bean goose, greylag goose, pale bellied brent goose, barnacle goose golden plover and curlew.
49. Substantial numbers of pink footed goose (up to 9000), whooper swan (70) Golden plover (80) and curlew (70) were observed using the fields in 2016, all of which are qualifying features of the Morecambe Bay and Duddon Estuary SPA.
50. NE has concerns about the impact the suggested alternative would have on wintering birds that use the fields between the flood embankment and the A588 east of Wrampool Brook. The proposed alternative route SDC-5-A004 to SDC-5-A002RD avoids passing through these sensitive areas and ensures that there would be a physical barrier between trail users and adjacent fields. The route proposed by the objector would mean that in winter months, users would progress landward of the embankment along a section where no additional fencing has been proposed. NE has concerns that there is likely to be a greater risk of disturbance to protected species during the sensitive period from walkers and their dogs were they to walk on top of the embankment.



51. The alternative proposed by the objector would also result in trail users walking through fields which are of importance to wintering birds. The track is unfenced which would not prevent walkers (and their dogs) from entering the fields and causing significant disturbance to these birds.
52. The proposed alternative would take users beyond the area proposed for a seasonal exclusion on nature conservation grounds before turning south through fields where there is significant nature conservation interest. It would also provide an opportunity to circumvent the corridor fencing to be erected east of Wrampool Brook which is designed to discourage trail users from walking on the top of the embankment.
53. The seasonal exclusion direction would mitigate the concerns regarding disturbance to roosting and feeding birds and the absence of additional fencing along SDC-5-S042 would facilitate the free movement of the objector's cattle to graze on the saltmarsh.
54. In addition to those species observed on the fields south of the flood embankment, this area is the most important winter roost site in Morecambe Bay for widgeon. Bar-tailed Godwit, curlew, dunlin, eider, grey plover, knot, lapwing, oystercatcher, pintail, redshank and shelduck also roost in the area in large numbers. There is currently no public access along the flood embankment between Lane Ends Amenity Area and Cockerham and disturbance to these roost sites is low. The proposed fenced corridor landward of the embankment is designed to minimise disturbance to these important roost sites.

## **Discussion and Conclusions**

55. The trail in the vicinity of Wrampool Brook would be reasonably close to the sea and would be available at all states of the tide but would not offer views of the sea as it would run on the landward side of the flood embankment. Whilst the Scheme aims to provide trail users with views of the sea because such views form a key part of people's enjoyment of the coast, section 4.6.3 of the Scheme provides for the trail to temporarily lose sight of the sea to take account of other uses of the land.
56. In the case of route section SDC-5-S042, the trail would be routed along the landward side of the flood embankment to mitigate disturbance to birds roosting on the saltmarsh at periods of high tide with the trail following an alternative route between 1<sup>st</sup> September and 31 March each year to mitigate disturbance to feeding birds using the fields to the east of Wrampool Brook likely to be caused if the trail on the landward side of the embankment was available year-round.
57. Whilst those making representations to the proposal would prefer the trail to run along the embankment to provide views of the sea, the evidence submitted by NE demonstrates that large numbers of protected bird species roost in the saltmarsh at times of high tide and that disturbance caused to those species by the movement of people along the top of the embankment is likely to be significant.
58. Although views of the sea would be limited along this section, there are valid nature conservation reasons for the trail not being routed along the top of the embankment. The proposal therefore satisfies the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.

59. The objector submits that he requires agricultural and livestock access through gates at the junction of the track which links SDC-5-S042 and the A588 at Sand Villa and at the junction of SDC-5-S042 and SDC-5-A004. The proposal would not result in the erection of additional fencing or gates at the head of the track adjacent to House Pool drain as there is no additional fencing proposed along section SDC-5-S042; the existing vehicular and livestock access at this point would remain unchanged.
60. The objector takes issue with the terms of the s26(3)(a) direction proposed by NE which would prohibit the use of the main trail between 1<sup>st</sup> September and 31 March on nature conservation grounds. The terms of this direction is described in paragraph 5.2.25 of the report which states that the kissing gates at the ends of sections SDC-5-S040 and SDC-5-S042 would be locked to prevent access during that period, with the locking of the gates managed by the Morecambe Bay Wildfowlers Association.
61. Although the objector contends that control of any locks should remain with him as the freeholder, it appears that the proposal to lock gates relates only to the kissing gates at the ends of sections SDC-5-S040 and SDC-5-S042. The kissing gate the western end of SDC-5-S042 is likely to be positioned at the boundary of the objector's property (no new fencing being proposed along SDC-5-S042 to prevent interference with agricultural access or livestock husbandry), so the arrangements described in paragraph 5.2.25 of the report for the seasonal locking and unlocking of the kissing gate should not have any adverse impact upon the objector.
62. With regard to the field gates and kissing gates proposed at SDC-5-A004 and SDC-5-A002RD, the type of gates to be erected and arrangements for the locking of those gates (if required) will be a matter for further discussion between NE, the Access Authority, and the objector as part of the works required to establish the trail. Such works should not adversely impact upon the objector's requirements for livestock access to be maintained to and from the saltmarsh.
63. The objector's concerns regarding the risk to livestock from interaction with dogs is acknowledged. The proposed direction restricting access requires dogs to be on leads at all times between Sandside and Wrampool when the main trail is open (see map SDC 5f), and at all times when the alternative fenced route is open. Policing and enforcing these requirements will be a matter for the Access Authority, however NE propose to inform trail users of the reasoning behind the restrictions which include the provision of information boards at Cocker Bridge, Wrampool, and Lane Ends Amenity Area.
64. I saw from my visit to the area that Lane Ends Amenity Area was extensively used by dog walkers. It is NE's view that the route west from the Amenity Area is more suitable for a walk with a dog; those I saw undertaking such activities mainly headed west. It may be that for the those who use the Amenity Area as a starting point for a walk with their dog, SDC-5-S042 is too far from the Amenity Area and may turn back to their cars before reaching SDC-5-S042. It would be for the Access Authority to determine whether dog waste bins should be provided along the trail.
65. The objector proposes an alternative route to that shown on map SDC 5l, utilising an existing farm access track which connects with the A588 at Mill House Bridge.

- The access track has a stone surface and was firm underfoot at the time of my site visit and did not appear likely to pose any difficulty to path users were it to be used as part of a seasonal alternative route. However, the route proposed would present a greater risk to pedestrians as they would be required to negotiate crossing the A588 at a point where the view of westbound traffic is obscured by the curve in the road and adjacent hedgerow vegetation.
66. The RSA conducted on behalf of the Highway Authority considered road safety from the perspective of vehicle drivers. However, the RSA reached the same conclusion regarding the hazardous nature of crossing the road at this point, recognising that those driving west may not observe pedestrians attempting to cross the road at Mill House Bridge due to hedgerow growth. In contrast, the junction of SDC-5-A002RD with the A588 provides far reaching views of approaching traffic in either direction which would give those following the trail the opportunity to make an informed decision as to whether it was safe to cross the road.
67. In addition, the objector's alternative proposal would require users to travel along part of the route for which a seasonal closure on nature conservation grounds has been proposed. The evidence within the HRA is of the fields either side of the track adjacent to House Pool drain is used by a variety of protected species of bird for winter feeding with some species being present in significant numbers. Routing the seasonal alternative route along part of SDC-5-S042 and by House Pool drain is likely to result in disturbance to feeding birds by path users and their dogs. A proposal to designate the suggested route adjacent to House Pool drain as a seasonal alternative when the main trail is closed is unlikely to accord with the Secretary of State's duties under the conservation of Habitats and Species Regulations 2017.

### **Habitats Regulations Assessment ('HRA')**

68. 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 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 National Site Network.
69. 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.

70. 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.
71. 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 SDC5 to which this report relates.
72. 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.
73. Those relevant to this report where there is some residual risk of insignificant impacts are: (a) 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 (b) 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.
74. 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.
75. 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.

76. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys 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)**

77. The NCA, 9 December 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest, Marine Conservation Zones, Limestone Pavement Orders, and undesignated but locally important sites and features, which are not already addressed in the HRA. Lune Estuary SSSI is located to the north-west of those parts of the trail subject to the objection but would not be impacted directly by the proposals for the trail at this location.

78. NE were satisfied that the proposals to improve access to the English coast between Silverdale and Cleveleys were fully compatible with their duty to further the conservation and enhancement of the notified features, consistent with the proper exercise of their functions.

79. 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**

80. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights. The proposed route will create a right of access over land at Sandside where grazing livestock have access to the saltmarsh. There are no works proposed in association with the establishment of the trail which would preclude livestock from accessing the marsh in the way they currently do. The only gate which is proposed to be locked is the kissing gate to be installed to allow access along the main trail at this location between 1 April and 31 August.

81. Whilst the route at SDC-5-S042 will not run in a fenced corridor, the possible disturbance to livestock will be mitigated by the direction that will require dogs to be kept on a lead at all times. The seasonal alternative route will run in a fenced corridor to provide segregation between the public and grazing livestock. Any adverse effects do not in my view 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**

82. Having regard to these and all other matters raised, I conclude that, with the mitigations proposed, the proposals would not fail to strike a fair balance as a result of the matters raised in relation to the objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alan Beckett*

Appointed Person



The Planning Inspectorate

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

**by Alison Lea MA (Cantab) Solicitor**

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

**Date**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Silverdale to Cleveleys

This report was completed by the Appointed Person, Alison Lea, prior to leaving the Planning Inspectorate. Other reports on this stretch (Silverdale to Cleveleys) have been transferred to a new Appointed Person, who will restart the process on the relevant sections.

Site visit made on 12 August 2020

File Ref: MCA/SDC3/0/3

**Objection Ref: MCA/SDC3/0/3**

**North Farm, Heaton with Oxcliffe**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to Report SDC3, Ocean Edge Caravan Park, Heysham to Carlisle Bridge, Lancaster, was made by [redacted] on 24 February 2020. The land in the report to which the objection relates is route sections SDC-3-S077 to SDC-3-S079 shown on Map 3f.
- The objection is made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.

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## **Procedural Matters**

19. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.

20. There are 6 admissible objections to report SDC3. The other 5 objections are considered separately. There are various representations which refer to the sections of the trail considered in this report, but none of the comments are specific to these sections. Representations from The Ramblers' and the Open Spaces Society are supportive of the proposed route from SDC-3-S066 to SDC-3-S084.

21. I carried out a site inspection on 12 August accompanied by [redacted], representatives from NE and a representative from Lancashire County Council.

## **Main Issues**

22. 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 a route for the whole of the English coast which:

- (c) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
- (d) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.



23. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
24. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (d) the safety and convenience of those using the trail,
  - (e) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (f) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
25. 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.
26. NE's Approved Scheme 2013<sup>7</sup> ("the Approved Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
27. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

28. It is proposed that the trail will follow the seaward edge of [redacted]'s field, which is situated above the adjacent marsh. The trail would continue on a similar alignment either side of [redacted]'s land. None of this part of the trail is an existing walked route, although access to the marsh is available from a public footpath leading from Yenham Lane. Field gates, steps and an interpretation panel are proposed where the path from Yenham Lane meets the trail at SDC-3-S077.
29. NE considered aligning the trail along the edge of the marsh from Dunnal Point to Lancaster Road (SDC-3-S073 to SDC-3-S089) but opted for the proposed route because the marsh is frequently and quickly inundated by the tide and surrounded by deep creeks and the marsh surface is heavily poached and unsuitable to walk on.

### **The Objection**

30. [redacted] states that his land is used for mowing grass for dairy cattle feed and for livestock grazing. He is concerned that walkers' dogs may cause incidents of livestock worrying or deposit canine faeces on the land and off the line of the path. That raises the problem of neospora if the faeces are ingested by livestock directly or are incorporated at mowing and contaminate feed. He states that neospora is a cause of abortion in dairy and breeding livestock. [redacted] suggests that fencing off the path would overcome the problems, or alternatively, that keeping dogs on a lead would reduce, but not overcome, the problem.

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<sup>7</sup> Approved by the Secretary of State on 9 July 2013

### **The response by Natural England**

31. The alignment of the trail is consistent with guidance in the Approved Scheme, namely 8.2.11 in relation to cattle, 8.4.9 in relation to sheep and 8.7.6 in relation to crops (including silage etc). It minimises the area of land more intensively farmed by [redacted] that would fall within the coastal margin.
32. National restrictions require that dogs must be kept on leads at all times in the vicinity of livestock, which minimises the likelihood of impact on stock. The fields are relatively wide (some 250m between the proposed trail and the landward field extent at the narrowest point) allowing for plenty of separation between walkers/dogs and livestock.
33. NE has received advice from the Animal and Plant Health Agency (APHA) which suggests that the risk of neosporosis being transmitted by domestic dogs is considered to be low, as pet foods are specifically treated to eradicate any such infectious agents. A copy of the advice is provided.
34. NE does not consider it necessary to fence the path off from adjacent land in this case. To do so would effectively restrict use of the land. However, [redacted] would be within his rights to install fencing if he considered it essential to do so.

### **Discussion and Conclusions**

35. The trail would follow the seaward boundary of the field adjacent to the marsh. There are trees and a hedge along the field boundary, but these do not prevent there being many views over the marsh. I agree with NE that aligning the trail along the edge of the marsh would be neither safe nor convenient for walkers for the reasons given in the report and which I have referred to in paragraph 11. The proposed route adheres to the periphery of the coast and provides views of the marsh, whilst also being safe and convenient.
36. Paragraphs 8.2.11 and 8.4.9 of the Approved Scheme provide that the trail may cross land grazed by cattle or sheep if it is the most convenient route along the coast and that it will normally follow the seaward edge of the field. Paragraphs 8.2.13 and 8.4.11 provide that exceptionally the trail may be aligned so that it avoids a field or enclosure in which cattle or sheep are usually kept even if it is the most convenient route if the field is so small that it would be impossible for the cattle or sheep and access users to avoid each other.
37. In this case the field is large and there is plenty of space for separation between walkers and cattle or sheep and I conclude that the proposed route is consistent with the advice in these paragraphs. Similarly, paragraph 8.7.6 states that normally the trail will occupy a 4 metre wide strip along the edge of a cropped field, which will normally be along the seaward edge as it represents the most convenient route along the coast.
38. I note [redacted]'s concerns about dogs wandering off the trail and in particular his concern about dog faeces in his crop or field of grazing animals. It is correct that dogs must be kept on leads in the presence of livestock. However, I accept that this is not always adhered to and also note that [redacted] does not always keep livestock in his field.

39. The advice from the APHA confirms that dogs are hosts to certain infectious diseases that affect cattle and sheep and can pass infections to livestock through faeces. As mentioned by NE, it states that the likelihood of walkers' dogs carrying infection is considered very low because the vast majority are fed with commercial dog food which is either processed or, if raw, is produced to human standards of consumption. However it also advises that walkers should be encouraged to stop their dogs from defecating on pasture where possible, for example by avoiding pasture until the dog has done so, pick up after their dogs and remove the bagged faeces to a public or home bin and (for tapeworms) deworm farm and pet dogs regularly.
40. It states that this is in the interests of human and animal health/well-being as well as farm biosecurity. It suggests that farmers may wish to consider separating the crop from the path or access area with fencing to provide additional reassurance but that further intervention is unlikely to be necessary.
41. Although the risk of neosporosis being transmitted is stated to be very low, it is understandable that [redacted] wants to minimise the risk of dog faeces being present in his crop. There are no bins proposed in the vicinity of his land and, although it is likely that dogs would have had plenty of places to defecate before reaching his land, I accept that, particularly at times when there are no livestock in his field, walkers may consider the field to be an inviting place for dogs to be let off lead. I agree with NE that fencing should not be undertaken lightly as this would restrict [redacted]'s use of his land. However, should [redacted] consider that a problem does arise, in my opinion the issue should be revisited and the measures he has proposed be considered further.
42. In conclusion, I consider that the proposed route is consistent with advice in the Approved Scheme. Although [redacted] has a legitimate concern, neither fencing nor a direction requiring dogs to be kept on leads should be required, but the situation should be kept under review in case either of these measures becomes necessary.

### **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 objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alison Lea*

**APPOINTED PERSON**



The Planning Inspectorate

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

**by Alison Lea MA (Cantab) Solicitor**

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

**Date**

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Marine and Coastal Access Act 2009

Objection by [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Silverdale to Cleveleys

This report was completed by the Appointed Person, [redacted], prior to leaving the Planning Inspectorate. Other reports on this stretch (Silverdale to Cleveleys) have been transferred to a new Appointed Person, who will restart the process on the relevant sections.

Site visit made on 13 August 2020

File Ref: MCA/SDC5/0/1

**Objection Ref: MCA/SDC5/0/1**

**Land at Fluke Hall Lane, Pilling**

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silverdale and Cleveleys under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009.
- An objection to Report SDC5, Glasson Dock Swing Bridge to Fluke Hall Lane Car Park, Pilling was made by [redacted] and [redacted] on 24 February 2020. The land in the report to which the objection relates is route section SDC-5-S050 shown on Map 5i.
- 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 for the reasons set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail to strike a fair balance.

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## Procedural Matters

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silverdale and Cleveleys. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There are 3 admissible objections to report SDC5. The other 2 objections are considered separately. There are various representations which refer to the section of the trail considered in this report and these are commented on within this report.
3. I carried out a site inspection on 13 August 2020 accompanied by [redacted], representatives from NE and a representative from Lancashire County Council.

## Main Issues

4. 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 a route for the whole of the English coast which:
  - (e) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (f)(except for the extent that it is completed by ferry) passes over land which is accessible to the public.

5. The second objective is that, in association with the English coastal route ("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 coastal route or otherwise. This is referred to as the coastal margin.
6. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
  - (g) the safety and convenience of those using the trail,
  - (h) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (i) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
7. 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.
8. NE's Approved Scheme 2013<sup>8</sup> ("the Approved Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
9. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

10. It is proposed that the trail from SDC-5-S047 to SDC-5-S050 would follow the top of the embankment adjacent to Pilling Marsh. At SDC-5-S050 the embankment falls within an area of land owned by the objectors and is not an existing walked route. The landward edge of the top of the bank would be specified as the landward boundary of the margin.
11. Access to the trail would be excluded between September 1 and March 31 each year by direction under section 26(3)(a) of the Countryside and Rights of Way Act 2000 (CROW 2000) to prevent disturbance to birds, and between April 1 and August 31 each year people would be required to keep dogs on leads, also in order to prevent disturbance to birds. An alternative route would be provided which would include Fluke Hall Lane.
12. Access to the saltmarsh and mudflat in the coastal margin seaward of the trail would be excluded all year round by direction under section 25A of CROW 2000 as the area is unsuitable for public access. Access to land in the coastal margin not covered by the section 25A direction would be excluded all year round by direction under S26(3)(a) CROW 2000 to prevent disturbance to birds.

### **The Objection**

13. The objectors state that the area landward of the proposed trail, which is an SSSI, is currently a haven for mammals such as deer, badgers and foxes as it is quiet

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<sup>8</sup> Approved by the Secretary of State on 9 July 2013

and that allowing walkers and dogs will disrupt the protected space. Farming policy is to maintain areas such as this. Although they note that it is planned that dogs will be kept on leads, the objectors query how that would be enforced.

14. The objectors also point out that there is already a path/route in use which avoids their land and has been used for the 32 years they have lived in the area. Walkers leave the sea wall via a track near Wheelbreck Pool, walk along Fluke Hall Lane, and then rejoin the sea wall where Fluke Hall Lane meets the coast. The continued use of that route would enable the objectors to maintain the peaceful, undisturbed haven for mammals and birds.

### **The response by Natural England**

15. Under NE's proposals there would be no new access rights to the landward side of the trail. NE also intends to replace the existing fence at the landward base of the embankment which would further deter walkers from leaving the trail.
16. The published Habitats Regulation Assessment and Nature Conservation Assessment concluded that there would be a risk of disturbance to protected species of birds as a result of the proposals and NE has therefore concluded that it is necessary to exclude the new access rights on the trail itself between 1 September and 31 March each year. An alternative route along Fluke Hall Lane has been proposed in combination with the exclusion.
17. Between 1 April and 31 August each year, access along the embankment will be permitted although all dogs must be kept on a lead. The access authority will have powers to manage new coastal access rights, including control of dogs.
18. The majority of the default coastal margin (saltmarsh) seaward of the trail will be subject to a direction to exclude access all year round, if approved.
19. The route proposed by the objector forms part of the alternative route (to be used whenever there is an exclusion affecting parts of the main route). However, NE does not believe that it complies with the criteria set out in the Approved Scheme in relation to the choice of main route. In particular, it is not particularly close to the sea nor does it provide views of the sea (whilst views seawards from the proposed route are excellent). It would also create an extended area of default coastal margin (ie all land between the trail and the seaward extent of the foreshore), including land owned by the objectors, which would then be subject to new access rights.
20. NE considers that the proposed alignment is entirely consistent with the advice in the Approved Scheme, in particular paragraph 8.21.4. This states that land covered by flood defence works and sea defence works is not excepted land. On a defended coast, the trail may therefore be aligned along the flood bank or barrier where it is safe, suitable and convenient for public access on foot.

### **Matters arising at and following the site visit**

21. The route proposed by [redacted] makes use of a track by Wheelbreck Pool which leads from the embankment to Fluke Hall Lane. NE pointed out that the track is not a public footpath and I saw signage consistent with this at my site visit. NE stated that access along it and the embankment is permitted under an agreement between Lancashire County Council and the Environment Agency who own the

land and that the agreement will need to be amended as the restrictions in it do not accord with those proposed for the trail. Following the site visit I was provided with a copy of the agreement.<sup>9</sup> It confirms what I was told at the site visit.

22. [redacted] stated that the whole field landward of the proposed trail has previously been used for clay pigeon shooting and they expressed concern that they may be prevented from carrying out such activities in the future. NE made it clear that, if necessary, it would be possible to ask for a direction excluding public access on the days that shooting was taking place and I agree.

### **Representations and NE's comments on representations**

23. The Lancashire Local Access Forum requests, in relation to this and other parts of the trail, that the proposed exclusion period of 7 months each year be reconsidered as they feel that it is excessive. They refer to the information presented by NE with regard to non-breeding birds and, although having no expert evidence to present, state that they do not see any well-researched evidence presented with the report to support the proposals. Otherwise they state that proposals are very sound.
24. NE states that the proposed exclusion is necessary to protect birds roosting and feeding in this vicinity and represents the least restrictive measure to mitigate against the risk of disturbance. NE also points out that, although the exclusion is for nature conservation purposes, these sections of the trail are also affected at certain times of the year by wildfowling and other shooting operations. If there was ever a need to review and change the proposed nature conservation directions, NE would also need to consider what other access management measures might be necessary in order to prevent disturbance to quarry, danger to the public or disruption to the activity.
25. A representation from Armitstead Barnett on behalf of J Kellet and Sons points to inconsistencies in NE's proposals but is not specific to route section SDC-5-S050.
26. The Ramblers', in referring to SDC-5-S047 to SDC-5-S051, state that currently access is available for about 8 and a half months of the year from Easter to Boxing Day and that NE is proposing to reduce it to 6 months. It should be noted however that, at present, there is no public access to the embankment at SDC-5-S050.

### **Discussion and Conclusions**

27. The proposed route adheres to the periphery of the coast. It is situated on top of an embankment and provides excellent views of the sea. It is convenient, particularly given that the adjacent section of trail is also situated on top of the embankment. By contrast the route proposed by the objectors, and the alternative route, are located further inland, are less convenient and do not provide views of the sea.
28. I note the objectors' interest in nature conservation and their concerns about the presence of dogs. However, there would be no new access rights landward of the

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<sup>9</sup> Agreement dated 21 August 1984 between Lancashire County Council and North West Water Authority under the National Parks and Access to the Countryside Act 1949 relating to land at Pilling



embankment. It is also a requirement that dogs be kept on leads. Although I accept that not all owners always comply with such requirements, the fact that it is a requirement and the presence of a fence at the landward base of the embankment, makes it unlikely that walkers, or their dogs, would stray into the objectors' field. If a problem did arise the matter should be brought to the attention of the access authority.

29. I consider that the proposed route complies with the criteria set out in the Approved Scheme and that the proposals do not fail to strike a fair balance.

**Recommendation**

30. 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 objection. I therefore recommend that the Secretary of State makes a determination to this effect.

*Alison Lea*

**APPOINTED PERSON**