



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

by [redacted] BA MSc MIPROW

A person appointed by the Secretary of State for Environment, Food and
Rural Affairs

Date 18 November 2022

Marine and Coastal Access Act 2009
Objection by Cumbria Wildlife Trust
Regarding Coastal Access Proposals by Natural England
Relating to Silecroft to Silverdale

File Ref: MCA/SCS6/01

Land at Grubbins Wood Nature Reserve, Arnside

- On 8 January 2020, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Silecroft and Silverdale under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) pursuant to its duty under the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection to report SCS 6 Kents Bank to Cove Well, Silverdale was made on 29 January 2020 by Cumbria Wildlife Trust. The land in the report to which the objection relates is route section SDC-6-S025 to SDC-6-S032FP shown on Maps SCS 6c & 6d.
- The objection is made under paragraphs 3 (3) (a) of Schedule 1a to the 1949 Act on the grounds that the proposal fails to strike a fair balance for the reasons set out in the objection.

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

Procedural and Preliminary Matters

1. On 8 January 2020 Natural England (NE) submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silecroft and Silverdale. The period for making formal representations and objections to the reports closed on 4 March 2020.
2. There is 1 admissible objection to report SDC6. A number of representations were made to report SCS6, none of which made specific mention of the parts of the trail subject to the objection.
3. I have been appointed to consider these matters and make recommendations to the Secretary of State. I undertook a site inspection on 30 June 2021 accompanied by representatives of NE, Cumbria County Council and the Cumbria Wildlife Trust. I have had access to the Report prepared by NE, the objections made to that Report, NE's comments on the objection and NE's responses to a request for further clarification of matters arising from the site visit.
4. This report includes the gist of submissions made by the objector, the gist of the responses made by NE and my conclusions and recommendations.

Main Issues

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

7. The second objective is that, in association with the trail, a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
8. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable, interruptions to that route are kept to a minimum.
9. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
10. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.
11. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. It forms the basis of the proposals of NE within the Report.
12. My role is to determine whether the proposals set out in the 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

13. The trail, subject to the Report, would run from Kents Bank (grid reference SD 3969 7526) to Cove Well, Silverdale (Grid reference SD 4567 7551) as shown on maps SCS 6a to SCS 6e (points SCS-6 0S001FW to SCS-6- S063 RD). The trail generally follows existing walked routes, including public rights of way and in the main follows the coastline quite closely and maintains good views of the sea. The route would utilise the Grange-Over-Sands and Arnside railway stations to cross the Kent estuary. The trail would also include ten sections of new path at Far Arnside, none of which include the sections of trail considered in this report.

The case for the objector

14. Cumbria Wildlife Trust ('the Trust') objects to the proposal to route the trail away from the public right of way running along the foreshore seaward of Grubbins Wood and to route the main trail through the nature reserve. NE's reason for choosing the route through the wood is that it remains available at all states of the tide, that it exists as a permissive path and provides a better surface for those of reduced mobility.

15. Paragraph 6.2.11 of the Report incorrectly describes the route through the wood as crossing through 'agricultural land' without recognising that the land is and has been managed as a nature reserve for many years or that the species rich grassland is a feature of the nature reserve.
16. The public right of way on the foreshore remains available at most states of the tide. Routing the trail through the nature reserve would send all users of the coast path through a field that has been under species rich grassland restoration for many years. In wet weather the path through the field becomes slippery and would pose a problem to those of reduced mobility. As the path is currently open on a permissive basis, some of the grassland is devoid of vegetation as people find the driest route through. All dogs are required to be on a lead within the nature reserve; this requirement will not change whether the path forms part of the main trail or, as suggested, forms part of an alternative route.
17. The Trust considers that NE has been purposely misleading in taking its proposals forward unchanged and has ignored the submissions and suggestions made by the Trust.
18. The trail should be routed along the public footpath seaward of Grubbins Wood with the permissive path through the wood becoming an alternative route at times of high tide, or for those of reduced mobility who may find the rocky nature of the foreshore challenging. This arrangement would strike a fair balance in allowing the public a choice of routes whilst while mitigating the possibility of further damage to the nature conservation interest of the Nature Reserve.

The response by Natural England

19. It is acknowledged that walkers currently follow the line of the public footpath along the foreshore which is generally easy underfoot provided that the surface is dry and not inundated by the tide. There are however some areas where there are exposed limestone outcrops which can be slippery when wet.
20. Sections 7.11.3, 7.14.3 and 7.15.2 of the Scheme provides advice that the trail will not be aligned on sandy beaches, rocky shores, saltmarsh or flat unless such a route would be the best or only option. In the case of the foreshore at this location, there is a better option for the trail available through the pasture at Grubbins Wood.
21. The coast near Arnside is popular with residents and visitors alike and levels of use currently experienced are not expected to rise significantly as a result of the establishment of the trail. All land seaward of the trail would become part of the coastal margin but the public right of way at the top of the foreshore would be unaffected by the proposals. It is expected that many users, including local residents, will continue to use the foreshore route when conditions allow and that there is unlikely to be a significant impact on Grubbins Wood, over and above existing levels and patterns of use. NE also considers that there may be no significant increase in the number of dogs passing through the nature reserve. National restrictions require dogs to be on leads in the vicinity of livestock; consequently, a direction to that effect is not necessary or possible.
22. No surfacing of the route through Grubbins Wood has been proposed, but NE would be open to discussion with the Trust regarding any small works which may be required to address localised issues.

23. NE is of the view that the proposal closely reflects the guidance in the Scheme.

Further information sought by the Inspector following the site visit

24. The Report noted that the proposed route through Grubbins Wood would remain available at 'most' states of the tide, which implies that there would be occasions when the foreshore route was unavailable due to high tides which would affect other parts of the trail between Arnside and New Barns Marsh, hence the Optional alternative route.
25. The foreshore route is approximately 400 metres in length and does not appear to be of a distance which would inconvenience users even when walking along a rocky, shingled foreshore. The foreshore was in constant use at the time of the site visit and appeared to be the preferred route of users.
26. As it appeared likely that the foreshore route was one which users would follow, NE was requested to provide the evidence/ information taken into account which led to the conclusion that the foreshore route would be inundated by high tides when the route either side would not be affected by the same tides.

NE's response to the Inspector

27. Parts of the route to the northeast of Grubbins Wood lie between 5m and 6m above OS datum, whereas the foreshore route is in places as little as 4.2m above datum. Observations made on site of a 10m tide on a calm day demonstrated that a number of sections of the foreshore adjacent to SCS-6-S027 to S031 cleared only 1.5 hours after high tide, suggesting they had been inundated for around 3 hours. At those locations where walkers would be around 4.5m above datum, the high-water mark on the rocks was around 0.75 – 1m higher than the foreshore. It is considered that the lowest sections of the foreshore (below Grubbins Wood) would be covered by standard tides of 9.5m (around 24% of the year); atmospheric conditions may have this effect with only a 9m tide (approximately 49% of the year).
28. The higher sections of the foreshore are likely to be flooded by a standard 10.5m tide for 3% of the year, with tides of 9.5m having the same effect for 24% of the year.
29. Given the high proportion of days when the foreshore route below Grubbins Wood is likely to be impassable and the period of time which the route would be inundated by the tide, the guidance at section 4.4.2 of the approved scheme is considered to be particularly relevant at this location. At this location, it is considered that there is another option for the trail which is both preferable and which best meets the criteria by which the coastal access duty can be discharged.
30. Consideration had been given to aligning the main route at the top of the foreshore and relying on the proposed optional alternative route or possibly adding another alternative through Grubbins Wood. However, the route at the top of the foreshore is not considered adequate for a national trail and a preferable option exists nearby. NE considers that the proposed main route, via Grubbins Wood would be more accessible, particularly for those with reduced mobility and a preferred route for many when the foreshore route is wet underfoot.

Discussion and conclusions

31. The proposed trail through Grubbins Wood would be located on the periphery of the Kent estuary and would be available at all states of the tide. Although views across the Kent would be restricted by a belt of trees to the north-west of the proposed trail, views directly over the Kent would only be unavailable for around 400 metres of the trail. In general, the proposed route accords with the guidance in sections 4.4, 4.5 and 4.6 of the Scheme.
32. The foreshore below Grubbins Wood is at a lower elevation than other parts of the foreshore to the northeast. On a rising tide, this part of the foreshore is likely to be inundated first and is likely to be the section which will clear last as the tide recedes. There are therefore likely to be occasions when users of the proposed trail walking southwest may be faced by an incoming tide with the foreshore below Grubbins Wood already under water. At such times, the proposed route through the wood would offer both a means of escape from an incoming tide and a means by which a journey along the trail could be continued.
33. The Trust submits that the path through Grubbins Wood should be an alternative route with the main trail being aligned on the foreshore. The foreshore route at this location appears to cross a variety of land forms, part sand, part mud with rocky limestone outcrops. Such land types are not considered suitable for a national trail unless there is no viable alternative nearby. Sections 7.11.3, 7.14.3 and 7.15.3 of the Scheme describe the general principles of alignment which should be followed in relation to the type of landforms present on this foreshore.
34. The guidance states that the trail would only be proposed to run over a sandy beach or rocky shores *"for a short distance, and only then where there are no other viable route options or if this offers the best 'fit' with the statutory criteria"*. I concur with NE that at this location, there appears to be a viable route option for the trail which would avoid users having to travel over unsuitable land forms.
35. Having said that, it is highly likely that at times of low tide, many people walking south west from Arnside towards new Barns Marsh (or vice versa) would follow a route along the foreshore, as I observed at the time of my site visit. The alignment of the trail through Grubbins Wood is likely to have little impact on such users and would not preclude people from walking along the shoreline either as part of the coastal margin or when following the public right of way.
36. If the trail was aligned through Grubbins Wood, there may be an increase in the number of people passing through, but it is equally likely that the numbers may not be greater than those which currently make their way through the wood to avoid an incoming tide or to find a route which is less uneven than the route on the foreshore. There is already a degree of public access to Grubbins Wood; the issues which the Trust identifies are therefore likely to be present currently.
37. The Trust has concerns about an increasing number of dogs being present in the wood, particularly when livestock are grazing in the pasture. It is a requirement for dogs to be on leads where grazing livestock are present; a direction for dogs to be on leads would not therefore be appropriate or suitable. It is noted that the trust requires dogs to be on leads at all times when in Grubbins Wood; the alignment of the trail through the wood would not negate that requirement.

38. As part of the establishment of the trail, NE propose to construct a short flight of steps from the foreshore to overcome the difference in elevation between the foreshore and the wood together with the installation of kissing gates to prevent the escape of livestock. Whilst other works to the surface of the existing path are not proposed, NE has indicated that minor works could be undertaken to guard against further braiding of the existing path.

Habitats Regulations Assessment (HRA)

39. The following sections are to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the UK National Site Network.
40. The Habitats Regulations Assessment provides information to inform the Competent Authority's AA. The assessment was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRA considered the potential impacts of the coastal access proposals on the Morecambe Bay and Duddon Estuary Special Protection Area (SPA); the Morecambe Bay Special Area of Conservation; the Morecambe Bay Ramsar site; and the Duddon Estuary Ramsar site. The HRA has identified the relevant sites affected by the proposals.
41. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, further assessment under the HRA provisions was required. The overall Screening Decisions found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European Site(s) 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity ('AEoI') of the designated sites.
42. The scope of the appropriate assessment is set out in Part D1 and Table 6a of the HRA and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in D2; the Secretary of State should note that in relation to the Morecambe Bay SPA & SAC NRA, this relates to the entirety of the SCS and SDC sections of the trail.
43. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives. Those relevant to this report where there is some residual risk of insignificant impacts are:

- Disturbance to foraging, breeding, or resting birds, following changes in recreational activities as a result of the access proposals, leads to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
44. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEoI 'in-combination' with other plans or projects. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from changes in recreational activities as a result of the access proposals and the construction of sections of new path through these habitats which had the potential to act 'in-combination' with those from other proposed plans or projects.
45. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on Morecambe Bay and Duddon Estuary SPA, Morecambe Bay SAC, Morecambe Bay Ramsar site and Duddon Estuary Ramsar site either 'alone' or 'in-combination' with other plans and projects.
46. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale 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 Scheme. To ensure appropriate separation of duties within NE, the HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

Nature Conservation Assessment (NCA)

47. The NCA, 9 December 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), Limestone Pavement Orders (LPO) and undesignated but locally important sites and features, which are not already addressed in the HRAs.
48. Relevant to this report is Arnside Park Ancient Woodland. NE were satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of their functions.
49. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

Whether the proposal strikes a fair balance

50. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights. The proposed route will create a right of access over land which forms part of Grubbins Wood Nature Reserve. There are currently no rights of access over the Nature Reserve, although public access to Grubbins Wood is permitted by the Trust.
51. The proposal will create a right of access over the objector's land which may adversely impact upon how that land is currently used. Mitigation in the form of kissing gates is proposed to prevent livestock from straying from the field. There is currently public access to the path the trail would follow, and it is unlikely that the trail would lead to an increase in disturbance to the site over and above that which is already present. Any adverse effects do not in my view outweigh the interests of the public in having rights of access over coastal land. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

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

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Appointed Person