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

by Mark Yates BA(Hons) MIPROW

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

Date 25 April 2023

Marine and Coastal Access Act 2009

Objections from Owners of Properties at Warren Close, Hayling Island

Regarding Coastal Access Proposals by Natural England

Relating to Portsmouth to South Hayling

Site visit made on 3 July 2018

File Ref: MCA/PSH/1-16

Objections Reference: MCA/PSH/1-16

Portsmouth to South Hayling

- On 19 July 2017 Natural England ("NE") submitted a Coastal Access Report ("the Report") to the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State") under section 51 of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act"), pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009 ("the 2009 Act").
- Objections to Chapter 3 of the Report, Langstone to South Hayling, have been made by [redacted]. In addition, objections have been received from [redacted] as Trustees of the Warren Close Trust.
- The land in the Report to which the objections relate is the area of coastal margin located generally to the north of Warren Close (route section PSH-3-SO15).
- The objections are made under paragraph 3(3)(e) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objections.

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

Procedural and Preliminary Matters

1. I have been appointed to report to the Secretary of State on objections made to the Report. This report includes the gist of the submissions made by the objectors, the response of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs contained in this report.

Objections considered in this report

2. On 19 July 2017 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Hampshire Coast between Portsmouth and South Hayling. The period for making formal representations and objections to the Report closed on 13 September 2017.
3. Objections were received from owners of properties on Warren Close which I deemed to be admissible. The objectors and an additional person [redacted] also submitted representations which broadly cover the same grounds as those contained in the objections. I have had regard to these representations in making my recommendation.
4. Additional representations and objections to the Report, which are not specific to the land at Warren Close, are addressed in a separate report to the Secretary of State (Ref: MCA/PSH/17-21). The other report also considers the Habitats Regulations Assessment undertaken by NE in relation to the land included in the Report. I have therefore not felt it necessary to address the same matters in this report.

Site visit

5. I carried out a site visit on 3 July 2018 when I was accompanied by a number of the objectors and representatives of NE and Hampshire County Council.

6. The proposed trail in this locality follows existing highways and passes the entrance to Warren Close. To the rear of the properties on Warren Close is land owned by the Warren Close Trust ("the Trust"). This land would form part of the coastal margin of the trail and is the subject of the objections.

Statutory Framework

7. 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.
8. The second objective is that, in association with the English coastal route, 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.
9. In discharging the coastal access duty there must be 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.
10. 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.
11. NE and the Secretary of State must 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.

The Case for the Objectors

12. They state that the Trust's land is specifically intended to facilitate sailing as a sport for the house owners and this satisfies paragraph 6.6.13 of the Scheme. The Trust permits residents to launch canoes, dinghies, ribs; to swim; to have barbecues; communal parties; children's games; and get-togethers, for instance communal recreation. It is considered that public access would restrict this carefree recreation.
13. It is outlined that the seats near to the water's edge are in memory of departed loved ones. Two of the residents sit on their benches in silent contemplation. Other residents respect their grief and need for quiet. It is asserted that the intrusion of strangers would compromise this reflective form of recreation.
14. In respect of paragraph 6.6.17 of the Scheme, their concern is that members of the public would not understand that they are not permitted to undertake particular activities.

15. The legislation restricts members of the public from doing many activities (such as access to saltmarsh/mudflat). They are concerned that this may cause conflict and it is unreasonable to expect the Trustees to challenge any infringement of the 2009 Act and to enforce it. Nor do they believe that it is a matter for the police to enforce.
16. In terms of paragraph 6.6.18 of the Scheme, reference is made to the Trust's land being prone to deep flooding. It is not possible to wade back to safety unless you can find the submerged bridges which cross the two drainage ditches. The area is stated to be flooded even at a 5.1 metre spring tide. Therefore, local knowledge is important for safe enjoyment of the land.
17. In relation to paragraph 6.6.26 of the Scheme, the nationally rare golden sapphire and the county scarce sea wormwood are present on the Trust's land. The land was therefore designated as a SINC (taken to be a 'SNCI' to denote a Site of Nature Conservation Interest).
18. They consider that there will be a major loss of privacy from the public having free access to look into the unfenced rear gardens.
19. It is asserted that the spreading room should be restricted to the start of the access to the Trust's garden (between Nos. 7 and 8 Warren Close), which is currently delineated by way of a notice stating, "*private property, no public access*". This would enable members of the public to experience the views of Langstone Harbour from Warren Close without disturbing the privacy of residents enjoying the Trust's garden or compromising the security of their boats, kayaks, tables and chairs.
20. They say the modified proposal is practicable and the notice presently in place could be modified to explicitly state that the access and foreshore are not part of the spreading room and that the notice marks the limit of the spreading room.
21. The modified proposal takes account of Section 297(2) of the 2009 Act as follows:
 - It is safe, convenient, provides views of the sea and does not interrupt the coastal route, instead only limiting the seaward extent of the spreading room.
 - It provides a fair balance between the interests of the public and persons with an interest in the land.
22. In addition to the above, [redacted] submit that the Trust's land is a garden, and it is therefore excepted land. Reference is made to Figure 22 of the Scheme which states "*A garden is usually enclosed land near a building. It typically includes areas of lawn, flower borders and other cultivated plants*".

Response from NE

23. They say the key principles of alignment and management as set out in the Scheme have been followed. Of particular relevance in this case are paragraphs 4.7.1, 4.8.5, 5.4.1, 6.6.20 and 6.6.5.
24. NE has previously advised that they agree that the land may be considered excepted land on the basis that: "*buildings and the area surrounding the buildings (known as curtilage), and land used as a garden or park, are excepted from coastal access rights*" (5.4.1).

25. However, it is asserted that NE cannot simply define any land as excepted, nor remove it from the coastal margin, on the following ground: *"The Order provides for any land seaward of the route to qualify automatically as coastal margin as a consequence of the route being put in that position"* (4.8.5).
26. The land in question is someway from the proposed route and not in the line of sight of any walkers using the proposed trail. Access to the land is via an alley between two houses at the end of a cul de sac. Additionally, the road sign includes the notice *"No access to foreshore"*. The access route to the land is roped off with a notice advising *"No public access"*. NE believes the existing management is sufficient to discourage access; however, the landowners have been advised that they are entitled to increase security if it is deemed necessary.
27. Paragraph 6.6.20 of the Scheme states that *"Directions cannot be used to avoid danger to the public from natural features of the landscape or natural processes"*. Further, in terms of the assertion that the land is excepted land, paragraph 6.6.5 specifies that *"Directions have no legal effect on land where coastal access rights do not apply including excepted land"*.
28. NE disagrees with the proposal to end the seaward extent of the coastal margin at the boundary of the pathway next to [redacted] Warren Close for the above reasons.
29. NE has conducted an Access and Sensitive Features assessment following the principle of protecting sensitive features. It does not believe there is a significant risk to the features described on the basis that the current signage advises that there is no public access.

Inspector's Conclusions

30. It is apparent that a proportion of the Trust's land and the adjacent land are proposed by NE to be the subject of a direction under Section 25A of the Countryside and Rights of Way Act 2000 to exclude public access. The objectors are also concerned about public access over the remainder of the Trust's land and how access can be restricted.
31. It is evident from the objections and my observations of the site that the land is used by residents of Warren Close and invited guests for a variety of non-commercial purposes [12]. Public access over the land would also impact upon the privacy of the residents [13 and 18]. However, NE accepts that the land in question can be viewed as excepted land by reference to the definition in paragraph 5.4.1 of the Scheme [24]. This is in line with the view of [redacted] [22]. I see no reason to take a different view.
32. In light of NE's acceptance that part of the Trust's land should be subject to directions and the remainder is predominantly or wholly considered to be excepted land, the issue of concern for the objectors appears to relate to how public access to the land can be managed [15]. However, in terms of whether directions could be issued for land management purposes, as NE highlights directions do not apply to excepted land [27]. In respect of the suggestion that the extent of the coastal margin is modified [19], it is evident that the Scheme does not permit this to occur [25].
33. I note the points made by NE regarding the proposed position of the trail in relation to the Trust's land [26] but this may not prevent some people from seeking to access the land. However, it cannot be determined that there will be a significant increase in the

amount of unauthorised access to the land. Ultimately, it is the landowner's responsibility to take action to deter such access to their land, including excepted land. There is the potential for signage and other measures to be implemented to deter unauthorised access.

34. I was pointed to the presence of golden sapphire and sea wormwood plants [17] during the site visit. NE does not believe there is a significant risk to these given the current signage advises that there is no public access [29]. It is also generally accepted that a proportion of the land is excepted land, and the remainder of the Trust's land is proposed to be the subject of directions to exclude access.

Recommendation

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

Mark Yates

APPOINTED PERSON



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by Mark Yates BA(Hons)MIPROW

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

Date 25 April 2023

Marine and Coastal Access Act 2009

Objections from [redacted] for the Hampshire and Isle of Wight Wildlife Trust and
[redacted] of the Langstone Harbour Board

Regarding Coastal Access Proposals by Natural England

Relating to Portsmouth to South Hayling

Objection Reference: MCA/PSH/17

Portsmouth to South Hayling

- On 19 July 2017 Natural England (“NE”) submitted a Coastal Access Report (“the Report”) to the Secretary of State for Environment, Food and Rural Affairs (“the Secretary of State”) under Section 51 of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”), pursuant to its duty under Section 296(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”).
- An objection to Chapter 2 of the Report has been made by [redacted], [redacted] and [redacted]. The land in the Report to which the objection relates is route section PSH-2-SO57 FP to PSH-2-SO58 FP (map 2h).
- The objection is made under paragraphs 3(3)(a), (b), (d) and (e) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified 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.

Objection Reference: MCA/PSH/18

Portsmouth to South Hayling

- On 19 July 2017 NE submitted the Report to the Secretary of State under Section 51 of the 1949 Act, pursuant to its duty under Section 296(1) of the 2009 Act.
- An objection to Chapter 2 of the Report has been made by [redacted] and [redacted]. The land in the Report to which the objection relates is route section PSH-2-SO60 (map 2h).
- The objection is made under paragraphs 3(3)(e) and (f) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified 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.

Objection Reference: MCA/PSH/19

Portsmouth to South Hayling

- On 19 July 2017 NE submitted the Report to the Secretary of State under Section 51 of the 1949 Act, pursuant to its duty under Section 296(1) of the 2009 Act.
- An objection to Chapter 2 of the Report has been made by [redacted] Ltd. The land in the Report to which the objection relates is route section PSH-3-SO60 (map 2h).
- The objection is made under paragraphs 3(3)(e) and (f) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified 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.

Objection Reference: MCA/PSH/20

Portsmouth to South Hayling

- On 19 July 2017 NE submitted the Report to the Secretary of State under Section 51 of the 1949 Act, pursuant to its duty under Section 296(1) of the 2009 Act.
- An objection to the Report has been made by [redacted] of the Hampshire and Isle of Wight Wildlife Trust. The objection relates to the entire route section between Portsmouth and South Hayling, specifically the mapping of coastal margin; and the Access and Sensitive Features Appraisal for this section of coast.
- The objection is made under paragraphs 3(3)(a) and (e) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified 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.

Objection Reference: MCA/PSH/21

Portsmouth to South Hayling

- On 19 July 2017 NE submitted the Report to the Secretary of State under Section 51 of the 1949 Act, pursuant to its duty under Section 296(1) of the 2009 Act.
- An objection to the Report has been made by [redacted] of the Langstone Harbour Board. The objection concerns the land below the mean high water included in Chapters 2 and 3 of the Report.
- The objection is made under paragraph 3(3)(e) of Schedule 1A of the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified 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 and Preliminary Matters

36. I have been appointed to report to the Secretary of State on objections made to the Report. This report includes the gist of the submissions made by the objectors, the responses of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs contained in this report.
37. I will consider the Habitats Regulation Assessment ("HRA") undertaken by NE when considering the objections to the Report. This should assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations").
38. No separate Natural Conservation Assessment has been undertaken given the conclusions reached in the Access and Sensitive Features Appraisal ("ASFA") continue to be applicable. Overall, NE were satisfied that the proposals to improve access to the English coast between Portsmouth and South Hayling complies with their duty to further the conservation and enhancement of the notified features of the Sites of Special Scientific Interest, consistent with the proper exercise of their functions.

Objections considered in this report

39. On 19 July 2017 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Hampshire Coast between Portsmouth and South Hayling. The period for making formal representations and objections to the Report closed on 13 September 2017.
40. Objections were received to the Report, which I deemed to be admissible. In addition to the objections, representations were made in relation to the Report and I have had regard to these in making my recommendation.
41. A separate report has been produced in respect of the objections and representations made specifically to route section PSH-3-S015 (reference: MCA/PSH/1-16).

Site visit

42. I carried out a site inspection on 3 July 2018 when I was accompanied by two of the objectors and representatives of NE and Hampshire County Council. In light of the general nature of some of the objections, the visit specifically focussed on land at Southmoor. I also walked a potential alternative route in this locality.
43. The section of the proposed route I walked commences from a car park at Southmoor Lane and proceeds by way of an existing public right of way (PSH-2-SO54-55) before following an unrecorded section of path (PSH-2-SO56), which is separated from the adjacent field to the east by a fairly substantial hedge. The route continues via a public right of way (PSH-2-SO57-58). I finished this part of the visit by walking over a section of Mill Lane (PSH-2-S060) through to the junction with Harbourside.

Statutory Framework

44. 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.
45. The second objective is that, in association with the English coastal route, 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.
46. In discharging the coastal access duty there must be 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.

47. NE's Approved Scheme 2013 ("the Scheme") is the methodology for implementation of the England Coast Path ("ECP") and associated coastal margin. It forms the basis of the proposals of NE within the Report.
48. NE and the Secretary of State must 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.

The Submissions of the Objectors

Objection by [redacted] (17)

49. The objection relates to land seaward of route section PSH-2-SO57-58. They say that the revised route across Southmoor is being pursued on the basis that the Environment Agency ("EA") Scheme will proceed, which is not certain at this stage. The proposed route inland would create public access over a designated site. They do not believe that NE has taken sufficient account of the implications of creating public access.
50. They state that English Nature paid for fencing to exclude the public and dogs from this sensitive habitat. There is now significantly more wildlife, but this progress will be reversed if it becomes a dog exercise area. It is astonishing how much disturbance a single loose dog creates, and owners seem unaware of this or just unconcerned.
51. If the EA proposals to flood Southmoor do proceed, the land will be of an identical character to the adjacent excluded area under section 25A of the Countryside and Rights of Way Act 2000 ("the 2000 Act").
52. They oppose the blanket magenta wash on Ordnance Survey ("OS") maps and feel it will create management problems and conflicts. Whilst they support the concept of a coast path with access to the shore, the main 'users' here will be of a local recreational nature and unconnected with the ECP.
53. They do not believe that the legislation intended or foresaw all the implications of this blanket coastal margin where the route is diverted inland. Once these problems became apparent, NE should have sought further clarification from Parliament before proceeding with the project.
54. It is suggested that Southmoor is excluded under section 25A of the 2000 Act, or the ECP is placed along the existing coastal footpath. No signage or fencing will offset the damage that will be created to this designated habitat if it is not excluded. It is particularly unhelpful considering the plans to create a reserve in this area in partnership with the local wildlife trust.

Objection by [redacted] (18)

55. The objection relates to the field to the south of Mill Lane (generally route section PSH-2-SO60). They point out that this small field is bounded by a steep unstable bank adjacent to the land which NE proposes to exclude. It does not provide safe access to the foreshore which is proposed for exclusion in any event under section 25A of the 2000 Act. Nor does the land provide any access to, or link with, any adjacent coastal access land.

56. They assert that this field should be excluded together with the adjacent foreshore on health and safety grounds. Failure to exclude it will encourage dangerous access down a steep unstable earth bank to the excluded land.
57. This land is only affected because the route diverts inland from the coastline to cross the river. They believe this is not an example of the spreading room intended by the legislation. NE should be adjusting it in accordance with the spirit and intentions of the legislation.
58. It is suggested that the section 25A area is extended to include this field as it is unsuitable for public access.

Objection by [redacted] (19)

59. The objection relates to land at the junction of Mill Lane and Harbourside (route section PSH-2-SO60). They do not consider this small piece of unenclosed land to be of coastal character and it does not link to or provide access to the coast or to any coastal access land. The landowner will need to enclose the site in order to retain control, which will be detrimental to the neighbourhood.
60. They state that this land is only affected because the route diverts inland from the coastline. It is not an example of the spreading room intended by the legislation. NE should adjust the access granted in accordance with the spirit and intentions of the legislation.
61. It was never the intention of the legislation to provide access to this type of land, where the route runs some distance from the coastline, and this should be recognised by its exclusion from the coastal margin.

Objection for the Hampshire and Isle of Wight Wildlife Trust ("the Trust") (20)

62. The objection relates to the entire route, specifically the mapping of coastal margin; and the ASFA.
63. The Trust does not accept that the HRA carried out as part of the ASFA can objectively conclude that the proposals will not cause a significant adverse effect on the Natura 2000 features given the evidence at hand. They are also not satisfied the ASFA states clearly that it fulfils the requirements of a systematic HRA. The ASFA appears to rely on the use of signage and fencing as mitigation measures. The ineffectiveness of these as mitigation measures are well documented, even by some of NE's own reports. Therefore, no certainty can be provided that the proposed mitigation measures will be effective. This means the Trust does not feel that, when applying, the precautionary principle, a conclusion of no likely significant (adverse) effect can be reached. The principle that a high degree of certainty regarding the effectiveness of mitigation measures must be present is well established and these proposals do not fulfil this test.
64. Whilst acknowledging that the Solent Recreation Mitigation Partnership (SRMP) exists, the ASFA states that the ECP proposals are complementary to the SRMP mitigation measures. The Trust questions the evidence that supports this assertion and would argue that the potential impacts of both the ECP and the development proposals that the SRMP seeks to mitigate should be assessed in combination. The SRMP measures are in place to facilitate the net increase in housing numbers within 5.6 km of the coast. The required number of rangers is based upon the length of

coastline that is accessible with priority areas identified where there are particularly high levels of activity and hence disturbance. These proposals seek to increase access to areas of coast that were previously inaccessible and will therefore result in a shortfall of warden numbers.

65. It is accepted that a relatively small number of people will use the path because it is the ECP, but by increasing access to parts of the coast that are presently inaccessible, it is likely that other users including local residents will use the path and associated spreading room more frequently. It is therefore inevitable that disturbance of designated coastal features will increase in these areas.
66. The Trust is opposed to the treatment of coastal margin in the following ways:
- The depiction of it on OS maps by way of a magenta wash when the land is excluded/excepted sends out a confusing message and conflicts with the aims of the SRMP. It will potentially increase pressure on designated sites, lead to potential conflict with coastal landowners/managers and increases the likelihood that people will access areas that are unsafe.
 - Whilst the exclusion of most of the coastal margin on the grounds in Section 25A of the 2000 Act is welcome, given the evidence provided by the ASFA, the exclusion should also be on nature conservation grounds. This is relevant at Langstone Harbour (PSH-1-SO12, PSH-1-SO01-3 and PSH-1-SO24-25) where there is no section 25A exclusion. Although there may not be a risk to public safety at certain times of the tide, in their opinion the ASFA fails to identify the risks to Natura 2000 features (coastal birds and vegetated shingle) from disturbance and abrasion.
 - The exclusion of the shingle ridges and islands at Langstone Harbour is supported. However, due to the shape and size of many of these features, a generous exclusion buffer should be mapped so that access does not cause disturbance.
67. They made it clear to NE that the Southmoor Reserve and adjacent land is currently being assessed for inclusion in the Regional Habitat Creation Scheme. This scheme seeks to create additional salt marsh habitats to compensate for those lost and to comply with the Habitats Regulations. The proposals will see a breach in the sea wall created and the site inundated at high tide which will render it unsafe for access and create a sanctuary for coastal birds. This section of the coastal margin should be excluded.
68. It is considered that the coastal margin should not be shown on OS maps by way of magenta wash and signage should be used to define where the land is accessible rather than where it is not. However, mitigation measures need to go further than signage and fencing. In addition, the SRMP's Definitive Mitigation Strategy provides a mitigation package including a range of measures which are required to offset the impacts of recreation arising from housing. For these mitigation measures to succeed, any new project such as the ECP should integrate with the SRMP suite of mitigation measures.

Objection for the Langstone Harbour Board

69. The objection relates to the land below the mean high water included in Chapters 2 and 3 of the Report.
70. Whilst the Report and the information shown on Map E within the overview of the Report make it clear that the intertidal area of Langstone Harbour is proposed to be excluded, it is understood that it will be represented on OS maps by way of a magenta wash. This will make it appear in the same way as land that is not excluded, and they consider this to be unacceptable.
71. Areas of coastal margin which are excluded should not be depicted in the same way as areas where people are encouraged to walk. The inclusion of a box in the corner of the map which states that not all areas coloured in magenta are suitable for access is insufficient and excluded areas should have the magenta wash removed. This will make the map clear and simple to understand and will assist in discouraging people from accessing areas that may compromise their safety as well as causing damage and disturbance to fragile habitats and species.

Responses from NE

The objection by [redacted] 17

72. The issue of the use of magenta wash is addressed in connection with the objection from the Langstone Harbour Board.
73. NE says the decision to use the existing public right of way (PSH-SO57-58), instead of the Solent Way is explained within section 2.2.3 of chapter 2 of the Report. The seawall at Southmoor is not in a good condition and will continue to be put under pressure in the future as a result of rising sea levels.
74. NE's revised comments of November 2021 outlines that when the Report was published the EA had planned a managed realignment under the Regional Habitat Creation Scheme for Southmoor. However, the EA has subsequently confirmed that it no longer plans to carry out the managed realignment or build the new seawall along the line of the route. Additionally, the existing seawall has now been breached and the public footpath on top of it has been temporarily closed on safety grounds.
75. It is proposed that Route sections PSH-2-5056 to PSH-2-5060 will run along the alignment included in the Report. Whilst it is recognised that PSH-SO57-58 can be muddy at times, NE believes it conforms to published standards for National Trails. However, NE intends to undertake surfacing works and install a boardwalk in places to aid walkers. In light of the circumstances, it is recognised that the coast and marsh in this area will be subject to erosion events. Therefore, it is proposed that the section of path will roll back in the future should the route become unviable due to coastal or geomorphological processes such as more frequent and significant coastal flooding.
76. It is also recognised by NE that there may be times when the proposed route is unsuitable, for instance due to flooding, and therefore it is proposed that in such circumstances the public could follow a designated optional alternative provided in accordance with Section 55C(4) of the 1949 Act. This would serve as an alternative to route sections PSH-2-5055 to PSH-2-5058 and is shown on a version of map 2h, which is attached to NE's comments of November 2021 (included as Appendix A to

this report). In essence, it runs from the car park on Southmoor Lane and continues via Penner Road to re-join the route near to Mill Lane.

77. An area of coastal margin to the south of sections PSH-2-5057 to PSH-2-5058 lies within the Portsmouth Harbour SPA (Special Protection Area) and Ramsar sites and is regularly used by several species of over-wintering waterbirds. NE now proposes for an exclusion to be applied to coastal access rights between 1 October and 31 March each year.

The objections by [redacted]

78. Sections 4.7.1, 4.8.5 and 6.6.12 of the Scheme are relevant to these objections.
79. The proposed route crosses the river at the beginning of section PSH-2-SO59, which is the first crossing point. It then follows an existing access along Mill Lane, before following the A3023 to Langstone Bridge. NE chose not to align directly south from Mill Lane after crossing the river, as a combination of homes and gardens and land unsuitable for access prevented any continuous route and would have involved going through the field in question.
80. NE did not feel there were valid grounds for a direction to restrict access based on their assessment of the land and its use.

Objection by the Trust (20)

81. NE says it has carefully considered the possible impacts on the European sites and the associated designated features that could be affected. They have taken an iterative approach to developing and refining the access proposals, including through discussions with the Trust and other relevant local organisations, and are satisfied that sufficient measures are included to mitigate the risks. The conclusions drew on the evidence and analysis presented in the ASFA and took account of any modifications to the proposals described in Part 5 of the ASFA. There is a degree of judgement involved in reaching this conclusion, and for some features it was not possible to entirely rule out that the ECP proposals could cause an effect. The nature of any leftover risks is described in the conclusion column of the table at section 6.1.1 of the ASFA and those risks were further considered as part of the in-combination assessment in section 6.1.2.
82. In reaching this conclusion, NE has taken account of the relevant conservation objectives for the European sites involved and their ecological characteristics. It is noted that:
- The stretch of coast is in a built-up area and the ECP makes use of established, promoted and regularly used paths. It is believed that encouraging people to use this route is compatible with nature conservation interests. Additionally, it is not considered that the proposals will greatly impact on use of these routes.
 - There are very few locations along this stretch of coast where a less well-known path or new section of path has been proposed for the route. The most significant change proposed is around the Fraser Range site where the impact of the route was fully assessed within the ASFA.
 - The legislation underpinning coastal access includes safeguards to limit access rights where necessary. In the Langstone Harbour area, NE have proposed

extensive directions to exclude access that will help to clarify that the area will not be used for recreational purposes.

83. NE has proposed new signage, fencing and improvements to existing signage at key locations to make the exclusions to the public clear. Experience of National Trails and other footpaths has shown that careful positioning of waymarker arrows at key locations greatly helps walkers stay on the path. Fencing where used appropriately and combined with other measures is an effective way of guiding visitors away from sensitive sites.
84. NE has worked closely with representatives of Bird Aware Solent to ensure that the proposals take account of and compliment this initiative. The Bird Aware Solent wardens provide a positive contribution to managing increased demand where there is existing access and raise awareness of the needs of wildlife and influence visitor behaviour. The ECP measures are focussed on ensuring that any practical changes of the proposals are compatible with the conservation objectives.
85. As a result of the engagement undertaken, and as described within the ASFA, any interpretation panels in sensitive wildlife areas will be designed in collaboration with Bird Aware Solent.
86. NE has carried out an in-combination assessment for the proposals, as required under the Habitats Regulations, and this is included in the report of the ASFA.
87. The issue of the use of magenta wash is addressed in connection with the objection from the Langstone Harbour Board.
88. In cases where there is more than one reason to restrict or exclude access; NE makes a direction according to the need that is most restrictive. Where it is decided that an area of salt marsh or mud flat is substantially unsuitable for public use, NE excludes access all year round. Therefore, in most cases, this need is the most restrictive and will be the ground cited in the direction.
89. Most of the islands in Langstone Harbour are surrounded by Section 25A exclusions, which can only be applied to saltmarshes and flats considered unsuitable for access. These directions would provide the buffer requested by the Trust.
90. Shingle islands and ridges in Langstone Harbour, including North Binness Island, Long Island and West Hayling Nature Reserve that are not part of the English Coast as defined by Section 300 of the 2009 Act (and therefore not eligible for trail alignment) may still be part of the coastal margin and subject to access rights. These shingle features are the ones that fall between the trail and mean low water. By contrast, islands surrounded by sea or estuarial waters neither fall into the margin nor are eligible for the ECP.
91. This means that the coastal access rights would apply by default to these features. NE considers it necessary to exclude these rights for the reasons set out in the revised and updated HRA. Maps of the affected areas are appended to NE's updated comments of November 2021 and also appended to this report (Appendix D). NE therefore intends to give a Section 26 direction to give effect to this exclusion from the commencement of coastal access rights over this stretch.

Objection from the Langstone Harbour Board

92. NE says that the decision as to how to depict the ECP and margin followed detailed discussions with the coastal access national stakeholder group. This group considered it imperative that the ECP and margin were both depicted.
93. Coastal margin will generally have, as a large component, land which is subject to coastal access rights but in some areas contains much land which is not subject to these rights. The depiction of coastal margin on OS maps is not a depiction of 'access land' per se, but a depiction of the status of the land, rather as national park boundaries are depicted on maps. This distinction was central to the decision to depict coastal margin distinctively on OS maps.
94. The depiction of coastal margin on OS digital and paper products with a magenta wash comes with a clear and concise explanation in the key.
95. The approach to depicting the ECP and margin on OS maps has been in use since 2014 and NE is unaware of any issues that have resulted in practice from this approach. This is despite the inclusion of some very substantial areas of developed or other excepted land within the magenta wash.

Inspector's Conclusions

OS maps

96. Concerns are expressed regarding the use of magenta wash to depict the coastal margin, irrespective of whether the land is excepted or subject to directions [17, 33, 35 and 36].
97. It is apparent that the convention for mapping coastal margin has been the subject of detailed discussions [57] and no issues are known to have arisen from its use elsewhere [60]. There also needs to be consistency in the way that coastal margin is depicted for different areas. I have doubts regarding whether this issue has a bearing on whether a fair balance is struck between the interests of the public and those with an interest in the land. Nonetheless, it would not in my view be appropriate to recommend a departure from the standard adopted convention. Additionally, some reassurance is provided by the detailed note in the key to the maps [59].

The coastal margin for route section PSH-2-5057-58

98. This matter is specific to the objections from [redacted] and the Trust. It relates to land seaward of this section of the route falling within coastal margin. Additional concerns are raised in some of the representations regarding the nature of the route in this locality. There has been further consideration of this section of the route in light of the changes in circumstances [39].
99. In respect of the suggestion that the route follows the seawall [19], there is no indication of when, or if, the current public footpath along the seawall will be restored. This footpath is currently closed on safety grounds and the EA do not plan to restore the seawall. It is apparent that the land in this area is prone to flooding. These matters will restrict the potential to place the path onto a revised alignment closer to the coast.

100. However, it appears that the exclusion now proposed by NE to exclude public access for a proportion of the year [42] is likely to address the concerns of the objectors regarding the public accessing this land. I note that NE have provided details of a response from [redacted] in support of the revised proposals to minimise the risk to wildlife. This 6-month exclusion to protect over-wintering birds also needs to be considered in relation to other measures such as fencing and signage [19].
101. When taken together the above measures should serve to address the concerns raised in the objections. The additional measures proposed for the ECP in this locality, including maintenance works, roll-back provision and an alternative route should also provide a suitable path for the public to use.

The coastal margin for route section PSH-2-S060

102. This matter is specific to the objections from [redacted]. The first objection relates to a field to the south of this section of the route and the second involves land at the junction of Mill Lane and Harbourside.
103. In terms of the inclusion of land seaward of the ECP, section 4.8.5 of the Scheme specifies that *"The Order provides for any land seaward of the route to qualify automatically as coastal margin as a consequence of the route being put in that position"*. This issue will apply to the field south of PSH-2-S060 and the land at the junction of Mill Lane and Harbourside.
104. NE chose the particular alignment as features prevented the ECP following a route to the south of Mill Lane [44]. No alternative route has been proposed or appears to be available in this locality. In the circumstances this alignment would be the most appropriate for the route. Nothing has been provided to justify the exclusion of the field under Section 25A of the 2000 Act [23]. NE do not consider there to be any valid ground for such a direction [45]. Nor is it apparent why the land near Harbourside would need to be enclosed [24].

The HRA

105. The Trust raised concerns about the HRA originally undertaken as part of the ASFA. However, a revised and updated HRA of July 2021 has been produced. Therefore, before making my recommendation, I felt it appropriate for the Trust to be asked if they have any additional comments to make in light of the revised HRA. However, no further comments were received in relation to this matter.
106. It seems to me that the issue involving the coastal margin at Southmoor has now largely been addressed [65]. The remainder of the objection relates mostly to issues addressed in the HRAs rather than site specific matters.
107. The Competent Authority is required to make an Appropriate Assessment 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 Appropriate Assessment 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 and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network.

108. The revised and updated HRA, providing the information to inform the Competent Authority's Appropriate Assessment, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations. The HRA considered the potential impacts of the coastal access proposals on the following sites of international importance for wildlife: the Portsmouth Harbour SPA; Portsmouth Harbour Ramsar; Chichester and Langstone Harbours SPA; Chichester and Langstone Harbours Ramsar; Solent and Dorset Coast SPA; Solent Maritime SAC; and Solent and Isle of Wight Lagoons SPA. Part B of the HRA provides information regarding these European Sites.
109. Part C of the HRA identifies some potential risks to the relevant qualifying features and concludes that the proposals for coastal access are likely to have significant effects (or may have significant effects) on some or all of these sites. Part D considers the risks in more detail (Section D3.2E at pages 62-66 relates to the Southmoor site), taking account of avoidance and mitigation measures incorporated into NE's access proposal and concludes that there will not be an adverse effect on the integrity of any of these sites either alone or in combination with other plans and projects.
110. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Portsmouth and South Hayling are fully compatible with the relevant European site conservation objectives. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts.
111. It is apparent that the Portsmouth to South Hayling section of the ECP will predominantly make use of existing public rights of way or other well used paths. It is generally accepted that there will be no widespread increase in use of these paths by virtue of them being designated as part of the ECP. There may be greater use in the future due to increases in residential developments in the surrounding area. Nonetheless, the issue of greatest concern by the Trust appears to be the potential increase in use of land that is currently inaccessible (the coastal margin). The Trust believes there will be an increase in disturbance in these areas [30]. Reference is also made to this leading to a shortfall in warden numbers [29].
112. NE considers that public use of the ECP is compatible with nature conservation interests. In essence this would require people to not stray into sensitive areas. On this issue, large areas are subject to exclusions and NE considers that the careful use of signage and fencing helps walkers stay on the path and away from excluded areas [48]. NE proposes to work with Bird Aware Solent in relation to the interpretation panels that would be placed in sensitive areas [50].
113. The Trust believes that exclusions should be made on natural conservation grounds [31]. However, where there is more than one reason to restrict or exclude access, NE makes a direction according to the need that is more restrictive [53]. Additionally, NE says that the requested buffer in relation to Langstone Harbour would be resolved by the intended directions [54].
114. The Secretary of State may also wish to note the representations from the Solent Recreation Mitigation Partnership ("SRMP") and the Royal Society for the Protection of Birds ("RSPB"). Reference is made by the SRMP to the rise in the number of

visitors to sensitive areas leading to increased disturbance to the overwintering birds. They do not have the resources to deal with any further elevation in visitor numbers. It is asserted that there needs to be a mitigation package in relation to the ECP to protect against the impact of increased visitor numbers it will create.

115. The RSPB says that given the pressures along this stretch the interpretation panels and online information might not be sufficient to ensure the access restrictions are properly followed. Measures to ensure compliance with restrictions should be pro-active and their effectiveness should be monitored. Reference is also made to the potential funding of wardens.
116. In response to these representations, NE states that they have thought carefully about the possible impacts on European sites and the associated designated features that could be affected. They believe the proposals are not likely to have a significant effect on a European site that gives rise to the real risk of an adverse effect on its overall integrity. In reaching this conclusion they have taken account of the relevant conservation objectives for the European sites and their ecological characteristics. It is proposed to erect new signage, fencing and undertake improvements to existing signage to make the exclusions to the public clear.
117. Overall, I consider that significant reliance should be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. Action is proposed by NE to exclude the public from sensitive sites and use physical barriers in the shape of fencing and signage to deter people from straying onto excepted land. These measures should be sufficient to make people aware of those areas they are not permitted to access. It seems to me that the degree of compliance by the public is a matter that should be monitored once the ECP is established in this area. If problems are identified with unauthorised access in specific locations NE can consider what further action is warranted.

Representations

118. Whilst the Secretary of State may wish to note the contents of the representations, she will be aware that the issue to be determined is whether the proposals strike a fair balance between the interests of the public in having rights of access on foot over land and the interests of any person with a relevant interest in the land. I have addressed the points raised in some of the representations when considering the objections and the additional matters are outlined below.
119. NE has responded to certain issues raised by the Hampshire Ramblers and the local access forum. Additionally, NE is confident a section of the route from just south of Langstone Road Bridge to Newtown will be available for the foreseeable future. However, should any change be required a variation report will be prepared.
120. NE points out in response to the representation from the Country Land and Business Association, that Part 5 of the Overview of the Report discussed the public benefit against private interests. Additionally, NE identified concerns with the ECP being designated as leading to the ferry terminal. NE also states that the existence of the Langstone Harbour waterside walk means the establishment costs involved are minimal. The estimated costs and further discussion on recreational benefit can be found in the Overview.

121. In respect of the point raised by the Eastern Solent Coastal Partnership, NE outlines that it will ensure works do not interfere with ongoing beach management.

Recommendation

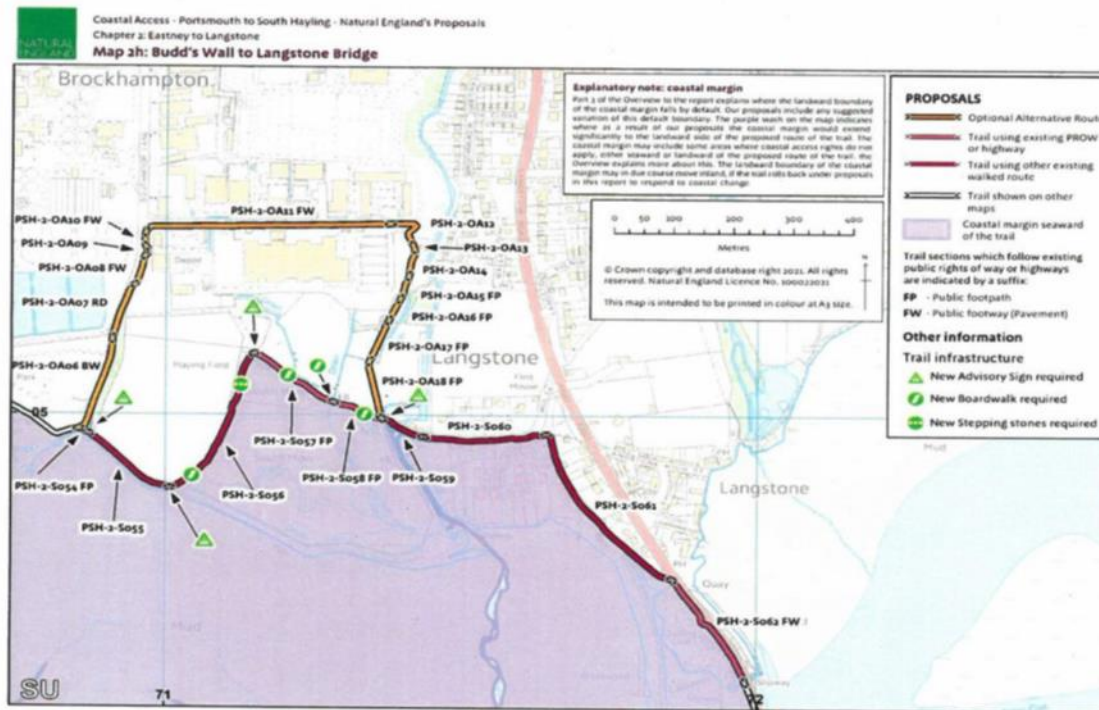
122. In reaching a view, I have had regard to the revised proposals put forward by NE, which the Secretary of State will need to agree. No adverse comments have been received in response to the proposed revisions.
123. The proposed changes to the original scheme at Southmoor relate to the adoption of roll back provisions in the event that the route becomes unviable due to coastal or geomorphological processes [40]; the provision of an optional alternative to route sections PSH-2-5055 to PSH-2-5058 [41]; and a seasonal exclusion within the coastal margin of PSH-2-5057 to PSH-2-5058 [42]. Additional exclusions are proposed for shingle islands and ridges in Langstone Harbour [55-56]. Maps showing the proposed alternative route at Southmoor and the proposed new directions in this area are included as Appendices A and B respectively. Appendix C outlines the proposed changes to the Report at Southmoor with C(i) addressing the rollback provisions and C(ii) the optional alternative route. The additional proposed exclusions are included as Appendix D.
124. With the modifications outlined above, 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.

Mark Yates

APPOINTED PERSON

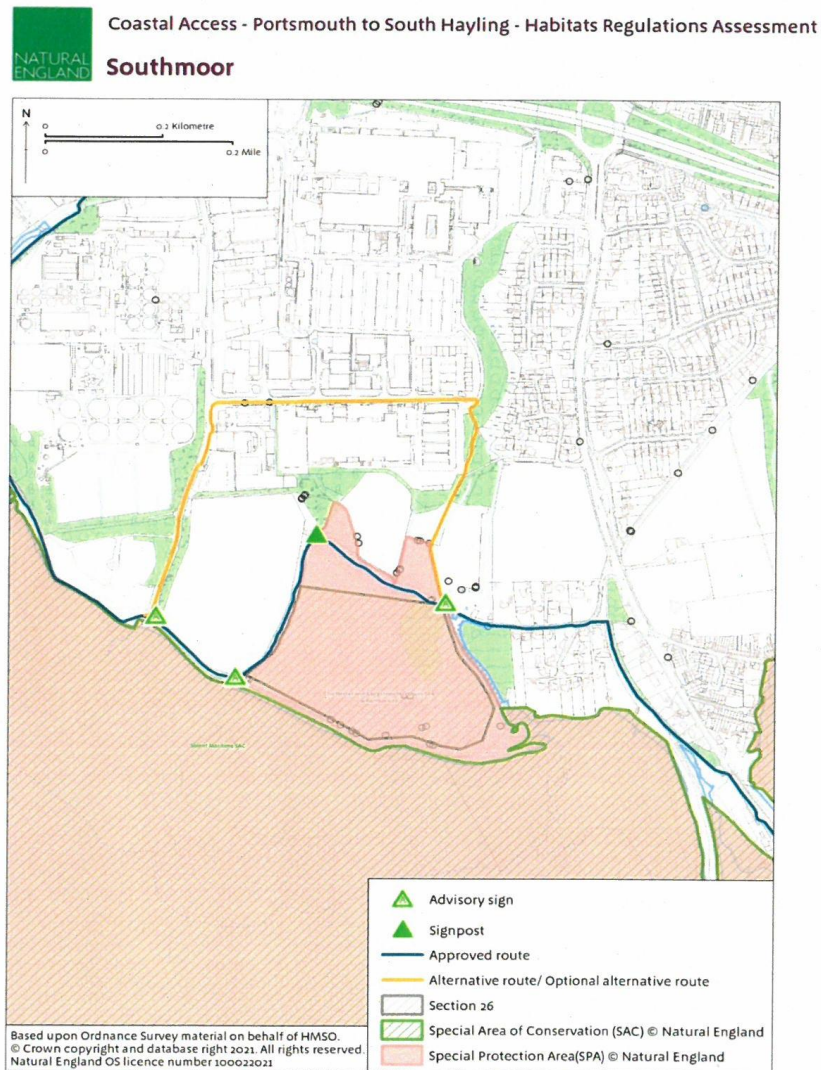
Appendix A

3.4a: Map 2h, showing the proposed modified alignment



Appendix B

3.4b: Map 2i, showing the newly proposed s26(3)(a) direction map – taken from the Habitats Regulation Assessment



Appendix C(i)

3.5: Amended Section Details: Map 2h – Budd's Wall to Langstone Bridge

Key notes on table:

1. Column 4 – 'No' means no roll-back is proposed for this route section. 'Yes – normal' means roll-back is proposed and is likely to follow the current feature (e.g. cliff edge/beach) for the foreseeable future as any coastal change occurs.
2. Column 5a – Certain coastal land types are included automatically in the coastal margin where they fall landward of the trail if they touch it at some point. The relevant land type (foreshore, cliff, bank, barrier, dune, beach, flat or section 15 land – see Glossary) is shown in this column where appropriate. "No" means none present on this route section.
3. Columns 5b and 5c – Any entry in these columns means we are proposing to align the landward boundary of the coastal margin on this route section with the physical feature(s) shown in 5b, for the reason in 5c. No text here means that for this route section the landward edge of the margin would be that of the trail itself - or if any default coastal land type is shown in 5a, that would be its landward boundary instead.

1	2	3	4	5a	5b	5c	6
Map(s)	Route section number(s)	Current status of route section(s)	Roll-back proposed? (See Part 7 of Overview)	Landward margin contains coastal land type?	Proposal to specify landward boundary of margin (See maps)	Reason for landward boundary proposal	Explanatory notes
PSH 2h	PSH-2-S056	Other existing walked route	Yes - normal	No			
PSH 2h	PSH-2-S057	Public footpath	Yes- normal	No			
PSH 2h	PSH-2-S058	Public footpath	Yes - normal	No			

Appendix C(ii)

3.5a: Alternative routes and optional alternative route details: Map 2h – Budd's Wall to Langstone Bridge

1. Column 4 – 'No' means no roll-back is proposed for this route section. 'Yes – normal' means roll-back is proposed and is likely to follow the current feature (e.g. cliff edge/beach) for the foreseeable future as any coastal change occurs.
2. Columns 5a and 5b – An entry in either or both of these columns denotes a proposal to align the seaward or landward boundary (as the case may be) of this section of the alternative route strip with the physical feature(s) shown. No text in the column means no such proposal, meaning that the edge of the alternative route strip would be at the default width of 2 metres on the relevant side of the route's centre line.

1	2	3	4	5a	5b
Map(s)	Route section number(s)	Current status of route section(s)	Rollback Proposed? (See part 7 of Overview)	Proposal to specify seaward boundary of alternative route strip	Proposal to specify landward boundary of alternative route strip
PSH 2h	PSH-2-OA006	Public bridleway	No		Road
PSH 2h	PSH-2-OA007	Public highways	No		Road
PSH 2h	PSH-2-OA008	Public footpath (pavement)	No		Pavement edge
PSH 2h	PSH-2-OA009	Other existing walked route	No		
PSH 2h	PSH-2-OA010	Public footpath (pavement)	No		Pavement edge

1	2	3	4	5a	5b
Map(s)	Route section number(s)	Current status of route section(s)	Rollback Proposed? (See part 7 of Overview)	Proposal to specify seaward boundary of alternative route strip	Proposal to specify landward boundary of alternative route strip
PSH 2h	PSH-2-OA011	Public footpath (pavement)	No		Pavement edge
PSH 2h	PSH-2-OA012	Other existing walked route	No		Path
PSH 2h	PSH-2-OA013	Other existing walked route	No		Path
PSH 2h	PSH-2-OA014	Other existing walked route	No		
PSH 2h	PSH-2-OA015	Public footpath	No		
PSH 2h	PSH-2-OA016	Public footpath	No		
PSH 2h	PSH-2-OA017	Public footpath	No		
PSH 2h	PSH-2-OA018	Public footpath	No		

Appendix D

