



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

by [redacted] BSc(Hons) MRTPI MCIEH DMS

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

Date 6 June 2022

Marine and Coastal Access Act 2009

Objections by [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Wallasea Island to Burnham-on-Crouch

Site visit made on 7 December 2021

File Refs: MCA/WIB2/0/1, MCA/WIB2/0/2

**Objection A - Ref: MCA/WIB2/0/1
[redacted], Wickford**

- On 29 January 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 5 March 2020 to Report WIB2, Ferry Road, Hullbridge to Hawk Hill, Battlesbridge, has been made by [redacted]. The land in the Report to which the objection relates is route section WIB-2-S028 (Map 2b).
- The objection is made under paragraph 3(3)(a) and (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 Report WIB2, specifically in respect to the trail section WIB-3-S028, do not fail to strike a fair balance.

**Objection B - Ref: MCA/WIB2/0/2
[redacted], Chelmfords Road, Wickford**

- On 29 January 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 23 April 2020 to Report WIB2, Ferry Road, Hullbridge to Hawk Hill, Battlesbridge, has been made by [redacted]. The land in the Report to which the objection relates is route section WIB-2-S029 to WIB-2-S038 (Map 2b).
- The objection is made under paragraph 3(3)(a) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection..

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report WIB2, specifically in respect to the trail sections WIB-2-S029 to WIB-2-S038, do not fail to strike a fair balance.

Procedural and Preliminary Matters

1. The Coastal Access Reports (WIB1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between Wallasea Island and Burnham-on-Crouch.
2. The period for making formal representations and objections to the Reports closed on 25 March 2020. Three objections were received in total from [redacted] and [redacted] within the specified timescale, all of which were determined to be admissible. Objection MCA/WIB3/0/2 to route section WIB-3-S008, made by [redacted], was withdrawn in a letter dated 16 November 2021.
3. I have been appointed to report to the Secretary of State on the remaining two objections (references MCA/WIB2/0/1 and MCA/WIB2/0/2) which relate to Report WIB2. In addition to the objections, a total of four representations were received and these are considered where relevant.
4. I carried out site visits to view the route section(s) in each objection on 7 December 2021 in the company of the relevant objector, a representative of NE and Essex County Council.

Site visit made on 7 December 2021

File Ref: MCA/WIB3/0/1

5. The letter dated 16 November 2021 sent on behalf of [redacted] contained additional information in support of his objection. This letter, amongst other matters, expanded on his proposals for an alternative route for the trail along the public footpath and Beeches Road which I viewed during the site visit. In the interests of fairness, I exercised my discretion and accepted this information. A further undated letter was received from [redacted] on 18 March 2022. Only the first part of this letter which contained photographs illustrating the alternative route and works that would be needed along it were accepted. NE was given the opportunity to comment on the information accepted and their response has been included in this report.
6. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to Wallasea Island to Burnham-on-Crouch might have an adverse impact on the Outer Thames Estuary Special Protection Area (SPA), Crouch and Roach Estuaries SPA and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). It has also produced a Nature Conservation Assessment (NCA) that should be read alongside the HRA. The sections of the trail covered by the objections in this report lie outside any of the international statutory designations covered by the Habitats Regulations Assessment.

Main Issues

7. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires Natural England (NE) and the Secretary of State to exercise their relevant functions to secure 2 objectives.
8. The first objective is that there is a route for the whole of the English coast which:
 - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

This is referred to in the Act as the English coastal route, but for ease of reference is referred to as “the trail” in this report.
9. The second objective is that, in association with the trail a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
10. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
11. 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.

12. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.
13. NE's Approved Scheme 2013 (the Scheme), which was adopted by the Secretary of State in July 2013, sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
14. My role is to determine whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

15. Wallasea Island and Burnham-on-Crouch are located on opposite sides of the River Crouch estuary. The estuary is dominated by muddy shorelines, saltmarsh habitats, low lying grazing, manmade flood defence banks ('sea walls') and long tidal reaches. The extensive area of saltmarsh and mudflats and their sheltered character attracts thousands of wintering shore birds to the area. Almost the entire length of the inter tidal estuary enclosed by the trail are designated areas of nature conservation (e.g. Essex Estuaries Special Area of Conservation, Crouch and Roach Special Protection Area & Ramsar).
16. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Crouch. On this basis it proposes that the trail should follow both sides of the River Crouch as far as the first bridge across the estuary which is Hawk Hill Bridge, Battlesbridge.
17. The sections of the proposed route that the objection A relates to are WIB-3-S028. Objection B relates to route sections WIB-3-S032 to WIB-3-S036. Given that all sections of the route referred to in this report have the prefix WIB-3, for ease of reference, I have referred to the trail sections by the S0 number only.
18. Route section S028 follows the edge of a field of pasture and would link the sea wall to Beeches Road. Route sections S032 to S036 follow Beeches Road towards the centre of Battlesbridge. These sections would lead trail users away from the sea wall and do not provides views of the estuary.

The Objections

19. Both objections have been made on the basis that the proposals in the report fail to strike a fair balance in relation to one or more of the grounds set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.

Objection A

20. The proposals in the report fail to strike a fair balance due to the position of the proposed route and the failure to include proposals for an alternative route.
21. The proposed route will conflict with farming, horse (stallion) grazing and shooting interests. There is an existing coastal path which is satisfactory along the sea wall. An alternative route also exists along the public right of way (PROW) at the junction of route sections S026 and S027 towards Beeches Road.

Objection B

22. The proposals in the report fail to strike a fair balance due to the position of the proposed route. It also is clear from the supporting text to the objection that the failure to include proposals for an alternative to the proposed route is also a ground of objection.
23. It is unclear how the field access (trail section S032) can accommodate trail users and large agricultural vehicles. There will be a significant impact upon the cultivation of productive arable land.
24. There is a concern in relation to trail section S034 that the impact of the trail on the priority grassland and arable land used by the Corn Bunting and Lapwing, which are priority species in the area, has not been considered.
25. Route section S036 is on land that has been promoted in the past for development and may well be promoted again in the future. To establish this route section NE would infill the ditch. This would increase the risk of flooding and is a matter of concern to residential neighbours.
26. Beeches Road is a busy road with a speed limit of 60mph. The route of the proposed trail would cross it twice (S030, S038). NE have not evidenced that such crossings would be safe and within highway regulations.
27. An alternative route is to connect trail sections S027 to S039 by continuing the route of the trail along the sea wall. Historically this section of the sea wall was accessible to all. An offer by the landowner of the marshes in 1963 to formalise public access did not proceed because of an objection from one of the residents of Timberwharf Cottages. Given that the sea wall is provided and maintained at public expense it is reasonable that this route is taken. NE state that this route would result in overlooking and a loss of privacy at 1 Timber Wharf Cottage. This could be overcome by a tall, close boarded fence or equivalent. This alternative route more closely follows the estuary and avoids the problems with agricultural machinery, impact on wildlife, flooding and highway safety that I have identified.

Representations

28. Essex County Council are wholly supportive of the England Coastal Path which will bring great benefits to the Essex coast through the economy, tourism and supporting our coastal communities, businesses and transport infrastructure.
29. Section 25 of the Countryside and Rights of Way Act 2000 allows public access to be restricted. A long section of sea wall appears to be wrongly included in the section 25 restriction north of S017 to S021. There are also errors to some trail sections (S029, S031 and S035) which should be identified as existing highway.
30. Ashingdon Parish Council is supportive of the proposed route as far as S028. After this point, rather than heading away from the estuary to Beeches Road, it should continue along the sea wall into Battlesbridge.
31. The Ramblers Association is in full support of the proposed route of the trail. The Disabled Ramblers support the proposed route of the trail and request that any infrastructure along the trail does not present access problems for those with a disability.

Natural England's comments on the objections

Objection A

Position of the proposed route

32. The large size of the field gives room for grazing animals and walkers to avoid each other. The dilapidated gates and fences to the field suggest that to date it has not been using for grazing stallions. We had offered to discuss the issue of fencing the alignment with regard to any livestock concerns but this was dismissed by the objector.
33. Following a meeting with the objector in his office in June 2019 NE invited him to a site visit on 16 September 2019. He did not attend. Based upon our engagement with the objector and our observations on the field's management we do not believe that there would be a conflict between public access and the way the land is currently managed.

Other route options

34. We considered other route options. These included the options suggested by the objector, namely, the sea wall between S028 and S038 and continuing section S026 southwards along the public footpath before turning westwards along Beeches Road. The sea wall option has problems with overlooking of a private house and static caravan. Potential problems also exist in relation to continuing the route due to excepted land at its western end by the bridge in Battlesbridge.
35. In relation to the other suggested option, the route heads away from the estuary earlier than is necessary and so reduces the views of the estuary. Given the nature of Beeches Road in terms of its width (including its verges), speed limit and forward visibility it would not be safe route for trail users. Should a path be engineered along the side of the road, the engineering work involved would be a considerable cost with little public benefit.
36. No alternative modification is proposed by NE.

Objection B

Position of the proposed route

37. The field access (trail section S032) is wide and it is used infrequently by vehicles. Should trail users come across vehicles there is space on either side of the entrance for trail users to safely wait. There is no need for the installation of any infrastructure to protect trail users.
38. In relation to trail section S034, to reduce the impact on arable land the trail will be limited to 1.5m in width. NE has carried out statutory assessments of the impact of the proposed route of the trail on wildlife. Lapwings are not birds that tend to make use of field edges. Corn buntings may frequent field edges and hedgerows but the location of the strip next to a main road is unlikely to offer sufficient interest to this species.
39. Should the land that trail section S036 passes over be developed in the future it will become excepted land to which there would be no coastal path access rights. In such a situation NE can submit a variation report to the Secretary of State to alter the

route of the trail to avoid the development. To establish trail section S036 the ditch would not be infilled. The route avoids the ditch.

40. The positions of the road crossings were chosen in consultation with the highway authority and are deemed to be safe owing to satisfactory visibility when crossing.

Other route options

41. We are unable to propose a more seaward aligned route in this location due to possible excepted land categories and judgements we have made related to privacy around properties (e.g. Rainbows End Essex Boer Goat Herd and Timber Wharf Cottages). The installation of a tall, solid fence on the sea wall to prevent overlooking would be impractical: it would not be in keeping with the landscape and would be damaged in strong winds.
42. No alternative modification is therefore proposed by NE.

Representations

43. NE will work with the County Council and amend its final report and maps to clarify the s25 restrictions and that route sections S029, S030, S031 and S035 are existing highway.

Discussion and Conclusions

44. The numbers quoted in brackets in this section indicates the source paragraphs in the report.

Objection A

Position of the proposed route (effect on grazing horses, farming and shooting)

45. Section S028 of the proposed trail leaves the sea wall and heads southwards along the eastern edge of a field of pasture towards Beeches Road. At the southern edge of the field it follows its edge westwards to the field access with Beeches Road.
46. Although the field was not in use on the day of the site visit photographic evidence of horses grazing the land on one of NE's previous visits has been provided. The Approved Scheme advises that widespread public access on land grazed by horses shows that the two are broadly compatible. Concerns about disturbance to horses usually relate to the presence of dogs. However, on land with coastal access rights, people are required to keep dogs on short leads. Furthermore, it is an offence under the Dogs (Prosecution of Livestock) Act 1953 to allow dogs to attack or chase livestock.
47. Horses quickly become used to the presence of visitors and are unlikely to be troubled by them, provided people behave responsibly and keep their distance. Public safety concerns can arise where there are stallions with a herd. In the absence though of any substantive submitted evidence on this matter that calls into question the temperament of stallions that use the field, there are no grounds for taking any action with regard to the trail section S028 and its management.
48. Exceptionally the trail may be aligned to avoid an enclosure in which horses are kept. However, this option will only be considered where the field is so small that it would

- be impossible for the horses and trail users to avoid each other. Given the large size of the field, that is not the case here.
49. Liability for injury caused by animals in certain defined circumstances exist. A combination of informal management techniques, e.g. warning signs not to approach or feed the horses and to keep dogs on leads in their vicinity, moving temperamental horses to land that is not publicly accessible where this is available, may limit the need for intervention in relation to the proposed path.
 50. Where NE decides that intervention is not warranted the Approved Scheme advises that they will be willing to reassess the situation if further evidence comes to light, or if experience of the operation of the coastal access rights indicates that intervention may be necessary.
 51. In relation to farming, no information has been provided as to what livestock the field is used for when horses are not present. Even so, other than to point out the liability that exists in relation to injury caused by animals, and the obligations under Health and Safety legislation not to endanger walkers, with the use of informal management techniques and the significant area of land that the objector owns in the locality, there are no substantive grounds for finding that his farming activities would be materially impinged.
 52. Similarly, in the absence of information regarding what shooting takes place when horses and farm livestock are not present, there are no grounds for finding that the routing of the trail around the edge of the field would impair this activity.

Objection B

Position of the proposed route

53. The field access (route section S032) is particularly wide and on the basis of the good condition of the ground it appears not to be in frequent daily use by agricultural vehicles. If trail users came across such vehicles entering or exiting the field, with the space available on either side of the entrance for trail users to safely wait, walkers and drivers would not come into conflict. As a result, infrastructure to protect trail users at this point would be unnecessary.
54. Beeches Road is a busy road with a speed limit of 60mph. In relation to the proposed route of the trail along its side, road safety assessments have been carried out by Essex County Council. Subject to, amongst other matters, the cutting back of overgrown vegetation to create a clear width for pedestrians along route section S029, and maintaining adequate visibility splays at the adjacent point the route crosses the road, the assessments found that the eastern part of the trail along this road would be acceptable. Similarly, in relation to the western end of the road the crossing point would also be suitable. This is because although located just before a busy T junction, the good visibility of oncoming traffic, lower speed limit along Hawk Hill / Chelmsford Road and the fact that turning vehicles often have to stop means that walkers can safely judge when to cross at this point.
55. Trail section S034 would pass along a field edge next to a hedgerow. To reduce the impact on the cultivation of arable land this section would be limited to 1.5m in width. NE advise that Lapwings are not birds that tend to make use of field edges but that Corn buntings may do so and that they may also frequent hedgerows. However, the

view of NE is that the location of S034 next to a main road is unlikely to offer sufficient interest to this species. As the organisation set up by government to conserve, enhance and manage the natural environment there is no good reason to doubt this assessment. It is also of note that the sections of the trail covered by the objections in this report lie outside any of the international statutory designations covered by the HRA [6] and that the HRA found that the proposed trail would not adversely affect the integrity of any European site [64].

56. If the land across which route section S036 crosses is developed in the future it will become excepted land to which there would be no coastal path access rights. If this was to occur NE will be able to submit a variation report to the Secretary of State to alter the route of the trail. In relation to flooding of this land, as the route avoids the ditch and the ditch would not be infilled to establish the route, flood risk would not be increased by this section of the proposed trail.

Objections A and B

Other route option – continuing along the sea wall

57. This alternative to the route sections between S027 and S040 would continue westwards along the sea wall to Hawk Hill Bridge. This route would have the advantage over the route proposed in the report as it would adhere to the estuary, providing clear views of it and some of the historic buildings along its northern shore towards the centre of Battlesbridge.
58. However, beyond the field through which trail section S028 passes the sea wall encounters the outer edge of development associated with Battlesbridge in the form of Rainbows End Essex Boer Goat Herd. Here within a field are static caravans, two of which are located close to the estuary. Owing to the proximity of the sea wall and its elevated height trail users would look down upon these units. This would result in a strong perception of overlooking and a material loss of privacy. Further along the sea wall would pass close to the flank of 1 Timber Wharf Cottage where a similar situation would occur. Beyond this a small business estate separates the sea wall from Hawk Hill Bridge. Due to its status as excepted land, where no coastal access rights exist, a diversion would be required in this area.
59. The erection of a tall, solid fence along the sea wall in the vicinity of the static caravans and 1 Timber Wharf Cottage would prevent overlooking. However, located on top of the sea wall in a flat landscape such a fence would appear incongruous and would harm the amenity value of the landscape.

Objection B

Other route option – continuing along the PROW and Beeches Road

60. This alternative route would continue the path southwards from route section S026 along the PROW to Beeches Road before continuing towards Battlesbridge and re-joining the proposed route at section S029. The national speed limit applies to this road and the section in question between S026 and S029 has limited forward visibility due to the bends in the road. With the co-operation of the objector in relation to the adjacent land that it is stated he owns, it may well be possible to create a route along Beeches Road that overcomes the highway safety concerns that exist along this part of the road.

61. However, section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to, amongst other matters, the desirability of the trail adhering to the periphery of the coast and providing views of the sea. This alternative would divert the trail away from the estuary earlier than is proposed in the Report and so would be contrary to this objective. Moreover, as the intervening land between the route and the estuary would become coastal margin it would increase public access rights to the objector's land.

Representations

62. In relation to the representations received, NE will review its final report and maps that identify excluded or restricted access to land within the coastal margin and will amend them as necessary to deal with any mapping errors present. With regard to the errors that are alleged to have occurred with some sections of the route identified as existing highway, NE acknowledges that it has incorrectly categorised the current status of certain route sections from S029 to S035 and will re-categorise them as existing highway in its final report.
63. Ashingdon Parish Council supports the alternative route for the trail along the sea wall after route section S028. This has been taken into account in the consideration of this matter [57-59].
64. The HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. Annex A provides information on this matter.

Conclusion

65. Having regard to these and all other matters raised, I conclude that NE's proposals for the route of the trail in the report do not fail to strike a fair balance as a result of the matters raised in relation to both objections. As a result, the option to recommend a different route to that proposed by NE is not available to me. Issues exist in relation to privacy with regard to the continuation of the route along the sea wall, and the route utilising the PROW and Beeches Road would be inferior to NE's proposed route [57-61].
66. Should circumstances and the assessment regarding the continuation of the route along the sea wall change in the future NE is able to review the alignment of the trail. If appropriate, NE could then prepare a variation report to the Secretary of State proposing that the route of the trail is changed.

Recommendations

67. In accordance with my conclusion, I recommend that the Secretary of State makes a determination to the same effect.

[redacted]

APPOINTED PERSON

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

Habitats Regulation Assessment

1. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE).
2. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
3. A 'shadow' HRA, dated January 2020, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and is recorded separately in the suite of reports. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation. The HRA considered the potential impacts of the coastal access proposals on the following European sites: Outer Thames Estuary Special Protection Area (SPA); Crouch and Roach Estuaries SPA and Ramsar site; Essex Estuaries Special Area of Conservation (SAC). The HRA is considered to have identified the relevant sites affected by the proposals. The proposals are not directly connected to or necessary to the management of the European sites, therefore a HRA is required.
4. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone'. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
5. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur, and the impact-effect pathways considered. Table 4 sets out the assessment of AEoI for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
6. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEoI from the proposals alone to determine whether they could give rise to an AEoI in combination with other plans or projects. In these circumstances, no AEoI was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the European sites considered either alone or in combination with other plans and projects.

7. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3.3). The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation objectives.
8. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
 - Physical damage to saltmarsh during establishment work, maintenance work and trampling by walkers which could result in long-term reduction in population and/or contraction in the distribution of Qualifying Features within the site.
 - More frequent disturbance to feeding or roosting waterbirds (non-breeding) following changes in recreational activities as a result of the access proposal, which could lead to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
9. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Coastal Access: NE's Approved Scheme 2013. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts.
10. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

11. The NCA, dated 22 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), a Marine Conservation Zone (MCZ) and an undesignated but locally important site, which are not subject to consideration in the HRA.
12. Relevant to this report are the Crouch and Roach Estuaries SSSI, the Cliff, Burnham-on-Crouch SSSI, the Blackwater, Crouch, Roach and Colne Estuaries MCZ and Kendal Park (Hullbridge Foreshore) Local Nature Reserve (LNR). NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs and that the access proposal is the one that is least likely to hinder the achievement of the conservation objective for the MCZ. In respect of the sites and features listed above, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.



The Planning Inspectorate

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

by [redacted] BSc(Hons) MRTPI MCIEH DMS

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

Date 11 May 2022

Marine and Coastal Access Act 2009

Objections by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Wallasea Island to Burnham-on-Crouch

Objection Ref: MCA/WIB3/0/1**[redacted], Battlesbridge and adjacent land**

- On 29 January 2020 Natural England submitted five Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 23 March 2020 to Report WIB3, Hawk Hill, Battlesbridge to Clementsgreen Creek, South Woodham Ferrers, has been made by [redacted]. The land in the Report to which the objection relates is route section WIB-3-S006 (Map WIB 3a).
- The objection is made under paragraph 3(3)(d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report WIB3, specifically in relation to trail section WIB-3-S006, do not fail to strike a fair balance.

Procedural and Preliminary Matters

13. The Coastal Access Reports (WIB1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between Wallasea Island and Burnham-on-Crouch.
14. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to Wallasea Island to Burnham-on-Crouch might have an adverse impact on the Outer Thames Estuary Special Protection Area (SPA), Crouch and Roach Estuaries SPA and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). It has also produced a Nature Conservation Assessment (NCA) that should be read alongside the HRA.
15. The period for making formal representations and objections to the Reports closed on 25 March 2020. In relation to Report WIB3 two objections were received within the specified timescale, both of which were determined to be admissible. However, one of the objections (reference MCA/WIB3/0/2) to route section WIB-3-S008 was subsequently withdrawn in correspondence dated 16 November 2021. I have been appointed to report to the Secretary of State on the remaining objection (reference MCA/WIB/0/3). In addition to this objection, a total of two representations were received and these are considered where relevant.
16. I carried out a site visit on 7 December 2021 accompanied by a representative of NE and Essex County Council.

Main Issues

17. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
18. The first objective is that there is a route for the whole of the English coast which:
 - (c) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and

Site visit made on 6 December 2021

File Refs: MCA/WIB4/0/1

- (d) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

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

19. The second objective is that, in association with the trail a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
20. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - (d) the safety and convenience of those using the trail,
 - (e) the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - (f) the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
21. 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.
22. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.
23. NE’s Approved Scheme 2013 (“the Scheme”) was approved by the Secretary of State in 2013. It sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE’s proposals within the Report.
24. My role is to consider whether or not a fair balance has been struck by NE between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

25. The proposed trail between Wallasea Island and Burnham-on-Crouch follows the estuary of the River Crouch to Battlesbridge. The estuary is dominated by muddy shorelines, saltmarsh habitats, low lying grazing marshes, manmade flood defence banks and long tidal reaches. The extensive area of saltmarsh and mudflats and their sheltered character attracts thousands of wintering shore birds to the area. Almost the entire length of the inter-tidal estuary enclosed by the trail are designated areas of nature conservation (e.g. Essex Estuaries SAC, Crouch and Roach SPA & Ramsar).
26. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Crouch. On this basis it proposes that the route of the trail should follow both sides of the River Crouch as far as the first bridge across the estuary which is Hawk Hill Bridge, Battlesbridge.

27. The section of the proposed route that the objection relates to is WIB-3-S006. Given that all sections of the route referred to in this report have the prefix WIB-3, for ease of reference, I have referred to the trail sections by the S0 number only.
28. The proposed route section S006 is along Maltings Road, a narrow no through road which links development on the outer edge of the small settlement of Battlesbridge to its centre. Due to the presence of tall roadside hedges this section of the proposed trail provides only occasional glimpsed views of the estuary.

The Objection

29. The objection has been made on a ground set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949. The ground relates to the failure to include proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal.
30. The house, garden and paddocks owned by the objector are located between the proposed route of the trail and the estuary. As a result, they lie within the coastal margin. The route map (WIB 3a) and proposal table do not make clear that the objector's land is excepted land. This lack of clarity is a cause of unacceptable and unnecessary distress to the objector due to the potential impact of the scheme on security, privacy, amenity and the enjoyment of private land within the coastal margin along this section. It also has the potential to devalue the affected land. These are concerns shared by a number of neighbours. As a result of the ambiguity caused by this lack of detail, a fair balance between public and private interests has not been achieved.
31. Modifications are sought to the proposal table in Part 3.3.1 of the Report in relation to trail section S006. Specifically, the landward boundary of the coastal margin should be specified in column 5b and a reason for this boundary proposal should be provided in column 5c and any necessary explanatory notes provided in column 6. All of the property and land owned by the objector should be explicitly recognised as excepted land.
32. The scheme is forcibly imposing the seaward coastal margin classification on the land owned by the objector. As NE has the facility to establish boundaries on the landward and / or coastal side of the path this should be applied in relation to the objector's land.

Representations

33. The Ramblers Association is in full support of the proposed route of the trail. Other representations were received from The Disabled Ramblers who support the proposed route and request that any infrastructure along the trail does not present access problems for those with a disability.
34. Essex County Council is wholly supportive of the England Coastal Path scheme which will bring great benefits economically and in terms of tourism to the Essex coast. However, there are inaccuracies within the report which need to be addressed if the Coastal Access rights are to come into force as intended. The trail section S013 to S015 past the entrance to Hayes Farm Caravan Park should be amended so that it runs along the edge of the access road and re-enters the scrub parallel to the main

road further on than is shown. The status of the section that runs along the access road and the roadside verge should be changed to existing highway.

35. Ashingdon Parish Council proposes that trail sections S008 to S020 which takes the route away from the coast and along the busy A132 highway should instead continue along the coastline through Hayes Chase and Tabrum's Farm.

Natural England's comments on the objection and representations

36. Seaward coastal margin is created by default between the trail and the foreshore. NE has no powers under coastal access legislation to limit the extent of the seaward coastal margin. However, a house and its gardens are excepted land and no coastal access rights exist in relation to such land. No new rights of access therefore would apply to the objector's dwelling or garden, or those of his neighbours.
37. Column 5b in the proposal table in Part 3.3.1 of the Report refers to the landward boundary of the coastal margin. As in relation to this section of the route the width of the trail broadly coincides with the landward edge of Maltings Road and its verge we did not propose a landward boundary at this location. NE believe that there is no need to amend the table as suggested.
38. In relation to Essex County Council's representations, the alignment of trail sections S013 to S015 is based on the survey that was carried out which was hampered by poor ground conditions and thick scrub. It was not possible to confirm whether sections S013 and S015 of the proposed trail are existing highway. We believe that they are correctly mapped at the proposals stage as 'not an existing walked route'.
39. Ashingdon Parish Council's proposed route would be closer to the coastline and more scenic. Excepted land though in the form of dwellings and associated gardens located adjacent to the seawall blocks the route proposed by the Parish Council. Furthermore, the railway line runs along the coast and there are only a few points at which it can be crossed. The route of the trail along the A132 is shielded from traffic by scrub and will provide a path that links South Woodham Ferrers and Battlesbridge for the first time in many years.

Discussion and Conclusions

40. The Access to the Countryside (Coastal Margin) (England) Order 2010 provides that any land seaward of the route qualifies automatically as coastal margin. On estuaries, as on the open coast, this relates to any land between the trail and seaward extremity of the foreshore. The objector's land on the southern side of Maltings Road, together with that of his neighbours, as a matter of fact, would therefore fall within the coastal margin.
41. However, as a house and its garden are excepted land no coastal access rights apply to the objector's dwelling and garden. Whilst paddocks are not excepted land, public access from the trail to this part of the coastal margin is restricted by a roadside hedge and locked gates. There is no requirement for this to be altered by the landowner to facilitate public access. The same principles apply to other houses, gardens and land within the coastal margin along Maltings Lane in the vicinity of the objector's property and elsewhere. As a result, land devaluation is unlikely to occur.
42. NE's scheme for coastal access ('the Approved Scheme') was approved by the Secretary of State in 2013. In describing the outline content of a coastal access

report the Approved Scheme's only reference to identifying excepted land within the coastal margin is where this relates to substantial areas of land. In such circumstances, the Approved Scheme advises that where possible such land should be identified within the report text.

43. Sporadic houses and buildings along one side of a minor road in a small settlement, by any reasonable estimate, cannot be considered to be substantial areas of land. As a result, in accordance with the Approved Scheme, there is no requirement for the route map, accompanying table or text of the report to identify the objector's house and garden as excepted land. In such situations the statutory definition of excepted land suffices. Indeed, if this was not the case, and the approach of the objector was taken in relation to all excepted land, NE would face the burdensome responsibility of having to continually update its reports to identify and except coastal access rights for all new buildings and other relevant new development within the coastal margin. This would be unnecessarily bureaucratic and burdensome.
44. Essex County Council's and Ashingdon Parish Council's representations do not relate to the section of the proposed trail that is the subject of the objection. As such they raise issues that are not directly before the Secretary of State. These representations and the comments of NE in relation to them are set out for information above.
45. The HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. This position is not contested by the objector or in any of the representations received. Annex A provides information on this matter.
46. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals strike a fair balance in relation to the matters raised in regard to the objection.

Recommendation

47. On the basis of my conclusion, I therefore recommend that the Secretary of State makes a determination to the same effect as my conclusion.

[redacted]

APPOINTED PERSON

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

Habitats Regulation Assessment

48. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE).
49. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in CJEU Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
50. A 'shadow' HRA, dated January 2020, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and is recorded separately in the suite of reports. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation. The HRA considered the potential impacts of the coastal access proposals on the following European sites: Outer Thames Estuary Special Protection Area (SPA); Crouch and Roach Estuaries SPA and Ramsar site; Essex Estuaries Special Area of Conservation (SAC). The HRA is considered to have identified the relevant sites affected by the proposals. The proposals are not directly connected to or necessary to the management of the European sites, therefore a HRA is required.
51. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone'. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.
52. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur, and the impact-effect pathways considered. Table 4 sets out the assessment of AEol for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
53. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances no AEol was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the European sites considered either alone or in combination with other plans and projects.

54. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3.3). The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation objectives.
55. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
- Physical damage to saltmarsh during establishment work, maintenance work and trampling by walkers which could result in long-term reduction in population and/or contraction in the distribution of Qualifying Features within the site.
 - More frequent disturbance to feeding or roosting waterbirds (non-breeding) following changes in recreational activities as a result of the access proposal, which could lead to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
56. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Coastal Access: NE's Approved Scheme 2013. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts.
57. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

58. The NCA, dated 22 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), a Marine Conservation Zone (MCZ) and an undesignated but locally important site, which are not subject to consideration in the HRA.
59. Relevant to this report are the Crouch and Roach Estuaries SSSI, the Cliff, Burnham-on-Crouch SSSI, the Blackwater, Crouch, Roach and Colne Estuaries MCZ and Kendal Park (Hullbridge Foreshore) Local Nature Reserve (LNR). NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs and that the access proposal is the one that is least likely to hinder the achievement of the conservation objective for the MCZ. In respect of the sites and features listed above, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.



The Planning Inspectorate

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

by [redacted] BSc(Hons) MRTPI MCIEH DMS

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

Date

Marine and Coastal Access Act 2009

Objections by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Wallasea Island to Burnham-on-Crouch

Objection Ref: MCA/WIB4/0/1**Land north east of Little Hayes Farm**

- On 29 January 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 25 March 2020 to Report WIB4, Clementsgreen Creek, South Woodham Ferrers to The Quay, North Fambridge, has been made by [redacted]. The land in the Report to which the objection relates is crossed by route sections WIB-4-S009 to WIB-4-S012 (Map 4c).
- The objection is made under paragraph 3(3)(a), (c), (e) 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 Report WIB4, specifically in respect to the trail sections WIB-4-S009 to WIB-4-S012, do not fail to strike a fair balance.

Procedural and Preliminary Matters

60. The Coastal Access Reports (WIB1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between Wallasea Island and Burnham-on-Crouch.
61. The period for making formal representations and objections to the Reports closed on 25 March 2020. In relation to Report WIB4 one objection was received within the specified timescale. The objection was found to be admissible and I have been appointed to report on it to the Secretary of State.
62. This report relates to the objection reference MCA/WIB4/0/1. In addition to the objection, four representations were received and these are considered where relevant.
63. I carried out a site visit on 6 December 2021 accompanied by the objector and a representative of NE and Essex County Council.
64. Following the site visit, I wrote to the objector with further questions regarding land ownership, flooding of part of the proposed route, animal husbandry and the benefits of the suggested alternative route directly to the south of the proposed route. These questions were copied to NE for information. The objector's answers included new evidence in relation to the operation of the Burnham-on-Crouch to Wallasea Island ferry and, amongst other matters, his intentions in relation to directions and compensation. As a result, NE were given the opportunity to comment on these points. The answers received, the additional points made and NE's comments in relation to them have all been taken into account in the writing of this Report.
65. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to Wallasea Island to Burnham-on-Crouch might have an adverse impact on the Outer Thames Estuary Special Protection Area (SPA), Crouch and Roach Estuaries SPA and Ramsar site and the Essex Estuaries

Site visits made on 6 December 2021

File Refs: MCA/WIB5/0/1, MCA/WIB5/0/2, MCA/WIB5/0/3

Special Area of Conservation (SAC). It has also produced a Nature Conservation Assessment (NCA) that should be read alongside the HRA. The sections of the trail covered by the objections in this report lie outside any of the international statutory designations covered by the Habitats Regulations Assessment.

Main Issues

66. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires Natural England (NE) and the Secretary of State to exercise their relevant functions to secure 2 objectives.

67. The first objective is that there is a route for the whole of the English coast which:

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

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

68. The second objective is that, in association with the trail a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.

69. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:

- (g) the safety and convenience of those using the trail,
- (h) the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
- (i) the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.

70. 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.

71. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing. Section 301(4) of the Act sets out additional statutory criteria (the Estuary Criteria) which must be taken into account when deciding whether, and if so how, to exercise the discretion to extend the trail along an estuary. The Estuary Criteria are:

- (a) the nature of the land which would become part of the coast;
- (b) the topography of the shoreline adjacent to those waters;
- (c) the width of the river upstream to that limit;

- (d) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters;
- (e) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land;
- (f) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint;
- (g) the existence of a ferry by which the public may cross the river.

72. NE's Approved Scheme 2013 (the Approved Scheme), which was adopted by the Secretary of State in July 2013, sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
73. My role is to consider whether or not a fair balance has been struck by NE between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

74. Wallasea Island and Burnham-on-Crouch are located on opposite sides of the River Crouch estuary. The estuary is dominated by muddy shorelines, saltmarsh habitats, low lying grazing, manmade flood defence banks and long tidal reaches. The extensive area of saltmarsh and mudflats and their sheltered character attracts thousands of wintering shore birds to the area. Almost the entire length of the inter tidal estuary enclosed by the trail are designated areas of nature conservation (e.g. Essex Estuaries Special Area of Conservation, Crouch and Roach Special Protection Area & Ramsar).
75. When considering whether to extend the trail along an estuary the Approved Scheme applies statutory criteria referred to in the previous section of this report. These include the consideration of any ferry services that cross the river, an assessment of the estuaries character (stretches or features of the river or adjoining land that are more characteristic of the coast than of a river are more relevant to the Coastal Access Duty), the recreational benefit of such a route and the extent of excepted land.
76. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Crouch. On this basis it proposes that the trail should follow both sides of the River Crouch as far as the first bridge across the estuary which is Hawk Hill Bridge, Battlesbridge.
77. The sections of the proposed trail that the objection relates to are WIB-4-S009 to WIB-4-S012. Given that all sections of the trail referred to in this report have the prefix WIB-4, for ease of reference, I have referred to the trail sections by the S0 number only.
78. The trail sections follow an existing public right of way (PROW) across a field and watercourse before leaving the PROW and following the southern edge of two fields of pasture. Views of the estuary are not possible from the route.

The Objection

79. The objection has been made on the basis that the proposals in the report fail to strike a fair balance in relation to one or more of the grounds set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.
80. The proposals in the report fail to strike a fair balance for three reasons. Firstly, due to the proposal positioning part of the trail across fields which contain livestock and the trail passing through a livestock handling pen. Secondly, due to the failure to include proposals for directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 (CROW) to restrict access to fields that the trail route crosses when lambing, suckler cows and a bull are present. Thirdly, due to the failure to include proposals for an alternative route.

Position of part of the route

81. Route section S009 of the trail crosses a field used by livestock and so would need to be fenced in. Route section S012 is a livestock handling pen and so should be avoided. Sections of the trail across my land would be flooded for some of the year. The ground that the route passes over is silty clay and would very quickly deteriorate with regular footfall.

Failure to include directions restricting access to the proposed route

82. Little Hayes Farm has a flock of 300 breeding ewes, 48 suckler cows and a bull. The trail should be closed for lambing during April and the first half of May. The cows, calves and bull could then be released to run on the fields on either side of the proposed trail route. A Higher Level Scheme environmental agreement is in place which requires that these fields are grazed as part of the management of the SPA and Ramsar designations relevant to the area. If this land was not grazed the farming business would lose valuable income and the habitat that sustains significant populations of overwintering birds would be undermined.

Alternative routes

83. NE has failed to include proposals for alternative routes. Three such routes exist.

Fields directly to the south of the proposed route

84. An alternative trail route is along the northern edge of the fields directly to the south of the proposed route. I am a partner in a tenancy in relation to these fields.

Railway embankment

85. Routing the trail along the improved southern side of the railway embankment would provide clear views of the estuary that are not possible from the proposed route across my land. Such a route would also avoid the problems that I have outlined above.

Ferry

86. A ferry may form part of the English coastal path, even if the ferry only operates at certain times, or during certain periods. There is a ferry service from Burnham-on-Crouch to Wallasea Island and one is proposed from North Fambridge. A ferry forms

part of the English coastal path across the river Exe in Devon and a ferry is proposed to cross the river Thames at Tilbury.

87. The ferry operator recently said he would run a winter service for a subsidy of £6,000 which would be a lot cheaper than the expense of creating access around all the awkward corners of the estuary.

Wear and erosion of the seawall in the area

88. Seawalls in the area are at significant risk of erosion and the increase in footpath wear caused by users of the proposed trail will increase this problem. The Environment Agency has not given any indication about future maintenance of the seawalls.

Establishment and management of routes across land I farm

89. If either the proposed trail route or this alternative trail route are confirmed I will be forced to ask for formal directions under the Countryside and Rights of Way Act 2000 (CROW Act) to control spreading room, surfacing of the trail to National Trail standards and / or temporary traffic regulation orders when flooding occurs. Both routes would need to be fenced in, which is another large capital and maintenance cost which would result in a compensation claim.

Wildlife

90. The proposed trail would result in severe issues with the disturbance of wildlife as land is either a SSSI or environmentally sensitive.

Representations

91. Essex County Council are wholly supportive of the English coastal path which will bring great benefits to the Essex coast through the economy, tourism and supporting our coastal communities, businesses and transport infrastructure.
92. Section 25 of the CROW Act allows public access to be restricted. Essex County Council is concerned that many errors have been included on the map prepared by NE identifying excluded or restricted access to land within the coastal margin in relation to this report (WIB E4). As a result, areas of saltmarsh and mudflats that the public should not have access to are shown as accessible which gives rise to safety concerns, and areas that the public should have access to are shown as land in relation to which access is excluded. In particular at North Fambridge there is a large area of land that we believe should not be included with the section 25a direction as it appears not to be saltmarsh or flat. There is also a smaller area of scrub and trees that should not be subject to the direction. In addition there are also errors to some sections of the route identified as existing highway. Part of route section S009 as it passes the pond is not a public right of way.
93. The Ramblers Association is in full support of the proposed route of the trail. Other representations were received from Ashingdon Parish Council and The Disabled Ramblers who support the proposed route of the trail, with the latter requesting that any infrastructure along the trail does not present access problems for those with a disability.

Natural England's comments on the objections and representations

Position of part of the route

94. The field in which trail route section S009 is located had farm machinery and straw bales present at the time of our site visits and is best described as a farm yard. As route section S009 is a PROW that crosses a field and is open all year it does not require fencing. Should livestock in the future use the field it could not therefore be closed for the time each year requested by the objector. The proposed route alignment utilising this section therefore brings no extra management burden to the land owner.
95. In relation to route section S012, at the time of the site visit no livestock handling facility existed in this or adjacent route sections.

Failure to include directions restricting access to the proposed route

96. Route section S010 consists of steps and a bridge across a small watercourse that connects the PROW to the adjacent field to the north. Route section S011 follows the edge of a field that the PROW cuts diagonally across. As this field contains a PROW it is kept open to the public all year even when livestock are present. NE therefore do not see any significant changes to management practices within this section of the proposed route.
97. Route section S012 is a short section of ground between two drainage ditches and does not appear to be actively used for farming. In our correspondence with the Objector he indicated that he had no management control over the fields that route sections S011 and S012 pass through. He is listed though as an owner of these fields.

Alternative routes

Fields directly to the south of the proposed route

98. The proposed route is at a slightly higher level than the alternative route to the south and appears to be drier. As the fields contain a drainage ditch significant investment would be required in relation to current fence lines and the establishment of a bridge or culvert. If the alignment of the route was through these southern fields then the whole of these fields down to the railway embankment would form spreading room in relation to which coastal access rights would exist for walkers. In contrast, with the proposed route the double fenced ditch on the seaward side would act as a barrier restricting public access to the proposed trail.
99. NE proposed the trail route on the basis of feedback from the site visit and correspondence. The proposed alignment moved the route away from fields we were told were used for lambing and calving into those that the land owner stated he had no control over (i.e. fields through which route sections S011 and S012 pass). As described above, the proposed route also prevents walkers roaming over the fields between the trail and the railway line by virtue of the double fenced ditch acting as a physical barrier. It also utilised a section of existing PROW, is located only a few metres further inland and links well with the onward trail. Collectively these advantages, in our view, make for a better proposal that enhances public enjoyment of the trail with limited impact on the farming business.

100. NE could accept this proposed alternative alignment. However, as the fields that it and the route proposed by NE runs through are all available to bulls and calves there appears to be no benefit to the alternative route.

Railway embankment

101. NE considered aligning the trail on the seaward side of the railway line. However, at the time of publishing the report there was no available land in this location. Future development may allow for a variation to be considered. Relevant considerations would include: the impact of creating a route on the SSSI and designated SPA present on the seaward side of the embankment; the effect of the proposed onward route on an important bird roost at Stow Creek; and, that development to protect the railway line would be land to which the public would not have coastal access rights under the Approved Scheme and that the Railway Acts would also prevent public access to such development. To overcome this last issue any alignment along the railway would require a dedication from Network Rail.

Ferry

102. Section 297 of the 2009 Act requires NE in discharging the duty to secure a walking route around the coast of England to have regard, among other things, to the desirability of ensuring that so far as is reasonably practical interruptions to the route are kept to a minimum. Paragraphs 10.1.4 and 10.1.5 of the Approved Scheme advise that as the seaward limit of estuarial waters is an arbitrary point from an access perspective, NE will always give careful consideration to the option of extending the trail to the first bridge or tunnel with public pedestrian access – for reasons of continuity and with a view to any additional recreational benefits.
103. The ferry between Burnham-on-Crouch and Wallasea Island is an on demand service and is scheduled to only run from Easter to the end of September each year. Permissions exist for new ferry infrastructure on Wallasea Island and for a ferry service between North and South Fambridge. However, at the time of writing the report and at the receipt of comments from the objector neither had been brought into use.
104. In terms of recreational benefits, the proposed trail route would allow much of the estuary edge to be walked and would link settlements around it that are currently unconnected by routes accessible by the public on foot. Excepted land, in relation to which there would be no coastal access rights, is scattered and small in nature.
105. NE carefully considered the merits of the ferry service and considered the merits of extending the trail around the Crouch estuary. On balance, the creation of a year round, permanent trail, linking local villages and major settlements with new access of National Trail standard, available all day, every day was deemed to be preferable to either an alternative route, most likely on the same alignment but only available to the public when the ferry was not running, or no route at all around the estuary and a seasonal gap in the England Coast Path network (when the ferry was not operating from 1 October to the end of March).
106. NE held informal discussion with the ferry operators regarding the England Coast Path proposals and the possibility of increases in service times. The operator suggested they would not at that time wish to extend running times later in the day to avoid dealing with passengers under the influence of alcohol and the seasonal times

were restricted by their business enterprises and the running times on their boat masters licence.

107. In relation to the conversation the objector recently had with the ferry service operator that he could offer a winter service for £6,000 a year, the Approved Scheme notes at 10.3.2 that even the existence of a regular ferry service does not rule out taking the trail up to the first crossing point if the balance between recreational benefits and cost is right, having regard to other statutory criteria. In NE's opinion, a permanent year round route connecting the settlements around the estuary to each other provides the greatest public benefit allowing people to walk between them with the associated benefit to businesses providing food and accommodation.
108. The recent storm damage sustained to one of the jetties used by the ferry highlights the vagaries of relying on a ferry service in comparison to a land route.
109. Once established for minimal cost, the trail around the estuary would be a permanent feature requiring little maintenance and would be free to use. In comparison, a ferry service has no guarantee of continuing if the operator decides to cease running the service. Ferry use would also be subject to a fee over which there would be little control unless subsidised at public cost. Unlike the public money spent on the land based route any public funds spent subsidising the ferry service would only be of benefit to that business.

Wear and erosion of the seawall in the area

110. The function of seawalls is to act as a flood defence structure. As a result, if a seawall becomes damaged legislation requires that it continues to be maintained.

Establishment and management of routes across land / farm

111. Landowners and managers have the right to request directions to restrict public access over the coastal margin (spreading room) at any time. These are considered in line with the Coastal Access Scheme and the statutory framework.
112. The objection also states that directions would be sought to ensure that the trail is surfaced to National Trail standards and that temporary traffic regulation orders would be sought when flooding occurs. A direction cannot be granted in relation to such matters. National Trail standards are inherent and the responsibility of achieving these standards is that of Essex County Council who are the local access authority. The route would be temporarily closed through discussion and agreement as advised by section 5.2.7 of the Approved Scheme. As the existing terrain is used by the trail, users should expect the trail at times to be muddy or wet. When the condition of sections of the trail are judged off putting, which is likely to occur during the wetter, colder months when the trail would be in use the least, users are more likely to be local and are likely to avoid such sections.
113. A landowner may choose to erect fencing as part of their management of the land. The western field that S011 would pass along the edge of though already has a PROW that cuts across its centre. The eastern field through which section S011 would pass currently has no public access. However, public access and grazing are generally compatible and happens throughout the countryside (sections 8.2.2, 8.3.1 & 8.4.1 of the Approved Scheme). NE on the evidence to date does not consider that it is necessary to financially support fencing to separate users from livestock or to

prevent landward trespass. Spreading room exists southwards to the railway line. However, fences on either side of a ditch adjacent to the trail would prevent trail users accessing the seaward spreading room and the seasonal wetness of this land would also deter its use.

Representations

114. As saltmarshes and flats are transient habitats mapped boundaries may not precisely align with the feature as it exists in real time. NE will work with the County Council and amend its final report and section 25A maps as necessary once access rights are confirmed post establishment of the trail (under the commencement order). On the ground this will include the provision of suitable signage and information at key locations to explain the restrictions to the public. In relation to trail section S009, NE will review its classification and amend the status of this section accordingly.

Discussion and Conclusions

Position of part of the route

115. The field that route section S009 passes through is not currently in use for livestock, although in future this may change. Livestock on the farm includes sheep, suckler cows and bulls. Bulls and cows with calves can be a danger to public safety. Given the presence of the PROW across the fields that route section S009 and the start of route section S011 pass, in order to comply with its obligations under health and safety legislation, the farm will already be carrying out management of its livestock to protect the safety of walkers. As a result, this section of the trail brings no extra management burden to the objector. The fencing in of route section S009 and the first field that route section S011 passes through would therefore not be necessary.
116. In relation to the livestock handling pen, this feature exists and has been created by the intersection of three field gates. On the basis of the site visit, it is evident that it is located next to the arrow on the Map WIB 4c that identifies route section S011. As livestock pens are excepted from coastal access rights under Schedule 1 to CROW this feature will need to be bypassed by moving the trail to the northern side of the pen and inserting a gate into the fence line.
117. Since the site visit NE have stated in writing that it is not uncommon for there to be minor differences between the position of proposed infrastructure, such as gates, on approved trail route maps and where in practice it is found that they can be positioned when trail establishment works are carried out. NE state that such minor alterations when establishing the route can be carried out without the need to notify NE or the local Access Authority. As moving the trail around the pen had the support of the objector at the site visit, and he is the owner of the affected land, there would be no prejudice if the trail was to implemented in this manner.
118. It has not been contested that sections of the path may flood during the year due to the overflow from the drainage ditch that route section S011 would follow. However, such flooding is likely to be inconvenient rather than a threat to safety. As the ground that the trail passes over is silty clay, use of the trail when wet could result in the route becoming muddy. Such soil types though are commonly found around estuaries and it is expected that walkers would wear appropriate footwear. Moreover, as section 4.3.7 of the Approved Scheme notes, the infrastructure of the trail would

conform to the published standards for National Trails. As this includes surfaces in good condition appropriate drainage of the route is a matter that would need to be addressed if the route is established. As a result, given the benefit in land management terms when creating new public access of keeping trail users to the edge of a field that contains livestock, the above matters are not matters of sufficient weight to warrant a change to the alignment of the trail.

Failure to include directions restricting access to the proposed route

119. The proposed route S011 passes through a field beyond the one mentioned in paragraph 56 above before reaching trail section S012. Both of these fields are within sight and sound of the farmhouse which allows animals to be easily monitored and attended to. In terms of sheep, pregnant ewes are most vulnerable to disturbance. In relation to cattle, bulls and cows with calves can be a danger to public safety. The objector's Aberdeen Angus cows are described as inquisitive and likely to approach walkers. However, the field trail section S011 passes through before reaching S012 is sufficiently large for trail users, who are limited to 1.5m of the field's southern edge, and animals to avoid each other. In addition a requirement on land with coastal access rights is that dogs are kept on short leads in the vicinity of livestock. Importantly, as I have noted earlier, given the presence of the PROW across the two previous fields that trail sections S009 and S011 pass, in order to comply with its obligations under health and safety legislation, the farm will already be carrying out management of its livestock to protect the safety of walkers.
120. The route of trail sections S009 and S011 would not result in undue conflict between livestock and trail users. Consequently, the proposed trail route does not warrant directions restricting access during the lambing and calving season in April and the first half of May each year. For the same reason the route of the proposed trail would not prevent any grazing required as part of the Higher Level Scheme environmental agreement in relation to the local SPA and Ramsar designations.

Alternative routes

Fields directly to the south of the proposed route

121. The fields directly to the south of the proposed route are fields of pasture used by sheep and cattle that the objector farms. If the proposed alternative route along the northern edge of these fields was used then the whole of these fields down to the railway embankment next to the estuary would fall within the coastal margin and so would become spreading room to which the public would have access. As the southern edge of this field next to the railway embankment regularly floods, providing habitat for birds that are a feature of the adjacent River Crouch SPA and Ramsar site, such access should be avoided.
122. A direction made under section 25 of the CROW Act could be used to deny access rights. However, as the field is open, unless fencing was erected, there would be nothing physically to prevent trail users encroaching onto this part of the field if they wanted to. Furthermore, as the northern edge of these fields are in the direction of the estuary they are likely to be at a slightly lower level and therefore more likely to be vulnerable to flooding than the proposed route along the southern edge of the fields directly to the north. For these reasons, and given in the objector's written response to the questions I posed after the site visit was that he now considered that this route

did not offer any benefits over the proposed route of the trail, this route should be avoided.

123. A route along the southern edge of the southern field was also considered by NE. However, it would have caused problems with privacy at the house adjacent to route section S007 as the route would first need to go around the side of the house and its garden. In addition, as I have noted, the southern edge of this field next to the railway embankment also regularly floods providing a habitat for birds.
124. The route proposed for the trail by NE would prevent users walking over the fields between the trail and the railway line by virtue of the adjacent double fenced ditch acting as a physical barrier. As a result, it is to be preferred.

Railway embankment

125. A path along the improved southern side of the railway embankment would provide clear views of the estuary that are not possible from the proposed route across the objector's land. However, the improved side of the railway is an embankment at a steep angle that consists of large stones. As a result, it is not a suitable route for the trail. Moreover, railway land is excepted from coastal access rights under the Schedule 1 to the CROW Act. This route is therefore not an alternative to the proposed route at present. In the future this would change if Network Rail was willing to dedicate land along the embankment for this purpose and funds were secured to create a level path that would not adversely affect the protected habitats present on the seaward side of the embankment.

Ferry service

126. In relation to estuaries, the Approved Scheme states that careful consideration will always be given to the option of extending the trail as far as the first bridge or tunnel. This is because this approach is in keeping with the duty to have regard to the desirability of ensuring, so far as reasonably practicable, that interruptions to the trail are kept to a minimum and the requirement to consider any other recreational benefits that would accrue. In all circumstances, the Approved Scheme advises consideration will be given to whether the cost of extending the trail would be proportionate to the extra public enjoyment of the coast that would result.
127. When deciding whether to extend the trail around an estuary the criteria in s301(4) of the 2009 Act have to be considered.
128. The Crouch estuary between Wallasea and Burnham-on-Crouch is largely undeveloped. As a result, relatively little of the coastal margin is excepted land. Characterised by low lying saltmarsh habitats, muddy shorelines, grazing and long tidal reaches the influence of the sea is readily apparent.
129. With the features described, the flat topography and openness of the landscape is scenic, tranquil and of high quality. The presence of large numbers of birds and the wide variety, attracted by its special habitats, adds to the interest and value of the estuary. Extending the trail as far as the first crossing at Hawks Hill bridge, Battlesbridge ties in with the picturesque inland extent of the tidal part of the estuary in the historic core of this settlement. The trail would allow the whole of the estuary between Wallasea and Burnham on Crouch to be appreciated on foot by connecting existing public rights of way around the estuary. The need to provide accommodation,

food and drink for trail walkers would be of benefit to the local tourist economy. The recreational benefits therefore of extending the trail along the estuary are very significant. This assessment is supported by representations received from Essex County Council.

130. The reports estimates that the capital cost of establishing the trail between Wallasea and Burnham would be approximately £102,000 excluding VAT with annual maintenance costing approximately £28,000 excluding VAT. In my judgement, this cost would be proportionate to the extra public enjoyment of the coast that would result.
131. An on demand ferry service exists between Wallasea Island and Burnham on Crouch. Its operation though is limited to the warmer months of the year only. It is suggested that the ferry operator would be willing to make the service a year round operation for a subsidy of £6,000 a year. No detailed breakdown though of these figures have been provided to demonstrate that they realistically reflect the cost of operating such a service. Even if such information had been provided, the very significant public benefit of extending the trail around the estuary from Wallasea to Burnham-on-Crouch would comfortably exceed the additional cost of establishing and maintaining the trail.
132. Reference has been made to the English coastal path making use of ferries to cross the river Exe in Devon and the river Thames at Tilbury. In relation to each estuary the public benefit of extending the coastal path along an estuary to the first bridge or tunnel will be different, as will be the frequency and regularity of any ferry service. The decision makers in relation to those sections will have exercised their judgement on the basis of the evidence available as will be the case in relation to the Wallasea to Burnham-on Crouch section of the coastal path.
133. Should any ferry service in the future provide a secure, year round service over a significant part of the day NE is able to review the alignment of the trail. If appropriate, NE could then prepare a variation report to the Secretary of State proposing that the route crosses the river using the ferry service.

Wear and erosion of the seawall in the area

134. In the wider area the increased usage of the top of the sea wall as part of the proposed trail would be unlikely to cause significant damage to the solid structure of the sea wall. As the seawall is a flood defence, any damage which did occur that impaired its integrity would be repaired as required by relevant legislation.

Establishment and management of routes across land / farm

135. A direction can only be applied to the restriction of spreading room rights. Directions cannot be used to ensure that the trail is surfaced to National Trail standards or to put in place temporary traffic regulation orders in the event that part of the trail becomes impassable due to particularly severe flooding. Instead, it is the responsibility of the local access authority, in this case Essex County Council, to ensure that the English coastal path meets National Trail standards. In relation to temporary closure of any part of the trail, this would be secured through discussion and agreement (section 5.2.7 of the Approved Scheme).

136. As the trail makes use of the existing terrain at times it would be wet and muddy. Given that trail section S011 follows the northern side of a drainage ditch and the southern side appears to be at a slightly lower level, should the ditch flood the fields to the south are likely to be more affected than section S011 of the trail. Moreover, severe floods that could exceptionally affect a trail constructed to National Trail standards are likely to occur during the colder months of the year when relatively few people would be walking the long sections of the path between settlements, especially where, as in this case, the estuary is not visible.
137. The objector currently has to manage livestock in the western field that trail section S011 would pass through due to the presence of a PROW. Public access and grazing are generally compatible and in this case the field where public access would be created for the first time is sufficiently large for livestock and trail users walking along the field edge to avoid each other. On the basis of the evidence submitted in relation to livestock, it has not been demonstrated that fencing at the present time is necessary. The erection of fencing and associated maintenance would therefore not be carried out by NE and there is no provision under the Act for compensation to be paid to the landowner if he carries out such works in relation to the trail crossing his land.
138. Should use of the trail show that without fencing informal management cannot meet the needs of the farm without compromising its operation or safety then as part of the ongoing management of the English coastal path, in accordance with the approach of the Approved Scheme, additional access management measures can be considered.

Wildlife

139. In terms of wildlife and ecology, the HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. Annex A provides information on this matter.

Representations

140. In relation to the representations received, NE has accepted that the maps identifying excluded or restricted access to land within the coastal margin need to be reviewed and amended where necessary to deal with any mapping errors present. This would occur once the access rights are confirmed post establishment of the trail. With regard to the error that has occurred with trail section S009 of the route identified as existing highway when a small part of it is not a PROW, NE acknowledges that it has incorrectly categorised the current status of this route section and will re-categorise it accordingly in its final report.

Overall Conclusion

141. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals strike a fair balance in relation to the matters raised in relation to the objection.

Recommendation

142. On the basis of my conclusion, I therefore recommend that the Secretary of State makes a determination to the same effect as my conclusion.

[redacted]

APPOINTED PERSON

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

Habitats Regulation Assessment

143. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE).
144. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
145. A 'shadow' HRA, dated January 2020, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and is recorded separately in the suite of reports. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation. The HRA considered the potential impacts of the coastal access proposals on the following European sites: Outer Thames Estuary Special Protection Area (SPA); Crouch and Roach Estuaries SPA and Ramsar site; Essex Estuaries Special Area of Conservation (SAC). The HRA is considered to have identified the relevant sites affected by the proposals. The proposals are not directly connected to or necessary to the management of the European sites, therefore a HRA is required.
146. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone'. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
147. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur, and the impact-effect pathways considered. Table 4 sets out the assessment of AEoI for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
148. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEoI from the proposals alone to determine

whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, no AEol was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the European sites considered either alone or in combination with other plans and projects.

149. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3.3). The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation objectives.
150. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
- Physical damage to saltmarsh during establishment work, maintenance work and trampling by walkers which could result in long-term reduction in population and/or contraction in the distribution of Qualifying Features within the site.
 - More frequent disturbance to feeding or roosting waterbirds (non-breeding) following changes in recreational activities as a result of the access proposal, which could lead to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
151. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Coastal Access: NE's Approved Scheme 2013. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts.
152. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

153. The NCA, dated 22 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), a Marine Conservation Zone (MCZ) and an undesignated but locally important site, which are not subject to consideration in the HRA.
154. Relevant to this report are the Crouch and Roach Estuaries SSSI, the Cliff, Burnham-on-Crouch SSSI, the Blackwater, Crouch, Roach and Colne Estuaries MCZ and Kendal Park (Hullbridge Foreshore) Local Nature Reserve (LNR). NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs and that the access proposal is the one that is least likely to hinder the achievement of the conservation objective for the MCZ. In respect

of the sites and features listed above, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.



The Planning Inspectorate

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

by [redacted] BSc(Hons) MRTPI MCIEH DMS

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

Date 6 June 2022

Marine and Coastal Access Act 2009

Objections by [redacted], [redacted], [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Wallasea Island to Burnham-on-Crouch

Objection A - Ref: MCA/WIB5/0/1
[redacted], Latchingdon, Chelmsford

- On 29 January 2020 Natural England submitted five Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 10 March 2020 to Report WIB5, The Quay, North Fambridge to Burnham-on-Crouch, has been made by [redacted]. The land in the Report to which the objection relates is route section WIB-5-S005 (Map WIB 5c).
- The objection is made under paragraph 3(3)(d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report WIB5, specifically in respect to the trail section WIB-5-S005, do not fail to strike a fair balance.

Objection B - Ref: MCA/WIB5/0/2
[redacted], Latchingdon, Chelmsford

- On 29 January 2020 Natural England submitted five Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 17 March 2020 to Report WIB5, The Quay, North Fambridge to Burnham-on-Crouch, has been made by [redacted]. The land in the Report to which the objection relates is route section WIB-5-S006 (Map 5d).
- The objection is made under paragraph 3(3)(c) and (d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report WIB5, specifically in respect to the trail section WIB-5-S006, do not fail to strike a fair balance.

Objection C - Ref: MCA/WIB5/0/3
Creeksea Salt Marsh

- On 29 January 2020 Natural England submitted five Coastal Access Reports (WIB1-5) to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 29 February 2020 to Report WIB5, The Quay, North Fambridge to Burnham-on-Crouch, has been made by [redacted]. The land in the Report to which the objection relates is Creeksea Salt Marsh, route section WIB-5-S032 (Map 5f).
- The objection is made under paragraph 3(3)(a) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report WIB5, specifically in respect to the trail section WIB-5-S032, do not fail to strike a fair balance.

Procedural and Preliminary Matters

155. The Coastal Access Reports (WIB1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between Wallasea Island and Burnham-on-Crouch.

156. The period for making formal representations and objections to the Reports closed on 25 March 2020. In relation to Report WIB5, three objections were received within the specified timescale, all of which were determined to be admissible. I have been appointed to report to the Secretary of State on these objections (references MCA/WIB5/0/1, MCA/WIB5/0/2 and MCA/WIB5/0/3). In addition to the objections, two representations were received and these are considered where relevant.
157. I carried out site visits to view the route section in each objection on 6 December 2021 in the company of the relevant objector, a representative of NE and Essex County Council.
158. Following the site visit, e-mails dated 22 December 2021 and 26 December 2021 were submitted by the objector in relation to Objection A. The content of these e-mails with regard to the operation of the ferry have been accepted on the basis that it relates to a change in circumstance relevant to the objection that was not previously available. Similarly, information regarding *Crassula helmsii* was accepted because it reproduced concerns expressed to NE in 2019 that were put aside and were not subsequently addressed. Concerns regarding increased footfall during the pandemic causing damage to the seawall were also in an email of 27 April 2021. These concerns were accepted on the basis that this was also a change in circumstance relevant to the objection that was not previously available. NE was given the opportunity to comment on the information accepted and their response has been included in this report.
159. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to Wallasea Island to Burnham-on-Crouch might have an adverse impact on the Outer Thames Estuary Special Protection Area (SPA), Crouch and Roach Estuaries SPA and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). It has also produced a Nature Conservation Assessment (NCA) that should be read alongside the HRA.

Main Issues

160. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
161. The first objective is that there is a route for the whole of the English coast which:
- (g) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (h) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
- This is referred to in the Act as the English coastal route, but for ease of reference is referred to as 'the trail' in this report.
162. The second objective is that, in association with the trail a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.

163. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (j) the safety and convenience of those using the trail,
 - (k) the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - (l) the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
164. 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.
165. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing. Section 301(4) of the Act sets out additional statutory criteria (the Estuary Criteria) which must be taken into account when deciding whether, and if so how, to exercise the discretion to extend the trail along an estuary. The Estuary Criteria are:
- (a) the nature of the land which would become part of the coast;
 - (b) the topography of the shoreline adjacent to those waters;
 - (c) the width of the river upstream to that limit;
 - (d) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters;
 - (e) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land;
 - (f) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint;
 - (g) the existence of a ferry by which the public may cross the river.
166. NE's Approved Scheme 2013 (the Scheme) was approved by the Secretary of State in 2013. It sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
167. My role is to consider whether or not a fair balance has been struck by NE between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

168. Wallasea Island and Burnham-on-Crouch are located on opposite sides of the River Crouch estuary. The estuary is dominated by muddy shorelines, saltmarsh habitats, low lying grazing, manmade flood defence banks ('sea walls') and long tidal reaches. The extensive area of saltmarsh and mudflats and their sheltered

character attracts thousands of wintering shore birds to the area. Almost the entire length of the inter tidal estuary enclosed by the trail are designated areas of nature conservation (e.g. Essex Estuaries Special Area of Conservation, Crouch and Roach Special Protection Area & Ramsar).

169. When considering whether to extend the trail along an estuary the Approved Scheme applies statutory criteria referred to in the previous section of this report. These include the consideration of any ferry services that cross the river, an assessment of the estuaries character (stretches or features of the river or adjoining land that are more characteristic of the coast than of a river are more relevant to the Coastal Access Duty), the recreational benefit of such a route and the extent of excepted land.
170. NE proposes to exercise its functions as if the sea included the estuarial waters of the River Crouch. On this basis it proposes that the trail follows the River Crouch westwards as far as the first bridge across the estuary, which is Hawk Hill Bridge, Battlesbridge, before turning eastwards to Burnham-on-Crouch.
171. The sections of the proposed route that the objections A, B and C respectively relate to are WIB-5-S005, WIB-5-S006 and WIB-5-S032. Given that all sections of the route referred to in this report have the prefix WIB-5, for ease of reference, I have referred to the trail sections by the S0 number only.
172. All three route sections follow an existing public right of way (PROW) along the top of a manmade seawall that abuts the saltmarsh and provides clear views of the estuary.

The Objections

173. All three objections have been made on the basis that the proposals in the report fail to strike a fair balance in relation to one or more of the grounds set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.

Objection A

Landward boundary to the coastal margin

174. The ground of objection relates to the failure to include proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal.
175. The report fails to identify a landward edge to the coastal margin. The report specifies that the trail has a 2 metre margin on either side. As a result, the proposed trail section S005 includes the banks of the sea wall. These steep banks provide grazing for the farm's livestock. If trail users walk on the banks of the sea wall they would trample the pasture and reduce the amount of land available for the farm's animals. Trail users may also stray landward beyond the base of the bank and walk on the strip of pasture between the bank and the borrow dyke that was created by the construction of the seawall. In so doing grazing would be trampled. Dogs off leads will also disturb wildlife. If walkers walk on the steep banks of the sea wall they could slip and fall injuring themselves.

176. From time to time we also have cows with calves and bulls in adjacent fields that have access to the sea wall and adjacent pasture on the flattings between the sea wall and the borrow dykes for grazing. If the route of the proposed trail was confirmed, due to the threat to public safety such livestock pose, we would lose several acres of grazing for these animals. This would result in a loss of income.
177. The increase in walkers during the pandemic using the PROW that follows the route of the proposed trail along the top of the sea wall is causing damage to it. The establishment of the trail along this route will increase the damage caused and reduce its effectiveness as a defence against the sea. Failure to graze the banks of the seawall will allow the growth of blackthorn and thistles which will result in its erosion. As the seaward side of the sea wall is within a Site of Special Scientific Interest (SSSI) the public should not have access to it. If the seawalls fail the SSSI saltmarshes would be flooded as would fields endangering livestock and ruining fields.
178. New Zealand Pygmy weed (*Crassula helmsii*) is present in the Essex Wildlife Trust nature reserve at Bluehouse Farm which borders the marshes of Stamford Farm. This plant is an invasive species listed under Schedule 9 of the Wildlife & Countryside Act 1981. As a result, it is an offence to plant or cause this species to grow in the wild. Trail users' dogs straying off the trail into infected water could transfer this plant into our borrow dykes. The resulting proliferation of this weed would block the sluice gates and prevent our land from draining. This would be a disaster for the farm.
179. A modification is sought that moves the landward boundary for the coastal margin to the top of the sea wall slope.

Ferry service as an alternative to the extension of the coastal path around the estuary

180. An enormous and unnecessary amount of money is being spent extending the coastal path around the estuary to the first footbridge. The purpose of the trail is to allow people to walk around the coast, not along estuaries. It is not reasonable to send trail users on a 35 mile detour around the estuary away from the sea and views of the sea. The Burnham to Wallasea ferry crossing takes approximately 10 minutes. It would be far cheaper to rely on the ferry crossing than to establish and maintain the trail around the estuary. National guidance does not require a ferry to operate all year round.
181. In 2008 Paul Johnson of NE in a report to DEFRA wrote that the trail should follow the coast as much as possible. The Burnham to Wallasea ferry owner was not approached by NE to discuss the use of this service as an alternative to the route of the trail around the estuary. A proposal to start another ferry service further upstream was refused. Formal discussions regarding extending the ferry service should have taken place between NE and the ferry operator.
182. In late 2021 the ferry operator informed the objector that the ferry had on occasion been operating in the evening and that advance booking out of season had been trialled. He advised that no licence was required and he did not mention any concerns about the alcohol consumption of passengers. The operator advised that out of season operating costs would be £1,000 a month and that he was prepared to offer a longer season. The objector is prepared to guarantee £2,000 and hopes that other land owners and local authorities would also be supportive.

An extended service would be beneficial for walkers and cheaper than extending the trail around the estuary.

Objection B

183. The proposals in the report fail to strike a fair balance for two reasons. Firstly, due to the proposed trail allowing access to the saltmarshes and aligning the landward boundary of the coastal margin with the landward base of the sea wall slope. Secondly, due to the failure to include proposals for an alternative route.

Coastal margin and its landward boundary

184. The existing PROW allows walkers to walk along the top of the sea wall. Walkers often do not keep to the top of the sea wall and allow their dogs to roam freely. The spreading room of the coastal trail would allow walkers to also legally walk on the banks of the seawall which are steep and easy to slip on. Walkers would also be in danger of falling into low lying pools or the river itself which can be very fast flowing when the tide is going out. Whose insurance would cover such a situation. The saltmarshes which are a SSSI would be especially susceptible to damage from people wandering over them. The increase in the use of the PROW if it becomes part of the trail, together with access to the landward slope of the seawall, will result in an increase in crop damage and littering.
185. There would be no clear demarcation lines for the trail. Even if they were provided walkers would still wander at will landward over the crops and seaward over the saltmarshes.

Ferry service as an alternative to the extension of the trail around the estuary

186. The objective of the coastal path is for the public to see the sea. No part of the sea can be seen from the estuary. Where the coastal path meets an estuary a ferry should be used to continue the coastal path, as in Cornwall, rather than extending the path around the estuary. I propose that instead of routeing the trail around the estuary the ferry from Wallasea to Burnham should be used to link the coastal path.

Objection C

187. The objection relates to the position of the proposed route of the trail. The saltmarsh is part of our private garden and is a haven for wildlife. If the trail passes over the saltmarsh, or gives users access to the saltmarsh, wildlife will be harmed.

Representations

188. Essex County Council are wholly supportive of the trail which will support our coastal communities, businesses and transport infrastructure and bring great benefits economically and in terms of tourism to the Essex coast.
189. Section 25 of the Countryside and Rights of Way Act 2000 (CROW) allows public access to be restricted. Essex County Council is concerned that many errors have been included on the map prepared by NE identifying excluded or restricted access to land within the coastal margin in relation to report WIB-5. As a result, areas of saltmarsh and mudflats that the public should not have access to

are shown as accessible, and areas that the public should have access to are shown as land in relation to which access is excluded. There are also errors to some sections of the route identified as existing highway.

190. The Ramblers Association is in full support of the proposed route of the trail. Other representations were received from Ashingdon Parish Council and The Disabled Ramblers who support the proposed route of the trail, with the latter requesting that any infrastructure along the trail does not present access problems for those with a disability.

Natural England's comments on the objections and representations

Objection A

Landward boundary and coastal margin

191. Under the coastal access duty NE is required to secure a margin of land along the length of the English coast which is accessible to the public. The component parts of the margin (landward and seaward of the trail) are set out in The Access to the Countryside (Coastal Margin) (England) Order 2010. Certain coastal types, such as banks, are automatically included in the coastal margin where they fall landward of the trail if they touch it at some point.
192. The proposed alignment along this length of shore follows an existing PROW along the top of a clay sea wall. As a clay bund this is a bank and so the whole of it is automatically included in the landward coastal margin.
193. In situations where on the landward side there is no discernible break in the slope to the bottom of the bank we have suggested that the landward boundary coincides with the top of the bank. However, that is not the case here. The bank along route section S005 has a clear break point at the base of the rear of its 45 degree slope which would enable users to recognise where their right of access ends.
194. As a PROW exists along the top of the bank the managers of this land will be used to managing the public and grazing. The inclusion of the slopes of the bank as spreading room to which coastal access rights for the public exist will not bring extra management issues as this status will not prevent grazing. If access to the rear slope is fenced by the land owner there is no requirement to facilitate public access to the rear slope.
195. In relation to *Crassula helmsii*, the proposed trail from North Fambridge passes along the same length of sea wall PROW on Blue House Farm as on the adjacent objector's land. It also has the same default landward margin on the rear slope available to the public should they wish to use it. The access provided by the trail does not give the right of access to any marshland areas, ditches or ponds. Any such access would be, as now, trespass. NE believes that there is no extra bio-contamination risk from the trail along this stretch of coastline beyond that already presented by the PROW and by any existing unlawful acts of trespass.
196. The habitats along the estuary and the wildlife that they support are internationally important. A HRA has been carried out to assess the effect of the proposed route of the trail. It concluded that no harm would occur.

197. With regard to increased footfall on the sea wall, the route along trail section S005 would follow the existing PROW. The increase in the use of PROWs during the COVID-19 pandemic has been widely reported. NE expects that there will be an increase in the use of the PROW if the route of the proposed trail is approved. However, the increase in use is unlikely to be so high as to create significant damage to the structure of the sea wall. As the sea wall is a flood defence structure, if damaged, it would continue to be maintained.

Objection B

Coastal margin and landward boundary

198. The proposed route of the trail follows an existing well used PROW along the crest of a man made sea wall on the objector's land. Seaward of the proposed trail is saltmarsh and flat that form part of the Crouch and Roach SSSI noted for its habitats that support internationally important numbers of wintering birds. Due to the dangers posed to public safety by such habitats spreading room within this part of the coastal margin will be restricted through a s25A (of the Countryside and Rights of Way Act 2000) public safety direction as shown on the relevant map in the report. Therefore there will be no new coastal access over the saltmarshes noted in the objection.
199. As the front face of the sea wall is not saltmarsh or flat there will be no restriction regarding access placed on it. However, with no access beyond the base of the front or rear face of the sea wall there is limited expectation that people will walk on either slope.
200. The trail in this area follows a linear corridor with few amenities scattered along its length. The expectation is that new users of the trail in this area will seek to progress their onward journeys from one settlement to the next with few users wishing to slow their journey down by venturing off the trail onto the spreading room available on the slopes of the sea wall. Users of the spreading room are more likely to be local walkers who already use this area and the anticipation is that little will change. No modification is proposed by NE.

Objections A & B

Ferry service as an alternative to the extension of the trail around the estuary

201. Section 297 of the Act requires NE in discharging the duty to secure a walking route around the coast of England to have regard, among other things, to the desirability of ensuring that so far as is reasonably practical interruptions to the route are kept to a minimum. Paragraphs 10.1.4 and 10.1.5 of the Approved Scheme advise that as the seaward limit of estuarial waters is an arbitrary point from an access perspective, NE will always give careful consideration to the option of extending the trail to the first bridge or tunnel with public pedestrian access. The paragraphs explain that this is for reasons of continuity and with a view to any additional recreational benefits.
202. The ferry between Burnham-on-Crouch and Wallasea Island is an on demand service and is scheduled to only run from Easter to the end of September each year. Permissions exist for new ferry infrastructure on Wallasea Island and for a ferry service between North and South Fambridge. However, at the time of writing

the report and receipt of comments from objectors neither had been brought into use.

203. In terms of recreational benefits, the proposed route would allow much of the edge of the estuary to be walked and would link settlements around it that are currently unconnected by public foot access routes. Excepted land, in relation to which there would be no coastal access rights, is scattered and small in nature.
204. NE carefully considered the merits of the ferry service and considered the merits of extending the trail around the Crouch estuary. On balance, the creation of a year round, permanent trail, linking local villages and major settlements with new access of National Trail standard, available all day, every day was deemed to be preferable to either an alternative route, most likely on the same alignment but only available to the public when the ferry was not running, or no route at all around the estuary and a seasonal gap in the England Coast Path network (when the ferry was not operating from 1 October to the end of March).
205. NE held informal discussions with the ferry operator regarding the England Coast Path proposals and the possibility of increases in service times. The operator suggested they would not at that time wish to extend running times later in the day to avoid dealing with passengers under the influence of alcohol. The operator also adds that the seasonal times were restricted by their business enterprises and the running times on their boat masters licence.
206. In relation to the representation regarding the ferry service made in late 2021, the Approved Scheme notes at 10.3.2 that even the existence of a regular ferry service does not rule out taking the trail up to the first crossing point if the balance between recreational benefits and cost is right, having regard to other statutory criteria. In NE's opinion, a permanent year round route connecting the settlements around the estuary to each other provides the greatest public benefit allowing people to walk between them with the associated benefit to businesses providing food and accommodation.
207. The recent storm damage sustained to one of the jetties used by the ferry threatens the operation of the ferry service this summer and highlights the vagaries of relying on a ferry service in comparison to a land route.
208. Once established for minimal cost, the trail around the estuary would be a permanent feature requiring little maintenance and would be free to use. In comparison, a ferry service has no guarantee of continuing if the operator decides to cease running the service. Ferry use would also be subject to a fee over which there would be little control unless subsidised at public cost.
209. Due to a lack of objection from landowners where the trail uses PROWS, and with the ferry operator being the only business that would benefit from investment in its service, the proposal seems unlikely to attract investment to support its operation from October to the end of March.

Objection C

210. The proposed trail follows a well-used PROW. On the landward side of the trail is a wet ditch and scrub. No landward coastal margin is proposed. On the seaward side of the trail saltmarsh forms part of the Crouch and Roach estuaries

SSSI owing to its habitats that support wintering birds. Due to the wildlife value of the saltmarshes and the danger they pose to walkers it is proposed to prevent access to the saltmarshes by a s25A direction. The proposed trail route will therefore not pass over the saltmarsh, or give the right of access to it, as feared by the objector.

Representations

211. NE agree with the general content of Essex County Council's representations and will review and where necessary amend the maps that are made publicly available. This will occur once the access rights are confirmed post-establishment of the trail.
212. NE will work with Essex County Council to ensure that the needs of those with disabilities are taken into account in establishing the trail.

Discussion and Conclusions

213. The numbers quoted in brackets in this section indicates the source paragraphs in the report.

Objection A

Landward boundary to the coastal margin

214. The modification sought would move the landward boundary for the coastal margin from the bottom of the sea wall slope to the top of the slope. The proposed trail follows a PROW along the top of the sea wall. There are no physical restrictions, such as fencing, preventing walkers currently wandering off the PROW onto the banks of the sea wall or the marshes on the seaward side or the flat pasture on the landward side.
215. The proposed trail would be likely to increase usage of the PROW. Given the open, undeveloped nature though of the estuary, and the distance between settlements, it is reasonable to assume that trail walkers will seek to make good progress and enjoy the fine open views by walking along the flat top of the seawall, rather than along its banks or trespassing on adjacent land. In strong winds and rain trail users may walk on the landward slope of the sea wall to gain protection from the weather. However, by virtue of the unpleasant nature of walking in such conditions, it is unlikely that this would involve significant numbers of walkers. As a result, the extent to which the trail would result in trampling of pasture on the banks of the sea wall, and the associated problems this would cause with loss of pasture, weed growth and erosion, is likely to be limited.
216. The increased usage of the PROW along the top of the sea wall as part of the proposed trail would be unlikely to cause significant damage to the solid structure of the sea wall. As the seawall is a flood defence, any damage that impaired its integrity would be repaired as required by relevant legislation.
217. In relation to livestock, on the day of the site visit the fields which give access to the seawall via gaps between the borrow dykes were being grazed by sheep. Stamfords Farm also has bulls and cows with calves that graze its fields. Bulls and cows with calves can be a danger to public safety. Given the presence of the PROW along the seawall, in order to comply with its obligations under health and

safety legislation, the farm will already be carrying out management of its livestock that graze the seawall and flattings to protect the safety of walkers. The increase in use of the PROW as part of the trail would be unlikely therefore to add to this management burden.

218. Trail users, as with current walkers along the PROW, may well have dogs with them. On land with coastal access rights though people are required to keep dogs on short leads in the vicinity of livestock in order to avoid disturbing them and on a PROW dogs must be kept under close control.
219. The potential exists for users who walk on the slopes of the seawall to slip and fall. However, the lowest level of occupier liability applies to land which has coastal access rights, far lower than the duty of care owed to trespassers on private land. It is therefore extremely unlikely that an occupier would be liable for an injury that occurs on a natural or manmade feature, such as on the slopes of a sea wall within the coastal margin.
220. To protect the Crouch and Roach SSSI access to the salt marshes on the seaward side of the trail access will be restricted [69].
221. *Crassula helmsii* is an invasive species that the objector states is present in the adjacent Essex Wildlife Trust Nature Reserve at Blue House Farm. The proposed trail would follow the existing PROW linking the nature reserve to the objector's farm. As no additional public access beyond the slopes of the seawall would be created by the proposed trail, the establishment of the trail would not give access to the borrow dykes or other land. Moreover, as noted where livestock is present walkers would be obliged to keep dogs on short leads and on a PROW dogs must be kept under close control. For these reasons, whilst the establishment of the trail would increase usage of the PROW along the sea wall, it would not create access to the borrow dykes and result in the spread of *Crassula helmsii*.
222. Having considered the grounds of objection above, I conclude that moving the landward boundary for the coastal margin from the bottom of the seawall slope to the top of the slope would not be warranted in order to strike a fair balance between the interests of the objector and the interests of the public in having rights of access over his land. As noted by NE, should the objector decide to fence off access to the rear slope to address his concerns there is no requirement for him to facilitate public access to it [40].

Objection B

Coastal margin and its landward boundary

223. The salt marsh and flat on the seaward side of the trail form part of the Crouch and Roach SSSI owing to its habitats which support internationally important numbers of wintering birds. Due to the dangers posed to public safety by such habitats NE have stated that spreading room within this part of the coastal margin will be restricted through a s25A public safety restriction as shown on Map WIB E5a in the report. This will have the additional benefit of also protecting the SSSI as identified in the Habitats Regulations Assessment which is assessed in Annex A to this report. Therefore the trail will not introduce access rights to the coast that will put public safety or the integrity of the SSSI at risk.

224. Landward coastal access rights would cease at the bottom of the seawall slope. As with the existing PROW there would therefore be no public access to the arable fields of the farm. For much of the length of route section S006 borrow dykes act as a barrier to the arable fields beyond. Given this, the increase in footfall that the trail is likely to generate is unlikely to increase trespass onto the fields and damage to crops. As walkers who make the effort to walk quieter sections of the trail, such as S006, are likely to be appreciative of its scenic beauty it is reasonable to assume that they are less likely than members of the public in general to litter. With the restrictions that would be applied to the coastal margin and the extent of its landward boundary the private interests of the objector would not be materially adversely affected.

Objections A and B

Ferry service as an alternative to the extension of the trail around the estuary

225. The Act and the Approved Scheme post-date the 2008 report to DEFRA and take precedent over it [27].
226. In relation to estuaries, the Approved Scheme states that careful consideration will always be given to the option of extending the trail as far as the first bridge or tunnel. This is because this approach is in keeping with the duty to have regard to the desirability of ensuring, so far as reasonably practicable, that interruptions to the trail are kept to a minimum and the requirement to consider any other recreational benefits that would accrue. In all circumstances, the Approved Scheme advises consideration will be given to whether the cost of extending the trail would be proportionate to the extra public enjoyment of the coast that would result.
227. When deciding whether to extend the trail around an estuary the criteria in s304(1) of the 2009 Act have to be considered [11].
228. The Crouch estuary between Wallasea and Burnham-on-Crouch is largely undeveloped. As a result, relatively little of the coastal margin is excepted land. Characterised by low lying saltmarsh habitats, muddy shorelines, grazing and long tidal reaches the influence of the sea is readily apparent.
229. With the features described, the flat topography and openness of the landscape is scenic, tranquil and of high quality. The presence of large numbers of birds and the wide variety, attracted by its special habitats, adds to the interest and value of the estuary. Extending the trail as far as the first crossing at Hawks Hill bridge, Battlesbridge ties in with the picturesque inland extent of the tidal part of the estuary in the historic core of this settlement. The trail would allow the whole of the estuary between Wallasea and Burnham on Crouch to be appreciated on foot by connecting existing public rights of way around the estuary. The need to provide accommodation, food and drink for trail walkers would be of benefit to the local tourist economy. The recreational benefits therefore of extending the trail along the estuary are very significant. This assessment is supported by representations received from Essex County Council.
230. The reports estimates that the capital cost of establishing the trail between Wallasea and Burnham-on-Crouch would be approximately £102,000 excluding VAT with annual maintenance costing approximately £28,000 excluding VAT. In

my judgement, this cost would be proportionate to the extra public enjoyment of the coast that would result.

231. An on demand ferry service exists between Wallasea Island and Burnham on Crouch. Its operation though is limited to the warmer months of the year. It is suggested that the ferry operator would be willing to make the service a year round operation and that this could cost as little as £6,000 a year with the objector offering to guarantee £2,000. No detailed breakdown of these figures have been provided to demonstrate that they realistically reflect the cost of operating such a service. Even if such information had been provided, and any additional money needed was invested by others, the very significant public benefit of extending the trail around the estuary from Wallasea to Burnham-on-Crouch would comfortably exceed the additional cost of establishing and maintaining the trail.
232. Should any ferry service in the future provide a secure, year round service over a significant part of the day NE is able to review the alignment of the trail. If appropriate, NE could then prepare a variation report to the Secretary of State proposing that the route crosses the river using the ferry service.

Objection C

233. The proposed route of trail section S032 would follow the top of the sea wall and would not cross the saltmarsh. The saltmarsh is within the coastal margin which the public would normally have access to. However, as it contains sensitive habitats that provide a home for protected species, and saltmarshes can be dangerous, access to it would be excluded by a s25A direction as shown on map WIB 5b.

Representations

234. In relation to the representations received, NE has accepted that the maps identifying excluded or restricted access to land within the coastal margin need to be reviewed and amended where necessary to deal with any mapping errors present. This will occur once the access rights are confirmed post establishment of the trail. With regard to the errors that are alleged to have occurred with some sections of the route identified as existing highway, no further details have been provided. It is therefore not possible to determine if they relate to the sections of the proposed trail that are the subject of the objections dealt with in this report and so raise issues that should be before the Secretary of State. These representations and the comments of NE in relation to them are therefore set out for information above.
235. The HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. Annex A provides information on this matter.
236. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals strike a fair balance in relation to the matters raised in the objections.

Recommendation

237. On the basis of my conclusion, I therefore recommend that the Secretary of State makes a determination to the same effect as my conclusion.

[redacted] **APPOINTED PERSON**

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

Habitats Regulation Assessment

238. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE).
239. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
240. A 'shadow' HRA, dated January 2020, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and is recorded separately in the suite of reports. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation. The HRA considered the potential impacts of the coastal access proposals on the following European sites: Outer Thames Estuary Special Protection Area (SPA); Crouch and Roach Estuaries SPA and Ramsar site; Essex Estuaries Special Area of Conservation (SAC). The HRA is considered to have identified the relevant sites affected by the proposals. The proposals are not directly connected to or necessary to the management of the European sites, therefore a HRA is required.
241. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone'. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
242. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur, and the impact-effect pathways considered. Table 4 sets out the assessment of AEoI for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
243. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEoI from the proposals alone to determine whether they could give rise to an AEoI in combination with other plans or projects. In these circumstances, no AEoI was identified. NE has therefore concluded that the

access proposal would not have an adverse effect on the integrity of any of the European sites considered either alone or in combination with other plans and projects.

244. The assessment of AEoI for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3.3). The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEoI in light of the sites' conservation objectives.
245. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
- Physical damage to saltmarsh during establishment work, maintenance work and trampling by walkers which could result in long-term reduction in population and/or contraction in the distribution of Qualifying Features within the site.
 - More frequent disturbance to feeding or roosting waterbirds (non-breeding) following changes in recreational activities as a result of the access proposal, which could lead to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
246. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Coastal Access: NE's Approved Scheme 2013. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts.
247. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

248. The NCA, dated 22 January 2020, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI), a Marine Conservation Zone (MCZ) and an undesignated but locally important site, which are not subject to consideration in the HRA.
249. Relevant to this report are the Crouch and Roach Estuaries SSSI, the Cliff, Burnham-on-Crouch SSSI, the Blackwater, Crouch, Roach and Colne Estuaries MCZ and Kendal Park (Hullbridge Foreshore) Local Nature Reserve (LNR). NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between Wallasea and Burnham-on-Crouch were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs and that the access proposal is the one that is least likely to hinder the achievement of the conservation objective for the MCZ. In respect of the sites and features listed above, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.