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

by A Blicq BSc (Hons) MA CMLI

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

Date

Marine and Coastal Access Act 2009

Objections by [redacted], and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Combe Martin to Marsland Mouth

Site visit made on 22 June 2021

File Ref: MCA/CMM8/1

Site visits made on 22 June 2021 and 6 October 2022

File References: MCA/CMM4/O/1/CMM0584 and MCA/CMM/VR11/O/1/CMM1348

**Objection References: MCA/CMM4/O/1/CMM0584 and
MCA/CMM/VR11/O/1/CMM1348**

Cock Rock, Croyde to Velator

- On 15 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs (Secretary of State) under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection to Report CMM4 Cock Rock, Croyde to Velator was made by [redacted] on 9 March 2020. The land in the Report to which the objection relates are route sections CMM-4-S001 FP, CMM-4-S002 RD, CMM-4-S003 and CMM-4-S004 RD, and specifically land adjoining Oyster Falls.
- The objection is made under paragraphs 3(3)(a), (b), (c), (d) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.
- On 3 March 2022 Natural England submitted a Coastal Access Variation Report to the Secretary of State. This report set out a proposed variation to the original route.
- An objection to Coastal Access Variation Report CMM VR11, Saunton Down, Down End, Croyde was made by the [redacted] on 26 April 2022. The land in the Report to which the objection relates are route sections CMM-VR11-S006 and land seaward of that route section.
- The objection is made under paragraphs 3(3)(a) and 3(3)(c) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the Variation Report strike a fair balance.

Procedural Matters

1. On 15 January 2020 Natural England (NE) submitted a Coastal Access Report (Report) to the Secretary of State setting out proposals for improved access to the coast between Combe Martin and Marsland Mouth. The period for making formal representations and objections to the Report closed on 11 March 2020.
2. I have been appointed to report to the Secretary of State on objections made to the Report. This report includes an outline of submissions made by the objectors, Mr and Mrs Hare, the responses of NE, and my conclusions and recommendation.
3. In addition to this objection there were a total of twelve representations regarding the proposed route. These are also considered within my reasoning.
4. I carried out a site visit on 22 June 2021 accompanied by representatives from the objectors and NE. Relevant points were clarified during the site visit, including the possible route of an alternative section of route, and following the visit, I requested confirmation of those points from the objectors and their agent, and NE.

5. In response to the suggestion that an alternative route might address some of the issues raised in the objection, on 3 March 2022 NE submitted a Coastal Access Variation Report (Variation Report) to the Secretary of State. The period for making formal representations and objections to the Variation Report closed on 28 April 2022.
6. I have been appointed to report to the Secretary of State on objections made to the Variation Report. This report includes an outline of submissions made by the [redacted] the responses of NE, and my conclusions and recommendation.
7. In addition to this objection there were a total of six representations regarding the route set out in the Variation Report. These are also considered within my reasoning.
8. I carried out a further site visit on 6 October 2022 accompanied by representatives from the [redacted], NE and a Rights of Way Officer from Devon County Council (DCC). The representative from DCE was invited to set out the objections to the proposed variation.
9. As all the sections of route referred to in this report have the prefix CMM, I have used the remainder of the reference only hereafter.
10. The objection from [redacted] states that the sections of proposed trail to which the objection relates are 4-5001FP, 4-5002RD, 4-5003 and 4-5004RD. However, I have presumed that this is a misreading of the base map and that 'S' has been read as '5' in error.

Main Issues

11. 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.
12. 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 whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path (ECP).
13. 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.

14. 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.
15. NE's Approved Scheme 2013, approved by the Secretary of State on 9 July 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 Variation Report.
16. 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 – Report CMM4

17. The original Report proposed that Sections 4-S001 FP, 4-S002 RD and the western end of Section 4-S005 FP would follow the existing route of the South West Coast Path (SWCP). Proposed Sections 4-S003 and 4-S004 RD, which would link Sections S002-FP and S005-FP, would be a new route which would necessitate the building of a new path to the west of Croyde Road to an opening directly opposite the entrance to Section S005-FP on the other side of the road. This route had the advantage of relocating the crossing of Croyde Road from a corner with poor visibility beside Chesil Cliff House, to a position where there was greater, albeit imperfect visibility. It also removed a section of 'on-road' walking that currently exists on this section of the SWCP.

The Objection to Report CMM4

18. The objection from [redacted] set out that the route would fail to accord with Article 8 of the Human Rights Act 1998 with regard to privacy and the protection of property; the loss of grazing land due to potential future roll-back; and an objection to the extent of coastal margin between Chesil Cliff House and Oyster Falls. The objectors suggest two alternatives, one requiring works to provide a verge at the existing crossing point and the second to provide an alternative route over Saunton Down. This would relocate the Croyde Road crossing for the ECP to the existing crossing at Down End.

Representations to Report CMM4

19. There were seven full representations in all. The representations from the Ramblers Association and the Devon Countryside Access Forum (DCAF), welcomed the removal of the requirement for on-road walking facilitated by the proposed new crossing location, although the Ramblers Association set out that traffic calming or a refuge would be needed at the proposed crossing point.
20. The DCAF made two further representations which raised concerns with regard to complex roll-back, signage and waymarking, and disability access. Two further representations from the DCAF were related specifically to sections of the proposed trail that were outwith the section under consideration here.
21. Of the five other representations, the comments from the South West Coast Path Association (SWCPA) supported the relocation of the Croyde Road crossing point. There was also a representation from the objectors which broadly reproduced the content of the objection. The other representations are concerned with other sections of the proposed trail.

Natural England's Response to the Objection, Report CMM4

22. The establishment of public access rights over land does not affect land ownership, and there is nothing fundamentally incompatible between the Human Rights Act 1998 and additional access rights, particularly as the duty at section 297 of the Act, requires NE to strike a fair balance between the interests of the public and owner/occupiers.
23. Moreover, land which is unsuitable for the application of access rights is automatically excepted under Schedule 1 to The Countryside and Rights of Way Act 2000, (CROW), the inherent limitation of the types of activities likely to be undertaken by the public as set out in Schedule 2 to CROW, and the ability of the NE to avoid and control unreasonable impacts arising from public access on the grounds set out in Part 1 Chapter 2 to CROW. Moreover, when the Act was taken through Parliament, Ministers were satisfied that the arrangements were compatible with human rights legislation.
24. The proposed trail would remove the need for walkers to traverse along approximately 100 metres of a narrow busy road, by providing a diagonal route up the bank between Chesil Cliff House and Oyster Falls to a small pedestrian refuge. NE accepts that there would be greater opportunities for overlooking of Oyster Falls than is currently the case and that it would not be possible to provide screening to entirely mitigate that concern.
25. With regard to roll-back, NE has taken and will continue to take all reasonable steps to discuss implications and options with all parties likely to be affected by roll-back. Moreover, information received from the Environment Agency indicates that the coastline would retreat by around 7 to 9 metres in this location over the medium term, that is, over a period of some 20 and 50 years. Even if the coastline retreated by that distance over that length of time, there would remain a distance of about 75 metres between the relocated trail and Oyster Falls.
26. [redacted] have suggested two alternatives for consideration. The first option would be to improve the existing route, through the provision of a verge or footway. However, this is precluded from further consideration by DCC as local topography would make this a very costly option.
27. The second option is that a new route is created from Down End car park, over Saunton Down and connecting with the ECP approximately 100 metres to the east of Chesil Cliff House. Having discussed this possible alternative route with the landowner, the DCE and DCC, NE have reached the opinion that if an agreement can be reached between the respective landowners, NE would support this option as a viable alternative to the original proposed trail. Although the trail would be further from the coast it would benefit from spectacular views. NE also concluded that the cost of this option could be less than that of the original route.
28. Map CMM4a does not identify any coastal margin. Nonetheless, NE has stated in its response that the small area of land that would fall within coastal margin as a consequence of being seaward of section 4-S003, is a steep scrub-covered bank which is inaccessible to walkers.
29. Additional land owned by the objectors would be brought into coastal margin if the proposed ECP route over Saunton Down was implemented. However, NE has

concluded that it is unlikely that walkers would attempt to access these fields, which are in any case fenced off. Furthermore, the existing SWCP would remain in use. Appropriate waymarking could ensure that the ECP and SWCP were easily identified, and users suitably directed.

Natural England's Response to the Representations, Report CMM4

30. NE welcomed the support for the removal of the current road crossing and the requirement for on-road walking, but set out that DCC had advised that Croyde Road is too narrow and too busy for the introduction of a verge or refuge.
31. With regard to signage and waymarking, and disabled access, NE will continue to ensure signage is clear and appropriate and will also discuss potential access improvements with DCC. NE's response to the objectors' representation is set out above.

Objection to Variation Report VR11

32. The Variation Report elicited an objection from [redacted] as well as six representations.
33. [redacted] set out that there had been a failure to undertake landowner consultation; the original proposals would route the ECP closer to the foreshore; the reasoning behind the proposed variations were subjective; that the variation would increase the number of road crossings; that the proposals would create a circular walk which gave users an opportunity to enter the coastal margin in an unrestricted manner; increased cost; poor accessibility and a failure to assess unexploded ordnance or the impact on biodiversity.
34. At the site visit [redacted] also raised a concern in relation to the likely increased use of what would be coastal margin land to the west and south-west of [redacted]. This would arise as [redacted] would be unlikely to maintain the existing fencing which separates the SWCP from adjacent fields. This could have an adverse effect on the privacy of occupiers of that dwelling.

Representations to Variation Report VR11

35. There are three full representations, from the Ramblers Association, DCC and DCAF. All three bodies are supportive of the variation. The Ramblers Association notes that members raised concerns in relation to road crossings in this area in representations to the original proposals, and support the safer road crossing. The elevated views and increased coastal margin are also welcomed.
36. The representations from DCC and DCAF have also suggested minor improvements to the proposed route and its links to existing tracks. Both bodies have raised concerns in relation to the potential steepness of the path across Saunton Down, but welcome the safer road crossing. DCAF has also raised a concern in relation to future erosion of the ECP, and the need for accessibility furniture and signage.
37. There are three other representations, from the SWCPA, an agent acting for the owners of Oyster Falls and a representative of the Down End car park.
38. The SWCPA comments that the variation would address its key concern in relation to the originally proposed road crossing, and adds concerns in relation to the surfacing

and gradient of the new path over Saunton Down. However, the SWCPA also sets out a concern that the views from Saunton Down would be similar to those enjoyed from adjacent sections of the ECP. This is considered to be a disadvantage of the proposed variation.

39. The owners of Oyster Falls broadly support the variation, notwithstanding that concerns are raised in relation to the need for improvements at the existing Down End crossing and a requirement for additional fencing on Section VR11-S003 to contain grazing animals. There are also requests for land seaward of Section VR11-S003 and the adjacent field, to be excluded from Coastal Margin. No reasons are given for this request.
40. The representative of the Down End car park has raised concerns in relation to maintenance of the path from the car park to the beach, future trail maintenance, the potential for conflict with farm machinery and pedestrians, and the need for access furniture and signage. There is also a request that the route be permissive. Other details are raised in relation to the use of an existing access rather than the creation of a gap in an existing bank. In addition, a request is given to remove the field adjacent to and below the car park from Coastal Margin to enable their use for events and overflow parking.

Natural England's Response to the Objection, Variation Report VR11

41. Email correspondence between NE and [redacted] provided with NE's comments on the objection, indicates that NE has repeatedly enquired as to whether [redacted] had any objections to the proposed route variation. This correspondence covers a period between January and October 2021. I conclude that there have been repeated attempts to engage with [redacted].
42. The route does not necessarily have to pass along land that is closest to the sea. The best route might be on elevated ground as views are better and the route will be less affected by coastal processes. Although the variation would allow elevated views of the coast, which is seen as weighing in its favour by most representations, the proposed variation has come about in direct response to concerns raised by various bodies and landowners in relation to highway safety.
43. The variation would remove a dangerous road crossing on Croyde Road by providing a crossing where there is a 30mph speed limit and better visibility. There would not be any increase in the number of road crossings. The variation also has the benefit of removing the overlooking concerns of occupiers of [redacted] as the original route would have allowed walkers to look directly into the living accommodation of that dwelling from a nearby and elevated section of path.
44. The benefits arising from elevated views are emphasised by the Ramblers Association, DCC and DCAF. The proposals also have the support of DCC, which is the highway authority and a range of traffic calming measures are being investigated in the vicinity of the Down End car park.
45. NE accepts that a combination of the variation to the ECP and the SWCP could be walked as a circular route but it would not be promoted as such. Moreover, a combination of topography, excepted land, existing field boundaries and vegetation cover will act as some deterrent to walkers taking short cuts.

46. With regard to the additional cost, NE has concluded that the additional expense is justified as it addresses some highway safety issues, ensures that walkers are not directed along a path that would cause a loss of privacy to the occupiers of Oyster Falls, and has the benefit of panoramic views.
47. The original route includes a long, stepped section alongside Chesil Cliff House and also involves walking around 100 metres on a narrow busy road, which would also pose significant mobility and accessibility issues.
48. No evidence has been provided in relation to unexploded ordnance and the bramble and gorse on Saunton Down have no statutory designation. Moreover, the clearance of the route could diversify the habitat which would be beneficial to other species.

Natural England's Response to the Representations, Variation Report VR11

49. NE and DCC are satisfied that although it has not been possible to undertake a topographic survey to date, Sections VR11-S005 and VR11-S006 could be built with a suitable gradient and surfacing. Having viewed the proposed routes at my visits I see no reason to disagree.
50. The issues raised in relation to maintenance of the existing track linking the Down End car park to the beach will be pursued accordingly. Further discussions will also be held with landowners in relation to the exact position of signage and gates.
51. NE accepts that the SWCP above the foreshore could be lost to coastal erosion and as it would not be part of the trail the route could not be rolled back. However, for the foreseeable future there would be two paths, the trail over Saunton Down and the SWCP. Any amendments to the existing SWCP would have to be dealt with through regular legislation relating to public rights of way.
52. With regard to the removal of some land from Coastal Margin, NE proposes that informal management such as fencing and locking gates, is likely to be the simplest solution. When the fields are needed for events or overflow car parks, the landowners may be able to apply for a direction to restrict or exclude access.

Discussion and Conclusions

53. At the site visit in June 2021, particular attention was paid to the potential for loss of privacy at [redacted], the difficulties of crossing Croyde Road and the practicability of future highway works to facilitate a formal crossing point which would be safer than that that currently exists. The proposed alternative route over Saunton Down was also discussed, and the proposed section leading from Down End car park walked by attendees of the site visit.
54. The original proposed route would result in intervisibility between walkers and a large expanse of glazing on the ground floor of [redacted], which appears to serve a large living area, as well as a small first floor window.
55. With regard to screening, and notwithstanding the legislative position with regard to the Human Rights Act 1998 and CROW, I agree with [redacted] that the degree of the potential overlooking arising from the original route could have an adverse impact on their living conditions.

56. It would be possible in principle to provide screening between the proposed trail where it approached the new crossing point. However, this is a very exposed coast. Although gorse and bramble appear to be well established, there is no tree cover. Even if trees or hedges could be established in the short term, the effects of salt and wind would limit growth. As such, planting is unlikely to be an option for screening, which would therefore have to take the form of a wall or fence or wall. This would need to be of some height to mitigate the overlooking and would in itself, be unsightly and intrusive in this context. Consequently, I am satisfied that effective or acceptable screening could not be provided.
57. Although the original route relocates the Croyde Road crossing, leading to an improvement on the current situation, visibility would remain at a sub-optimal level as there is another bend in the road to the north of [redacted]. Moreover, this stretch of road has a 40mph speed limit. The steepness of the bank immediately adjacent to the road appears to preclude any meaningful widening of the verge or provision of a refuge without major engineering works.
58. If proposed variation was implemented, users of the ECP would be able to cross Croyde Road beside Down End car park. This is within a 30mph zone and where there is far greater visibility. The variation would therefore have advantages in terms of road safety compared to the proposed route. It would also remove the concerns raised by the occupiers of [redacted] with regard to overlooking. The variation is supported by DCC and the Ramblers Association, DCAF and SWCPA, who all raised concerns in respect of the Croyde Road crossing set out in the original proposals.
59. Fields to the south-west of [redacted], which are in [redacted] ownership, are currently fenced. This ensures that users of the SWCP stay on the designated route. [redacted] noted that if the fields became part of the coastal margin there would be no reason to keep these fields fenced and that if the fences were not maintained, there could be unrestricted public access on land adjacent to the [redacted] plot. This could also raise issues of loss of privacy for occupiers of [redacted]. However, these are not concerns which have been raised by those occupiers in their response to the Variation Report. Moreover, even if this did occur, the overlooking would be of a lesser magnitude as walkers would not be directed along a particular route, and would be likely to be further from the house on flatter and lower land. As such, direct and close overlooking into [redacted] would be unlikely.
60. Moreover, it is unclear whether there is currently an incentive for [redacted] to maintain the fences. The land was not being used for livestock at either of my visits, and the fencing was installed by DCC as part of the SWCP works. I appreciate that the proposed alternative route over Saunton Down would increase the area of coastal margin within [redacted] ownership, but the extent of its use for grazing has not been clarified. Moreover, the field boundaries would act as informal barriers. Overall, I conclude that there is nothing before me to suggest that an increase in the land designated as coastal margin would result in an increase in trespass across this land.
61. [redacted] have raised concerns with regard to the extent of coastal margin for both the original and varied routes. For the original route, their objection does not identify why the designation of the small and inaccessible area seaward of section 4-S003

would be considered unreasonable by the objectors. I am unable to conclude that this land should not be within coastal margin.

62. Concerns have also been made with regard to the proposed extent of coastal margin at Down End as these fields are sometimes used for overflow parking or events. However, I see no reason why informal management, or applying for directions to restrict or exclude access could not address these concerns. Although the landowners have raised specific queries with regard to signage, maintenance, fencing and gates I am satisfied that these issues can be resolved with NE and/or DCC as appropriate.
63. With regard to future roll-back, I see no reason to doubt that NE would not take all reasonable steps to discuss the implications of roll-back should it be needed. Although I appreciate that the low cliff beside the SWCP is subject to active erosion from surface water runoff, I am satisfied that the speed of that erosion is insufficient to present a significant loss of grazing land or privacy to Oyster Falls, even in the long term.
64. The SWCP would remain in use. It might be the case that footpath users take a circular route along the proposed variation to the ECP over Saunton Down and then along the foreshore, following the SWCP. However, it is unclear why this should be advanced as an argument against the variation. I appreciate that a circular route would involve crossing Croyde Road close to Chesil Cliff House, as part of the existing SWCP, but the original proposal also involves crossing Croyde Road at a less than suitable location in highway safety terms. Moreover, there would still be use of the SWCP and the existing crossing point adjacent to Chesil Cliff House.
65. One of the aims of the ECP is to generate additional footfall to these coastal areas. There is no evidence before me to suggest that at least a proportion of the increased footfall would not follow the proposed varied route over Saunton Down. This could be because walkers wished to avoid an unnecessary crossing of Croyde Road, or merely because this would be the approved and promoted route. As such, there would be reduced use of a Croyde Road crossing near Chesil Cliff House or Oyster Falls than would otherwise be the case.
66. There is no evidence that unexploded ordnance poses a threat to the construction or use of the varied trail, or that its implementation would have an adverse impact on biodiversity or habitats.
67. It is not disputed by NE that the cost of the variation would be greater than that of the originally proposed route. However, given the likely improvements to safety, as well as the benefits arising from continued privacy for occupiers of Oyster Falls, I am satisfied that the increased cost would be justified. It is acknowledged that the proposed variation would limit accessibility for people with mobility issues, but this is the case for much of the trail, as well as the originally proposed route.
68. The implementation of the proposed variation would have advantages in terms of road safety compared to the proposed route and would also remove the concerns raised by the occupiers of Oyster Falls with regard to overlooking. That there would be elevated views from the top of Saunton Down is also seen as an advantage by most of the bodies making representations. I appreciate that the original route allowed views from the low cliffs immediately above the foreshore, which give a very different experience. However, whilst I do not give particular weight to the elevated

views, I see no reason why these views should be seen as a disbenefit when considering the variation. For the original and the proposed variation to the route, I am satisfied that the public benefits would outweigh the harm identified by the objectors. Nonetheless, I have concluded that the variation would achieve a fairer balance between the interests of the public and the interests of persons with a relevant interest in the land.

Habitats Regulation Assessment

69. 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.
70. Case C-127/02 Waddenzee 7 September 2004 of the Court of Justice of the European Union, reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij, sets out a precautionary principle to be applied in such instances. This sets out that if the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt, then consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
71. A 'shadow' Habitat Regulations Assessment (HRA) entitled Assessment of Coastal Access proposals between Coombe Martin and Marsland Mouth, dated 15 January 2020, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations. The shadow HRA was provided to inform the Competent Authority's AA and has been considered in making this recommendation.
72. The HRA considered the potential impacts of the coastal access proposals on the following European sites: Bristol Channel Approaches SAC, Tintagel- Marsland- Clovelly Coast SAC and Braunton Burrows SAC. The HRA is considered to have identified the relevant sites affected by the proposals. As the proposals are not directly connected to or necessary to the management of the European sites, a HRA is required.
73. The HRA screening exercise for the stretch Coombe Martin to Marsland Mouth found that the proposals taken as a whole could have significant effects on some or all of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. With regard to the likelihood of in-combination effects, it was concluded that there would be no appreciable risks with the potential to act in combination with other proposed plans for projects.
74. However, the section of trail under consideration here, Cock Rock, Croyde to Velator, is outside the European sites identified above. As such, the qualifying features of sand dune habitats, open coastal habitats and lower plant species identified in the HRA would be unaffected by this variation. The proposed variation

would not have significant effects on those sites and their qualifying features, and consequently there is no need to carry out an AA.

Nature Conservation Assessment

75. The Nature Conservation Assessment (NCA) dated 15 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features which are not subject to consideration in the HRA.

76. Braunton Burrows SSSI is located to the south of the section of trail under consideration here and Saunton to Baggy Point Coast SSSI is located to the west. Neither SSSI would be affected by the variation. NE is satisfied that the proposals to improve access to the coastline between Cock Rock, Croyde and Velator would be compatible with its duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of NE's function. Consequently, in respect of the relevant sites or features, an appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.

Conclusion

77. Although I appreciate the concerns raised by [redacted], the variation would locate the Croyde Road crossing for the approved ECP to a location where there are lesser concerns in relation to highway safety and greater opportunities to implement traffic calming measures. The variation would also have the benefit of addressing concerns arising from overlooking compared to the original proposals. As such, I conclude that the proposals set out in the variation comply with the duty set out in Section 297 of the Act.

Recommendation

78. Having regard to these and to all other matters raised, I conclude that the proposals set out in the Variation Report do not fail to strike a fair balance as a result of the matters raised in relation to the objections. I therefore recommend that the Secretary of State makes a determination to this effect and adopts the proposed variation over the originally proposed route for this section.

A Blīcq BSc MA CMLI

APPOINTED PERSON



The Planning Inspectorate

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

by A Edgington BSc (Hons) MA CMLI

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

Date

Marine and Coastal Access Act 2009

Objection by [redacted], Woodland Trust

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Barton Wood

- On 15 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection to Report SMM8, Kipling Tors, Westward Ho! to Barton Wood was made by [redacted] of the Woodland Trust on 5 March 2020. The land in the Report to which the objection relates are route sections CMM-8-S045 and CMM-8-S046.
- The objection is made under paragraphs 3(3)(a), (c), (d) and (f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

Procedural Matters

1. On 15 January 2020 Natural England (NE) submitted a Coastal Access Report (Report) to the Secretary of State setting out proposals for improved access to the coast between Combe Martin and Marsland Mouth. The period for making formal representations and objections to the Report closed on 11 March 2020.
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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 whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path (ECP).

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, and;
- (c) 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 2013¹ (the Scheme) is the methodology for implementation of the ECP 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. It is proposed that the ECP should follow the existing route of the South West Coast Path (SWCP) along this section. Where the SWCP runs through a plot of ancient cliffside woodland owned by the Woodland Trust, the SWCP has permissive rights only.

12. At a point roughly mid-way along Section CMM-8-S045, the SWCP skirts the southern edge of Barton Wood (the wood). Although the definitive Public Right of Way (PROW) is nearby, its route lies to the north of the SWCP and shifts from one side of the fenceline to the other. Where the SWCP abruptly turns to the north-east to follow the western edge of the wood, there is a pedestrian gate in the fenceline. After a distance of around 25 metres the SWCP enters land owned by the Woodland Trust and proceeds broadly northwards along Section SMM-8-S046, parallel to and inside the Woodland Trust's western boundary. The SWCP leaves the land owned by the Woodland Trust around 185 metres north of the gate.

The Objection

13. The objection from the Woodland Trust concerns the proximity of the definitive PROW which runs a few metres to the west of and largely parallel to, the SWCP from the pedestrian gate at the entry to the wood. The Woodland Trust has suggested that the ECP should follow the walked route of the PROW.

14. The arguments advanced in support of this objection are that the ECP could lead to a significant increase in traffic within the wood, which could have an adverse effect on biodiversity and that should the ECP ever need to be closed or diverted, the administrative burden of the closure or diversion would fall on the Woodland Trust.

15. The second reason for the objection concerns the designation of the coastal margin in the vicinity of Woodland Trust's land ownership.

Representations

¹ Approved by the Secretary of State on 9 July 2013

16. There are three full representations from the Devon Countryside Access Forum (DCAF) which raise concerns in relation to complex roll-back, signage and waymarking, and disability access. These representations concern the entire stretch of the proposed ECP between Combe Martin and Marsland Mouth.

17. With regard to complex roll-back, NE states that where roll-back becomes necessary and local circumstances require detailed consideration, NE will continue to take reasonable steps to discuss implications and options with all the parties likely to be affected during planning and implementation.

18. With regard to signage and waymarking, and disabled access, NE will continue to ensure signage is clear and appropriate, and will also discuss potential access improvements suggested by DCAF with the access authority.

19. Only one of the other three representations relates specifically to Sections CMM-8-S045 and CMM8-8-S046. This is a representation from the Woodland Trust with regard to liability for land within the coastal margin. This is addressed in my discussion of the Woodland Trust's objection.

Response from Natural England

20. The SWCP was designated in 1978, eight years before the Woodland Trust purchased its landholding. DCC has subsequently maintained the currently walked path and taken responsibility for it as the SWCP.

21. There is no evidence of a walked route along the line of the definitive PROW, and at the gate, fingerposts and signage direct walkers of the SWCP through the wood.

Discussion and Conclusions

22. The PROW is in the vicinity of the SWCP as it proceeds along the southern edge of the wood, and both paths sit entirely outside the Woodland Trust's ownership. Where the PROW crosses the SWCP a few metres from the pedestrian gate into the wood, the onward route leading to the field adjacent to the western edge of the Woodland Trust land is blocked by fencing. There is no evidence that the PROW is currently walked and it appears that it has not been walked for some considerable time. Nor is there any evidence from localised topography or ground conditions that the route has been recently used.

23. Even if the route of the PROW was designated as the ECP, it is difficult to see how users could be required or persuaded to take that route when there is an established and alternative path through the wood. It also seems likely that users would prefer to walk within the woodland which has a distinct cliffside character, rather than along the field edge outside the wood.

24. Furthermore, as the SWCP is already a well-used and designated national trail it seems unlikely that traffic would significantly increase following the designation of the ECP. There is no evidence before me that the SWCP designation has led to the nuisance of wild camping or mountain biking, and in any case the Woodland Trust land is some distance from public car parks.

25. I recognise that designation of the SWCP route as the ECP would grant the route statutory rights of access. However, the route through the woods has been part of the national trail network since 1978 and it was indicated at the visit that DCC would continue to provide maintenance and management. Moreover,

Section 4.7.1 of the Scheme states that *Where there is an existing national trail along the coast – or another clear walked line along the coast, whatever its status – we normally propose to adopt it as the line for the England Coast Path so long as it is safe and practicable for the public to use; it can be used at all times and the alignment makes sense in terms of other statutory criteria and principles.* Section 4.7.2 states that *where the definitive line of a public right of way differs from the line already walked on the ground, it is the walked line that we normally propose, in discussion with the landowner, to use as the route.*

26. Although I understand that the designation of the ECP along the current walked route would increase the administrative burden on the Woodland Trust, I am not satisfied that this would be unduly onerous. In any case, a balance has to be struck between the interests of the Woodland Trust and those of the public. Even if a duplicate path was created along the definitive line there, is no guarantee that it would be used or that its use would prevent erosion or other damage within the wood.

27. NE's response to the Woodland Trust's original objection includes correspondence relating to the coastal margin. This sets out the statutory position that Section 2.3.4 of the Approved Scheme states that *land on the seaward of the trail automatically becomes coastal margin.* There is nothing before me to indicate that the Woodland Trust's land falls into any of the exceptions listed under Schedule 1 to the Countryside and Rights of Way Act or that the Woodland Trust advanced arguments in relation to grounds for which a direction to exclude access can be given. Even if the PROW route was used as the ECP, the wood would still be automatically included in the coastal margin as it would be seaward of the ECP.

28. There are sections of coastal margin landward of the proposed route on other sections of the route between Kipling Tors and Barton Wood, but not on the sections that affect the WT's ownership.

Conclusions

29. Although I appreciate the Woodland Trust's concerns, the ECP would follow the route of an existing and established trail. Given the wood's location and accessibility I see no reason why this should lead to increased traffic or nuisance, to the detriment of the woodland habitat. Moreover, the creation of a parallel and duplicate route along the line of the PROW would have capital cost implications associated with its establishment, as well as maintenance implications for DCC who would effectively be maintaining duplicate routes. It would not in any case necessarily divert walkers from the current route through the wood.

30. I conclude that the proposals comply with the duty set out in Section 297 of the Act.

Recommendation

31. Having regard to these and to all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. I therefore recommend that the Secretary of State makes a determination to this effect.

A Edgington

APPOINTED PERSON