



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

by [redacted] MA (Cantab) Solicitor

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

Date 13 March 2018

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Site visit made on 7 February 2017

File Ref: MCA/GAL0387/03

Objection Reference: MCA/GAL0387/03

Arlosh House – land adjacent to Newton Marsh

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 13 September 2016 to chapter 4 of the Report, Gretna to Allonby, has been made by [redacted]. The land in the Report to which the objection relates is route section ref. GAL-4-S011.
- 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 the report do not fail to strike a fair balance.

Procedural Matters

1. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby Report (the Report) to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved access to the coast between Gretna and Allonby.
2. The period for making formal representations and objections to the Report closed on 19 September 2016 and 11 objections were received within the specified timescale. 10 of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference MCA/GAL0387/03. The remaining objections are considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.
3. I carried out a site inspection of route section GAL-4-S011 on 7 February 2017 when I was accompanied by the landowners and representatives from Natural England.
4. Following the site visit I requested further information from NE. On 22 May 2017 notices were published (the Schedule 6 Notices) stating that I was minded to determine that the proposals in the report fail, in the respects specified in the objections, to strike a fair balance as a result of the matter or matters specified in the objections and inviting further representations.
5. [redacted] was invited to attend a hearing into the objection on 7 December 2017 but did not attend.

Main Issues

6. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:

Site visit made on 28 September 2023

File Ref: MCA/Gretna to Allonby MR2

- (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
7. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
8. Section 297 of the Marine and Coastal Access Act (the Act) provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
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. 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 and
 - (g) the existence of a ferry by which the public may cross the river.

11. NE's Approved Scheme 2013¹ ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
12. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

13. The proposed trail between Gretna and Allonby is almost entirely above the seaward limit of the Solway Firth's estuarial waters, the terrain and natural environment of which pose a number of particular challenges. Much of the estuary is dominated by large areas of saltmarsh and mudflats, as are the river estuaries leading from the Solway Firth. Considerable parts of the Solway Firth are designated for nature conservation or heritage preservation, including the Solway Firth Special Area of Conservation, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and Marshes Site of Special Scientific Interest and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.
14. 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 as that 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. However, in all circumstances, consideration will be given to whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.
15. The Approved Scheme also notes at section 10.4.1 that several of the Estuary Criteria relate to its overall character. It states that when considering an estuary in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.
16. Chapter 4 of the Report relates to Whitrigg Bridge to Silloth and states at 4.3.1 that NE proposes to exercise its functions as if the sea included the estuarial waters of the Solway Firth, including the rivers Waver and Wampool, as far as the existing road bridge over the River Wampool and to a proposed new footbridge over the River Waver.
17. From Whitrigg Bridge the trail follows the river bank until Section GAL-4-S011(S011) where it leaves the river bank and is aligned close to the landward edge of the marsh. Where the existing fence is landward of the trail the landward boundary of the coastal margin is proposed to coincide with the fence.
18. A long-term access exclusion to the saltmarsh adjacent to S011 is proposed under s25A of the 2000 Act on the basis that the land is not suitable for public access. A long-term access restriction requiring dogs to be kept on leads is also proposed in order to avoid disturbance to birds. The exclusion would be in operation all year round.

¹ Approved by the Secretary of State on 9 July 2013

19. Roll-back, meaning that the route of the trail would be able to change without further approval from the Secretary of State, is proposed in relation to this section.
20. An optional alternative route would be available when the route from Whitrigg Bridge across Newton Marsh is affected by high tides. It would follow an existing public highway. NE state that this route, which follows the road from Angerton, through Newton Arlosh to Raby Cote and avoids Newton and Saltcoates Marsh, was considered as an option for the main trail but the proposed route was chosen because it is closer to, and maintains better views of the sea and also avoids creating an additional, large area of coastal margin.

The Objection

21. Severe danger to walkers of drowning on the marsh due to high tides and areas of quicksand.
22. Danger to stock and walkers due to possibility of startled stampeding cattle.
23. Depreciation of farm value and no compensation.
24. Increase in liability.
25. Disturbance to wildlife.
26. Difficult to provide disabled access on a tidal saltmarsh.
27. Increase in litter.
28. Impact on shooting of wild geese to protect crops and smaller birds.
29. The nearby B5307 which is an advertised cycle route would be far safer. There are observation points along the road.

Representations

30. The RSPB states that the proposed route risks causing unacceptable levels of disturbance to SPA/SSSI birds species through the introduction of access onto a site that currently has no access. The RSPB considers that the limited access restrictions and exclusions do not constitute adequate mitigation and that in the absence of sufficient data to inform or contradict the risk the precautionary principle should be followed.
31. The RSPB considers that the alternative route is more suitable for use as the primary route, although the increased area of coastal margin which would result from adopting the alternative route as the primary route is not ideal. However, in its view, the linear nature of a route along a lane combined with signage denoting the access restrictions on the marsh as well as a pro-active approach to access management being taken by landowners will likely result in increased compliance from users of the route.
32. The Open Spaces Society and the Ramblers' welcome the proposals.

Natural England's comments on the objections

33. Most areas of low-lying coast will be subject to flooding, due to a combination of tides and adverse weather. NE agrees that the proposed main route will

- periodically be affected by floods which is why an optional alternative route is provided for use when the main route become unsuitable. Appropriate signage will alert walkers to the potential dangers and remind them to check tides.
34. The coast path will often cross land grazed by cattle and the situation is not unique or particularly unusual. The proposals are consistent with the approach in the Approved Scheme at parts 8.1 and 8.2. Although primarily for nature conservation reasons, rights will be restricted so that dogs must be kept on a lead.
 35. The Access and Sensitive Features Appraisal concludes that any impacts on protected sites and species are not likely to be significant, when viewed against the protected sites as a whole and the distribution of such species across the whole of the Solway estuary. The alignment of the route and associated restrictions of access for people and dogs on either s25A or s26 grounds will separate walkers from the most sensitive areas.
 36. Occupier's liability is specifically and considerably reduced in relation to visitors on land covered by coastal access rights (section 4.2.2 of the Scheme). It is set at the same lower level owed to trespassers provided the visitor is only exercising the statutory right of access. Section 306 of the Marine and Coastal Access Act 2009 extends this exclusion of liability for land which is coastal margin in respect of a risk resulting from any physical feature. This does not affect liability under animals' legislation.
 37. NE accepts that access for those with reduced mobility will be constrained by practical limitations such as the nature of the terrain. Kissing gates of a design optimum for those with reduced mobility to be installed.
 38. NE is not required to consider additional facilities for litter and dog waste bins as part of its proposals. This will be a matter for the local authority to consider.
 39. Wildfowling and other shooting quite commonly occur on the coast. The primary responsibility for preventing injury lies with those shooting. Shooters have to assume that members of the public are present and take all necessary precautions even at times when they are unlikely to encounter visitors. People using shotguns should be able to see the whole area where their shot could fall and must not shoot if anyone enters that zone of risk. Coastal access rights on this part are restricted to the proposed line of the trail at the back edge of the marsh. Directions to exclude access for limited periods, backed up by a temporary inland route will be available if the situation justifies this approach.
 40. Issues relating to depreciation of farm value, lack of compensation, provision of public conveniences are raised but not recognised as grounds for objection to the proposals.
 41. The nearby road fails to meet the key criteria within the Approved scheme – namely that the route should normally adhere to the periphery of the coast and provide views of the sea ((para 4.1.1). It would also have the effect of creating a very large area of coastal margin. The proposed route minimises the extent of the margin and therefore any impact on local farming practices, whilst offering the most enjoyable route for walkers.

Further information provided by NE

42. Following the site visit I requested further information with regard to NE's appraisal of the bird species present in the area and its consideration of the likely impact of the proposed route upon them. NE responded that, as with the appraisal relating to the northern side of the Wampool estuary, they were able to conclude that the overall package of proposals would not have a likely significant impact. This conclusion was based partly on the proposed alignment at the back edge of the marsh (and including features of the terrain and vegetation that will tend to reduce any disturbance effect) and partly on the proposals to exclude access from the coastal margin and to require dogs to be kept on leads throughout the year.

Responses to Schedule 6 Notices

The Objector

43. [redacted] did not respond to the notice.

Ramblers'/Open Spaces Society

44. Walkers and naturalists are familiar with the issues of crossing fields containing agricultural stock. If this objection is accepted as a principle then we foresee significant problems for NE in applying Government policy as set out in the Approved Scheme.
45. There is a significant amount of the Solway coast where NE has not extended the spreading room to cover areas which they have considered as too sensitive due to the disturbance of birds. We regard the interaction of people with nature as a paramount consideration and this section of the route provides such an opportunity.
46. The alternative route was rejected by Cumbria County Council for the Cumbria Coastal Way because of concerns for the safety of walkers. The Cumbria Coastal Way follows a route further inland to Angerton. Mr Brodie states that he has used the alternative route on several occasions and that it is not a route which he is keen to use again or would encourage the public to use. The route provides few, if any, real views of the coast and walkers attention is on safety which means that no attention can be given to the landscape or wildlife of the area.
47. If the alternative route becomes the main trail then the fields between the road and coast would become spreading room. The fields would in all probability be used by birdwatchers and other naturalists to access the coast. Use of the road would prove to be less of a fair balance than the current proposal.
48. [redacted] presents no evidence that the perceived increase in litter, issues of disabled access, disturbance to wildlife and impact, if any, on farm assets will occur and these matters should be given no material weight.
49. [redacted]'s objection is contradictory in that he claims to be concerned about the disturbance to wildlife and also as to how users of the path might disturb wildlife being shot by the landowner.

Discussion

Farm management and safety

50. In his objection [redacted] expressed concern about the danger to walkers from the presence of cattle but has provided no details. I note that the trail would be separated from the adjoining fields and that Newton Marsh is an extensive area which would allow for plenty of separation between any cattle on the marsh and walkers.

Nature Conservation

51. NE stated that it had been difficult to get the right balance along this stretch of the trail because of the high usage of the Wampool estuary, in particular by wintering barnacle and pink footed geese which graze on the marshes. As the winter progresses the barnacle geese graze in adjacent agricultural fields. It was accepted that any pedestrian access will cause some disturbance and may result in a change in their feeding habits. It was also acknowledged that greylag geese are present all year round and some nest in the area. However, they are not a species for which the Solway is notified.
52. Shelduck, skylark, lapwing and oystercatcher all breed in the area and form part of the SSSI interest. It was accepted that the trail would have an impact upon individual pairs. However, they are found elsewhere within the Solway, where they would continue to breed and therefore the overall impact on the species in the area would be small. NE also stated that there was scope for planting hedges and providing visual barriers to reduce the impact on individual pairs.
53. I note the concerns of the RSPB in respect of this part of the route.
54. I accept that the impact on the designated sites as a whole may not be significant. However, it is clear that use of these sections of the route is likely to result in some disturbance to birds, and that there will be an impact on protected sites and species.

Flooding

55. In his objection [redacted] expressed concern about the danger to walkers crossing the marsh and I accept that there are areas of the Solway estuary that are particularly dangerous. Section 7.15 of the Approved Scheme states that the trail will not normally be aligned on flats and salt marsh and that such areas are typically unsuitable for public access.
56. The route at S011 is at the back edge of the marsh on slightly raised ground. No information has been provided with regard to the extent to which this particular section may be subject to flooding. Signage will be provided to warn walkers of the dangers and an optional alternative route is proposed.

Alternative route

57. [redacted] has proposed that the alternative route should be the primary route. It follows a road which in places is some distance from the estuary. Although good views of the estuary are available from particular vantage points, along much of the road the views are severely limited. The Ramblers' expressed concern about use of the road due to traffic and the lack of views. I accept that the views of the coast from the proposed route are significantly better.

58. Use of the road as the main trail would result in a large area of coastal margin which NE state would impact on farming practices. The suggestion that his farm would fall within the coastal margin and that there could be public access to his fields is a matter of great concern to [redacted]. However, there are various grounds on which a direction excluding access can be made, including land management and public safety and it does not appear that this is a matter which has been considered in any detail.

Occupiers' Liability

59. [redacted] has expressed concern about the possibility of liability in the event of an incident involving walkers and cattle. Section 4.2.1 of the Approved Scheme states that the key principle is that "visitors should take primary responsibility for their own safety....and should be able to decide for themselves the level of personal risk they wish to take". Section 4.2.2 clarifies that land subject to coastal access rights benefits from the lowest level of occupiers' liability known under English law and that this "makes it extremely unlikely in normal circumstances that an occupier could successfully be sued in relation to injury on land with coastal access rights".

Other matters

60. I note the concerns raised about possible property depreciation and lack of compensation. However, these are not matters to be taken into account in considering whether a fair balance has been struck.
61. Litter and dog waste bins would be a matter for the local authority.
62. Given the location of the trail at S011 the impact on wildfowling should be minimal.
63. Access for those with reduced mobility will be constrained in this area due to the nature of the terrain crossed. Section 4.3.8 of the Approved Scheme states that NE will "make the trail as easy to use as we reasonably can for disabled people and others with reduced mobility, whilst accepting that such opportunities will often be constrained by practical limitations such as the rugged nature of the terrain".

Conclusions

64. The proposed route adheres to the periphery of the estuary and provides good views of it. Although I have some concerns about the safety of walkers due to the location of the trail on a saltmarsh, the alignment proposed reduces the danger. I also accept that there will be some disturbance to birds but again the alignment at the back edge of the marsh and the restrictions imposed will minimise the impact.

Recommendation

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

[redacted]

APPOINTED PERSON



The Planning Inspectorate

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

by [redacted] BSc(Hons) PGDip.LP Solicitor (Non Practicing)

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

Date 7 March 2024

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Objection Reference: MCA/GAL/MR2/O/1/0958
Raby Cote/Raby Grange, Abbeytown, Cumbria

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for the Environment, Food and Rural Affairs 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.
- In response to objections received to chapter 4 of the Coastal Access Report – Gretna to Allonby, on 6 July 2022 Natural England submitted the Coastal Access Modification Report GAL-MR2 (the Modification Report) to the Secretary of State for the Environment, Food and Rural Affairs, setting out revised proposals for the route of the England Coast Path in Cumbria at Raby Cote and Raby Grange.
- An objection dated 25 August 2022 to the Modification Report has been made by [redacted]. The land in the Modification Report to which the objection relates is route section ref: GAL-MR2-S001.
- The objection is made under paragraphs 3(3)(a) and 3(3)(c) of Schedule 1A to the 1949 Act on the grounds that the modified proposal fails to strike a fair balance in such respects as set out in the objection.

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

Procedural Matters

66. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby Report to the Secretary of State for Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Gretna and Allonby.
67. NE's original proposals were the subject of objections. Subsequently, in March 2018 an Appointed Person made a recommendation to the Secretary of State for Environment, Food and Rural Affairs, that they make a determination that the proposals within NE's original report failed to strike a fair balance as a result of the matters that were raised in the objections to the original report. As such, on 6 July 2022 NE submitted the Modification Report to the Secretary of State, setting out revised proposals for the route of the England Coast Path in Cumbria at Raby Cote and Raby Grange.
68. The period for making formal representations and objections to the Modification Report closed on 31 August 2022 and one objection was received within the specified timescale. The objection referred to the three route sections 'GAL-MR2-S001', 'GAL-4-S017' and 'GAL-4-S018'. However, the two sections 'GAL-4-S017' and 'GAL-4-S018' were proposed by NE in 2016, and only route section 'GAL-MR2-S001' is the subject of the Modification Report for which this Report to the Secretary of State for Environment, Food and Rural Affairs considers in terms of a recommendation. In addition to the objection, three representations were received within the specified timescale.
69. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Gretna to Allonby, might have an adverse effect on: the Solway Firth Special Area of Conservation, the Solway Firth Special Protection Area and the Upper Solway Flats and Marshes Ramsar site. NE has also produced an Access and Sensitive Features Appraisal (ASFA) relating to Gretna to Allonby.

Hearing Held on 6 December 2017
Site visits made on 6 February 2017

File Refs: MCA/GAL0110/12 and MCA/GAL0811/07

70. I carried out a site visit on 28 September 2023, and I was accompanied by [redacted], members of his family, his agent and representatives from NE. Following the site visit, I requested further information from NE and the objector.

The Main Issues

71. 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 two objectives.

72. 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.

73. 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.

74. 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 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.

75. 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.

76. Section 301 of the 2009 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.

77. NE’s Approved Scheme 2013 (“the Scheme”) sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE’s proposals within the Report.

The Coastal Route

78. The proposed trail between Gretna and Allonby generally follows existing walked routes for much of its length but does depart from those existing routes in places. The area is dominated by the estuarial waters of the Solway Firth, large areas of saltmarsh and mudflats and river estuaries leading into the Solway Firth. Considerable parts of the Solway Firth are designated for nature conservation or

heritage preservation, including: the Solway Firth Special Area of Conservation, the Solway Firth Special Protection Area, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and Marshes Site of Special Scientific Interest, and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.

79. As noted above, the objection relates to section GAL-MR2-S001, and which comprises the northern part of section GAL-4-S018 as referred to within NE's original report (2016). NE's original proposal was for the trail to follow a disused railway line. The Modification Report proposes that approximately 310 metres of the trail be realigned away from the disused railway line to a maximum distance of 15 metres westward of the original proposed line of the route. NE proposes an all year round access restriction on section GAL-MR2-S001 requiring that dogs be kept on leads.

The Objection

80. The objection comprises a number of different themes. The objector considers that the position of the proposed route through productive agricultural fields would have a negative impact on farming operations. The objector maintains that it would be more appropriate to align the trail along one of two suggested alternative routes and suggests modifications in that respect. The first suggested alternative route would be to continue the trail along the length of the disused railway line. The second suggested alternative route would be to not align this section of the trail along the disused railway line but rather should follow a nearby minor road towards the settlement at Abbeytown, before crossing the River Waver at an existing bridge and connecting with the trail on the western side of the River Waver.
81. The objection raises concerns regarding access across agricultural fields needed in respect of the construction and long term maintenance of a proposed fence which would separate the trail from the adjoining fields. In that regard, the objection provides that access across the fields for vehicles would disturb livestock and impact on silage production at other times. Furthermore, once that fence was constructed, access across the fields would still be required in order to maintain that new fence. The presence of the new fence would also make it impossible for the landowner to maintain his fence at the eastern boundary of the holding and which separates the holding from the adjacent disused railway. Further concerns are raised regarding the proposed removal of a section of hedgerow, and that that the proposal fails to strike an appropriate balance between landowners by placing a far larger stretch of the trail at Raby Cote when compared to Raby Grange.
82. In addition to the above, the objector maintains that the proposed route through agricultural fields would have an unacceptable impact on livestock. Specifically, the objector states that the farm holding through which the proposed route would be aligned, is subject to a tenancy agreement for geese to graze on the land throughout the winter, and that it is a term of that tenancy agreement that the objector must not allow the geese to be disturbed. In that respect, it is maintained that use of the proposed route by walkers and their dogs would result in disturbance of the geese.
83. Concerns are also raised in respect of ewes and lambs and that the use of the proposed route would result in walkers and their dogs disturbing lambs causing them to split from their mothers. Furthermore, it has been put to me that dogs would chase pregnant ewes causing them to abort and would chase and corner lambs which often

results in their death. The objector further refers to the presence of bulls, cows and calves grazing in the fields that may be affected by the position of the proposed route.

84. There is also a concern that as a result of increased levels of unaccompanied public access, the potential impact on farming operations and the knock-on impacts in terms of animal welfare with regards to health problems associated with dog fouling, additional costs, potential loss of income from loss of livestock or reduction in milk production, as well as additional burdens placed on farmers in terms of emotional stress, would be unacceptable. The objector further notes that no compensation for the additional works or loss of productive agricultural land has been discussed.

Representations

85. The Ramblers and the Open Spaces Society consider that the proposed modification to NE's original proposal is unnecessary. Nonetheless, both the Ramblers and the Open Spaces Society believe that the process for implementation of the trail would be achieved more speedily if the proposed modification is accepted.
86. Historic England confirms that the proposed modification would have no significant impact on designated heritage assets or the wider historic environment. Historic England raises no objections to the proposed modification to the alignment of the route.

Natural England's Response to the Objections

87. NE proposes the installation of new fencing to separate the proposed route from adjacent agricultural land. The proposed new fence would enclose approximately 640 square metres of land, and which represents approximately 0.7% of the total area of the two fields through which the trail would pass.
88. In terms of the objection that the proposal fails to strike a fair balance between neighbouring landowners, NE clarifies that the fair balance requirement as set out in section 297 of the 2009 Act relates only to the balance to be struck between public rights of access and the interests of owners or occupiers. Nonetheless, NE considers that, given the respective size of the two neighbouring agricultural holdings, the additional length of the route to be aligned on the objector's land would not represent a disproportionate share.
89. NE acknowledges that the proposed route would require gates or gaps to be created in existing boundary features and accepts that a small section of hedge would need to be removed to facilitate the proposal. NE advises that such actions are not taken lightly but are inevitable, to some extent, in terms of delivering such a significant national asset such as the England Coast Path.
90. In respect of the proposed introduction of new fencing and long term arrangements for maintenance of new and existing boundary features, NE states that the timings of works would be agreed in advance with the landowner and that it is likely that a majority of the works required would be carried out manually and that therefore significant vehicle access onto the land would not be required. All future maintenance of the proposed new fencing would be carried out by contractors on behalf of the access authority, with additional gates being placed within new fencing so as to provide access for the landowner to maintain their fence on the eastern side of the trail at this section of the proposed route.

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91. NE maintains that the erection of new fencing separating the proposed route from adjoining agricultural land would be entirely adequate to prevent disturbance to geese, ewes and lambs, by walkers and their dogs. NE confirms that they have received advice regarding the active goose refuge area which suggests that new fencing would prevent disturbance to the geese, and proposes that information panels are erected at either end of the proposed route which advises users of the nature conservation sensitivities of the area and the need to keep dogs under control at all times. Furthermore, in respect of disturbance to ewes and lambs, NE notes that the fields are large in scale and would therefore provide opportunity for such livestock to move away from the trail when necessary.
92. In addition to the above, NE also states that the proposed erection of new fencing separating users and adjoining agricultural land, would completely mitigate against the concerns and objection associated with increased public access. NE maintains that the risk to animal health from dog fouling causing infections such as Neospora is very low given that commercial dog foods are treated to prevent such infections. NE further states that there is no provision for providing compensation contained within the 2009 Act. Nonetheless, NE notes that the relevant legislation does not require that there is no impact on owners or occupiers, only that the proposal strikes a fair balance between the new rights for walkers and existing rights for owners and occupiers, and that some level of impact on owners and occupiers is inevitable in most cases.
93. The suggested two alternative routes for this section of the trail have been considered and discounted by NE. The first suggested alternative route is essentially NE's original proposal (2016) that was subject to a previous objection, and which has given rise to the Modification Report. The second suggested alternative route was also considered as part of NE's original proposal. That alternative route would require users to walk approximately an additional 1.35 km of road, and would considerably increase the area of default coastal margin with most of the land falling within the coastal margin being likely to become legally accessible as a result.

Natural England's Comments on the Representations

94. NE advises that they are grateful to the Ramblers and the Open Spaces Society for their views on the proposal and are grateful to Historic England for their confirmation that the proposal would not have a significant impact on heritage assets or the historic environment.

Further Information provided by the Objector

95. Following my visit, I requested further information from the objector regarding the agreement for overwintering geese at Raby Cote, and specifically requested further information regarding the terms within any such agreement regarding disturbance to overwintering geese.
96. Subsequently, the objector confirmed that following the grant of planning permission for a nearby wind farm and which required the relocation of a goose refuge area, a deed of covenant was agreed which allocated grazing fields at Raby Cote to be used as a goose refuge. The objector further advised that the deed of covenant states that a management scheme is to be adhered to, and that the management scheme provides an outline of what needs to be included in the prescriptions for the refuge,

with the prescriptions stipulating, amongst other matters, not to allow any disturbance of these birds between 1 September and 15 April. Furthermore, the objector provided a copy of the deed of covenant with the management plan and management prescriptions documents attached.

Discussion and Conclusions

Livestock and Disturbance of Geese

97. The objector has put it to me that use of the proposed modified route would impact on the foraging and feeding activity of overwintering geese which congregate in the fields in large numbers, and that that use is likely to have an impact on the health of the population. The objector submitted details from a Deed of Covenant which, amongst other matters, provides agreement on behalf of the relevant landowner that the land be managed in accordance with a Refuge Management Scheme. The aims of the Refuge Management Scheme are stated as being: to provide optimal feeding areas for the target bird species; encourage bird species to feed undisturbed in areas away from wind turbines, and; create areas which are not subject to shooting, scaring or other regular disturbance from landowners/farmers at critical times of the year.
98. In terms of Agreed Management Prescription, the agreement further provides that the relevant landowners, *“do not allow birds to be disturbed between 1 September and 15 April by walkers (except on public rights of way or open access land) or by other recreational or non-essential activities (including shooting) unless agreed...”*.
99. The ASFA for the trail between Gretna and Allonby confirms that the land around the Solway Firth is important for providing overwintering geese with areas for foraging. That appraisal further indicates that disturbance of overwintering birds through interaction with users of the England Coast Path has the potential to impact on feeding in the absence of any site specific measures to manage visitors.
100. In developing the coastal access proposals for this section of the Trail, the HRA which accompanied NE’s original report considered the possible impact on the goose refuge around Raby Cote and adjoining coastal fields. The HRA provides that the England Coast Path “is aligned through the fields used by geese at Raby Cote on the disused railway line. It is unlikely that walkers would leave the route and enter the fields in the margin used by geese, as the railway line is fenced on both sides”, with the conclusion that, “As a consequence of these measures, we do not expect to see a significant increase in access to the areas which are used by roosting, breeding or feeding non-breeding waterbirds within the coastal margin following introduction of coastal access rights”.
101. In consideration of the potential for disturbance of overwintering geese at Raby Cote, NE has confirmed that they were aware of the active goose refuge zone and have obtained advice regarding the requirements to prevent disturbance. In this instance, NE proposes that, in order to prevent disturbance by walkers and dogs, a fence should be constructed which separates the proposed modified route from the adjoining agricultural field. Furthermore, NE proposes that nature conservation sensitivity information panels are placed at each end of the proposed modified route, with the modification report confirming that this section of the trail would also be subject of an access restriction, under section 26 of the Countryside and Rights of Way Act 2000, requiring that dogs be kept on leads all year round.

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102. In respect of the objection raised concerning disturbance to ewes, lambs and other livestock at Raby Cote, the same proposed fence, as described above, would also prevent walkers and dogs from approaching livestock contained within the two agricultural fields through which the proposed modified route would pass. Furthermore, as I observed on my visit, the fields through which the route would pass are substantial in terms of area and, as such, should there be any disturbance caused by walkers or their dogs, there would be sufficient room for livestock to move away from the fence and proposed line of the modified route, as necessary. As noted above, this section of the trail would also be subject to a restriction to have dogs kept on a lead all year round, thereby reducing the risk of loose dogs causing disturbance or worry to livestock within those fields.
103. The above described information panels, the restriction requiring that dogs be kept on the lead and the provision of fencing separating users and dogs from adjoining fields, appear to be appropriate measures to minimise any disturbance to livestock at Raby Cote and provides confidence that overwintering geese would continue with their normal foraging and feeding patterns within the area without being displaced into areas of substandard or insufficient feeding habitats. Furthermore, whilst it does not appear that use of the proposed route by walkers would be likely to substantively increase risk of disturbance to overwintering geese, NE have confirmed that it expects that the timing of any works to install the fence would be discussed in advance. In that respect, such an action would help ensure that works would not be likely to disturb geese during critical times of the year.

Fence Construction and Maintenance

104. In respect of the proposed new fence, it is unlikely that works for its construction or future maintenance would require any significant vehicular access across the fields at Raby Cote. NE have confirmed in their response to the objection that a majority of the works necessary could be carried out manually, with the relevant bodies discussing the timing of works and the design of the fence with the objecting landowner. Furthermore, as part of the discussion regarding the design of such a fence, NE are prepared to incorporate gates within the new fence so as to facilitate access by the landowner from their fields to the landowner's fence which runs adjacent to the disused railway line.
105. In light of the above, and subject to NE's proposed discussion regarding the timing of any works and the design of the proposed fence, I do not consider that the proposed fencing would have a significant impact on farm management practices.

Use of Land, Public Access and Compensation

106. The provision of fencing to separate the proposed modified route from the adjacent agricultural fields is unacceptable to the objector. The objector maintains that the enclosure of that land would reduce the amount of versatile productive land available and notes that both national and local planning policies seek to restrict development of such land. The objector advises that they would normally take a number of cuts of silage from those fields and, that by enclosing the land for the proposed route, it would reduce the amount of silage that could be taken from the fields, having a negative impact on farming operations. The objector further considers that by allowing access to the land, there is increased risk of dogs fouling on crops which are

then used for silage, with resulting infections causing animal distress, and negative impact on income through the loss of livestock from such infections.

107. NE contends that, whilst proposed fencing off of the trail is not usually considered appropriate, in this instance, such a measure would be necessary in order to prevent disturbance to geese as described above. Furthermore, NE maintains that providing a corridor at 2 metres in width (rather than the default trail width of 4 metres as set by legislation) for the approximate 320 metres length of the modified route, the amount of land that would be enclosed by the fence would represent approximately 0.7% of the ninety six thousand square metres total area of the two fields.
108. In respect of the above and with regards to increased levels of access with potential knock-on effects to operations, paragraph 5.3.3 of the Scheme provides that NE “will aim to prevent coastal businesses suffering significant loss of income from the introduction of coastal access rights”, and that “If on the basis of the evidence available at the time, we are persuaded that significant loss of income is likely, we will include specific proposals to prevent it”.
109. In this instance, there does not appear to be any evidence that by enclosing the proposed modified route with fencing, there would be a significant loss of income. Additionally, the proposed fencing would assist in preventing walkers and dogs disturbing livestock and would prevent dog fouling in areas where livestock would graze. Consequently, in addition to the restriction that dogs be kept on a lead whilst on the proposed route and in consideration of the evidence before me that commercial dog foods are treated to prevent infections such as from Neospora, it is unlikely that access to the proposed modified route would result in adverse effects on livestock health, resulting in additional costs or animal distress.
110. The costs of providing the proposed new fencing, including the provision of any points of access for the landowner, as well as maintenance of that fencing and the route, would be the responsibility of NE. Furthermore, whilst I acknowledge the objector’s comments that there has been no discussion of compensation, the legislation cited by NE above does not include provision of compensation in these circumstances.

Loss of Hedgerow

111. The proposed modified route would result in the loss of a section of hedge which separates the two fields which are located adjacent to the disused railway. However, as noted above, NE has stated in their response to the objection that it is assumed that the trail would be 2 metres in width. As such, the provision of a gap in the existing hedgerow would require a small section to be removed. That gap in the hedgerow would provide convenient access in terms of being reasonably direct for walkers, rather than increasing the distance that walkers would need to travel by aligning the route through existing openings between the fields and which would potentially result in an increase in the levels of disturbance caused by walkers to livestock and geese.
112. Accordingly, the loss of a small section of hedge, whilst regrettable, is necessary in order to provide a reasonably direct route for users of the England Coast Path and to avoid further potential disturbance to farming operations.

Raby Cote/Raby Grange Balance

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113. As noted above, the objector's concern here is that, following the proposed modification to realign part of the trail away from the disused railway line, there would be a longer stretch of the path over land at Raby Cote than at the neighbouring holding at Raby Grange. In that respect the objector maintains that it would be more appropriate for the proposed section of the path to be aligned along the disused railway line, which would result in the loss of less productive agricultural land when compared to NE's proposed modified route.
114. However, section 297 of the 2009 Act does not require that a balance is struck between landowners in terms of the length of the trail over respective properties, but rather that NE must strike a fair balance between the interests of the public in having rights of access over land and the interests of owners or occupiers. Nonetheless, it appears that NE have considered the position with regards to the respective neighbouring holdings and have put it to me that, by reason of the relative sizes of the two holdings, it would not be disproportionate to align approximately 80 metres more of the trail on the holding at Raby Cote.

Alternative Routes

115. The objector has provided details of two suggested alternative routes for the trail at this location. The first suggested alternative route for the trail would be to revert back to the original proposal (2016) for the trail to follow the disused railway line before crossing over the River Waver via a new footbridge. Whilst I have considered all of the submissions and information before me in that regard, following objections to NE's original report, it was determined that by retaining the path on the alignment of the disused railway on land which forms part of the neighbouring holding, there would be potential for conflict between walkers and cattle within a confined space. Following the Appointed Person's view that the original suggested alignment of the path would consequently be unsafe, NE produced the suggested proposed change in alignment of the path as detailed in the Modification Report.
116. The second suggested alternative route would be to not align this section of the trail along the disused railway line but rather should follow nearby roads towards the settlement at Abbeytown, before crossing the River Waver at an existing bridge and connecting with the trail on the western side of the River Waver. Whilst this alternative route would be along surfaced highways thereby providing improved accessibility, this route would be shared with vehicles.
117. As I observed on my site visit, parts of this alternative route were narrow and without passing places, with the wider roads being relatively heavily trafficked with large agricultural vehicles and, consequently, I have concerns regarding the use of this alternative route on the grounds of safety. The alternative route would add approximately 1.35km of walking on roads, and which would take users further inland from the coast. Whilst it could be possible that a direction could be made to exclude access to the additional substantial area of coastal margin that would be created through implementation of this alternative route, aligning the trail to the existing road network at this location would result in that section of the trail not being particularly direct nor pleasant to walk on for much of the additional length of the trail. I therefore agree with NE's conclusions for discounting this alternative route for the reasons given in the Modification Report.

Public Sector Equality Duty

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118. Further to the above matters, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
119. In this instance, the proposed modified route would require the provision of a limited number of new steps down from the unaffected section of the disused railway line and into the adjoining field. As such, accessibility for those with restricted mobility would be affected. However, in order to access the connected unaffected section of the trail to the north of the proposed modified route, walkers would be required to travel down a greater number of steps from the public road to the disused railway line before being able to continue. Both the original proposal for the trail along the disused railway line and the proposed modified route would be over uneven, unsurfaced land. Consequently, users of the trail within this area would already have to traverse steps down onto the disused railway line and the limited number of additional steps to be included as part of the proposed modified route would not substantially decrease the level of accessibility that would be experienced by users.
120. The existing topography within this area limits, to some extent, the ability to provide full access for all users. Nonetheless, new access in this area would allow for a range of people to access the countryside. As such, and in light of the above, I am satisfied that the provision of the new additional steps would not substantially affect the level of accessibility for all users to this area.

Other Matters

121. Following the period for making formal representations and objections to the Modification Report, the objector provided NE with a copy of a notice and deposit made under section 31(6) of the Highways Act 1980, with a request that NE forward the details of the notice and deposit to the Planning Inspectorate as an addition to their objection.
122. Such notices and deposits enable landowners formally to acknowledge the rights of way across their land and, in doing so, create a presumption that they have no intention to dedicate any further routes across their land. Whilst acknowledging the details provided, the deposit made under the abovementioned section of the Highways Act 1980 has no bearing or relevance with regards the establishment of the England Coast Path and the duties and requirements of the 2009 Act.
123. The proposed route would pass through fields that are located close to protected habitats. Details of whether NE's coastal access proposals, relating to this section of the trail, might have an adverse impact on the Solway Firth Special Area of Conservation, the Solway Firth Special Protection Area and the Upper Solway Flats and Marshes Ramsar site, are contained within the HRA. The HRA carried out by NE concludes that the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of those protected habitats. Appendix A to this report provides further information on these matters.
124. Further to the above, the Modification Report also notes that the proposed modified route would pass through fields that are close to the Upper Solway Flats and

Marshes Site of Special Scientific Interest (the SSSI), and which are used by non-breeding birds that are features of that designated site. In that respect, the Modification Report provides that, where the proposed route is aligned at the edge of fields, a stock proof fence would be installed to reduce the risk of disturbance to those non-breeding birds features. NE confirms that they are satisfied that modifying its proposals as described within the Modification Report, will not lead to then having an adverse effect on the site integrity of the SSSI and is fully compatible with the conservation of the SSSI. At the time of the publication of the original report, NE completed the ASFA which documented the nature conservation implications of the proposal. Again, Appendix A to this report provides further information on these matters.

Conclusions

125. I am aware of the difficulties in proposing a route in this area given the presence of large areas of protected habitats close to the River Waver estuary. As such, the modified route would cross the River Waver some distance upstream where there are no views of the coast, with the modified section of the trail being on lower ground than the connecting sections of the trail that would be aligned along the disused railway line. The proposed modified route would result in the requirement to provide additional steps down from the disused railway line embankment and would necessitate the removal of a small section of hedgerow whilst also enclosing some agricultural land.
126. The terrain in this area means that opportunities for providing level access for walkers would be limited without using a route that would follow existing roads for some considerable distance inland. The unaffected connecting section of the trail to the north of the proposed modified route would also require the construction of steps to allow walkers to access the trail from the public road and would also be similarly unsurfaced where it would be aligned along the disused railway line. The proposed modified route would provide fencing which would mitigate against disturbance to geese and livestock, with further provisions in respect of additional signage and the application of restriction that dogs be kept on lead all year round.
127. Overall, with the width of the route being 2 metres and in addition to provision of proposed fencing, additional signage and the restriction that dogs be kept on lead all year round on this section, I find that the potential adverse effects of aligning the trail along the proposed modified route have been considered and mitigated against such that they would not outweigh the interests of the public in having rights of access over the land.

Recommendation

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

[redacted]

APPOINTED PERSON

APPENDIX 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 C127/02 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 May 2021, 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: Solway Firth Special Area of Conservation, River Eden Special Area of Conservation, Upper Solway Flats & Marshes Ramsar site, and Solway Firth Special Protection Area. 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 (AEol) of the designated sites.

5. The scope of the assessment is set out in Section D1 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. Tables 16, 17, 18, 19, 20, 21 and 22 set out the assessment of AEol 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 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.

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. 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:

- Non-breeding waterbirds. Disturbance to feeding, roosting or breeding birds, following changes in recreational activities as a result of the access proposal, leads to reduced fitness and reduction in population and/or contraction in the distribution of qualifying features within the site.
- . Saltmarsh: Atlantic Salt meadows (*Glauco-Puccinellietalia Maritimae*), *Salicornia* and other annuals colonising mud and sand. More frequent trampling following changes in recreational activities as a result of the access proposal and constructing sections of new path through these habitats leads to reduction in the extent of the feature within the site; changes in range and distribution of characteristic communities, sub-communities and transitional communities within the site; changes in vegetation structure; and changes in species composition of characteristic saltmarsh communities.

9. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Gretna and Allonby 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.

Access and Sensitive Features Appraisal

11. The ASFA is dated 21 July 2016. Amongst other things, the ASFA covers matters relating to assessment of impacts on Sites of Special Scientific Interest (SSSI) which are not subject to consideration in the HRA. Relevant to this report is the Upper Solway Flats and Marshes SSSI. In that respect, the ASFA concludes that the access proposal complies with NE's duty to further the conservation and enhancement of the features, as described within the report, of the Upper Solway Flats and Marshes SSSI, consistent with the proper exercise of its functions and, accordingly, the new access proposal may proceed.

12. In respect of the relevant sites or features noted above, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.

This report has been made void following the publication of a Modification Report that addressed the concerns originally raised by the objector(s). Although this report is no longer relevant to the final approved route, it is being published for transparency and public record.



The Planning Inspectorate

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

by [redacted] (Cantab) Solicitor

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

Date 13 March 2018

Marine and Coastal Access Act 2009

Objections by [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Objection Reference: MCA/GAL0110/12**Eden Bank Farm, Beaumont, Carlisle**

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 19 August 2016 to chapter 2 of the Report, Gretna to Allonby, has been made by [redacted]. The land in the Report to which the objection relates is route sections ref. GAL-2-S034 to GAL-2-S039.
- The objection is made under paragraphs 3(3)(a), (c), (d) and (f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

Objection Reference: MCA/GAL0811/07**North View Farm, Beaumont, Carlisle**

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 15 September 2016 to chapter 2 of the Report, Gretna to Allonby, has been made by [redacted]. The land in the Report to which the objection relates is route sections ref. GAL-2-S040 to GAL-2-S041.
- 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 the report fail to strike a fair balance.

Procedural Matters

129. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby Report (the Report) to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved access to the coast between Gretna and Allonby.

130. The period for making formal representations and objections to the Report closed on 19 September 2016 and 11 objections were received within the specified timescale. 10 of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objections reference MCA/GAL0110/12 and MCA/GAL0811/07. The remaining objections are considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.

Hearing held on 6 December 2017
Site visit made on 6 February 2017

File Ref: MCA/GAL0810/11

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131. I carried out site inspections on 6 February 2017 when I was accompanied by the respective landowners and, in the case of [redacted], a number of his representatives and his agent, [redacted], and representatives from NE. Following the site visits I requested further information from NE. On 22 May 2017 notices were published (the Schedule 6 Notices) stating that I was minded to determine that the proposals in the report fail, in the respects specified in the objections, to strike a fair balance as a result of the matter or matters specified in the objections and inviting further representations.
132. I held a hearing into the objections on 6 December 2017, which was part of a series of hearings into objections to the Report held during that week. [redacted] appeared at the hearing on behalf of [redacted], who was also present. [redacted] did not attend. At the hearing NE provided a bundle labelled General Evidence Documents and a bundle relating to the objection (the Bundles). They did not refer to them at the hearing and failed to state that they contained material not previously provided to me or the objectors. After [redacted] and [redacted] had left it became apparent that the Bundles contained new documents. As [redacted] was present at hearings later in the week I was able to draw the documents to his attention and invite comments upon them. I am satisfied that no prejudice has been caused.

Main Issues

133. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:
- (c) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (d) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
134. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
135. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (d) the safety and convenience of those using the trail,
 - (e) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (f) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
136. 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.

137. 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

- (h) the nature of the land which would become part of the coast,
- (i) the topography of the shoreline adjacent to those waters,
- (j) the width of the river upstream to that limit,
- (k) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters,
- (l) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land,
- (m) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint and
- (n) the existence of a ferry by which the public may cross the river.

138. NE's Approved Scheme 2013² ("the Approved Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.

139. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

140. The proposed trail between Gretna and Allonby is almost entirely above the seaward limit of the Solway Firth's estuarial waters, the terrain and natural environment of which pose a number of particular challenges. Much of the estuary is dominated by large areas of saltmarsh and mudflats, as are the river estuaries leading from the Solway Firth. Considerable parts of the coast and river estuaries are designated for nature conservation or heritage preservation, including the Solway Firth Special Area of Conservation, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and Marshes Site of Special Scientific Interest and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.

141. 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 as that 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

² Approved by the Secretary of State on 9 July 2013

that would accrue. However, in all circumstances, consideration will be given to whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.

142. The Approved Scheme also notes at section 10.4.1 that several of the Estuary Criteria relate to its overall character. It states that when considering an estuary in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.
143. NE proposes to align the trail along the entire southern side of the Solway Firth. The part of the trail subject to Chapter 2 of the Report runs from Knockupworth Bridge, where the trail would cross the River Eden, to Bowness-on-Solway. Paragraph 2.3.1 of the Report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Eden as far as Knockupworth Bridge.
144. The objections relate to Sections GAL-2-S034 to GAL-2-S039 ([redacted]) and Sections GAL-2-S040 and GAL-2-S041 ([redacted]) which are shown on Map 2C, Doudle Beck to St Ann's Well, Beaumont. As all sections of the route referred to in this report have the prefix GAL-2, for ease of reference I shall use the S0 number only.
145. The proposed route follows the bank of the River Eden and joins the Hadrian's Wall National Trail (HWNT) at S031. At S034 where the route enters [redacted]'s land the route diverges from the original line of the HWNT³, which is close to the river bank, to pass within the boundary of grazing land. Stepping stones would be provided at S036 where the route descends towards the river and a footbridge at Monkhill Beck. The route then rises away from the river and re-enters a grazed field. It then continues through [redacted]'s land, described as an orchard and used, amongst other things, for the grazing of sheep and cattle. The scenery is riverine rather than characteristic of the coast.
146. Roll-back is proposed in relation to sections S034 to S041. At S038, S040 and S041 NE proposes that the landward boundary of the coastal margin should coincide with the existing fence.

Objections

[redacted] – GAL0110/12

147. [redacted] states that the route should be modified to follow the walked line of the HWNT before it was temporarily diverted (the Riverside Route). In his opinion that route affords better views of the river, would be safer for walkers and would not interfere with farm management. There would be no disturbance to the site of the Scheduled Ancient Monument. His objections are set out in more detail below.
148. Eden Bank Farm is a dairy farm situated in the centre of Beaumont. It has very little land at the home farmstead, the majority of land being elsewhere. This has management consequences in that the fields at the farmstead are used in a more intensive way than grazing fields. The field closest to the farmstead

³ The HWNT is currently subject to a temporary diversion.

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- (through which section S039 passes) is the only field adjacent to accommodation/handling buildings and is the only field which can be properly supervised. Its uses include the collection of animals, nursing sick animals, keeping animals in isolation, putting the bull to cows, keeping an eye on cows about to calf or with calves at foot and holding stock for the vet.
149. The HSE warns farmers to avoid running cows with calves in fields with public footpaths and according to HSE figures 18 members of the public on public footpaths were killed by bulls/cows/cows with calves in the last 15 years, with 56 farm workers suffering the same fate. To put the coastal footpath through this field would have a major impact on farm management, would reduce the useable area of an already small field considerably, would be impractical and would put the public at risk. If it is decided to align the path here there should be a restriction on members of the public with dogs (on a lead or not). In any event, the field is within the curtilage of land covered by buildings and is therefore excepted land.
150. The proposed route at section S034 would also prevent use in the field through which it passes of about 200m of land for strip grazing and at S035/36 would prevent access down to the riverside for cattle. Using the existing HWNT in this location would allow half of the field to be used unencumbered for strip grazing.
151. There is an available public right of way along the eastern edge of the field on the far side of the hedgerow which, until it was closed in 2012 was the HWNT. People came from all over the world to walk it. Cumbria County Council (CCC) estimate 15,000 per year, mainly from the USA and Canada. It was constructed about 40 years ago and closed in 2012 due to a small slip of material on about 4m of the path probably caused by a tree growing on the edge of the bank becoming wind-blown and falling down towards the river. Since this time there has been no maintenance or repair and it is therefore not surprising that NE found it in a state of disrepair especially given the recent storms in Cumbria.
152. The proposed route does not attempt to take advantage of the riverine scenery afforded by the HWNT. A walk through dairy cows and dung pats with no views of the river is of no recreational benefit and far removed from a coastal walk. There has been no consideration of the criteria of the Approved Scheme or the common meaning of a coastal path experience modified by the fact that in this location it is by a river.
153. There are a few flights of steps on the HWNT but thousands of people have negotiated them in the past. The steps down to the river have not been walked or maintained for 6 years but even so are more negotiable than other steps on the route. In particular the steps at S007 are very dangerous and slippery and there are steep steps leading from the river, which anyone with reduced mobility would be unable to negotiate. Access for the disabled should not be used to support a route when the route cannot even be reached by those of reduced mobility. Furthermore, although the proposed route refers to the provision of stepping stones, these would in fact be a steep and slippery stone staircase which would be hazardous to even a slightly disabled person.
154. Part of the proposed route is on top of the course of the Roman Wall and the establishment of it could cause damage to the archaeology and historic setting.

[redacted] – GAL0811/07

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155. The HWNT has been subject to erosion and the increased usage, combined with ongoing lack of maintenance has destabilised the bank. The path is now closed as it has proved unviable to repair and maintain. It has been successfully rerouted suggesting that that is a viable and acceptable alternative route.
156. The proposed new route crosses a fruit orchard which is the curtilage of the adjacent buildings. There are concerns about crop being taken.
157. The land is regularly used for cows with young calves, sheep with lambs and to pen stock. There are safety concerns for the stock and for visitors.
158. The land is also used for baled silage and is subject to frequent vehicular access and operations.
159. No provision appears to have been made for ongoing maintenance and repairs to the proposed route and erosion will lead to it being relocated, taking more land.

Representations

160. The Ramblers state that they welcome the proposals between S001 and S057. None of the other representations relate specifically to S034 to S041.

Natural England's comments on the objections

161. NE maintains that the proposed route is the most appropriate as it is direct, relatively accessible for people with limited mobility and is sustainable in the longer term. It is also relatively close to the River Eden.
162. Concerns in relation to walkers and/or dogs in close contact with livestock are valid and reasonable but are neither unique nor particularly unusual. The coast path will often cross land with livestock and this is recognised in the Approved Scheme. NE's proposals are consistent with the approach contained in the Approved Scheme at sections 8.1 and 8.2. A person with a dog must keep it on a short lead in the vicinity of livestock.
163. The route of the HWNT was closed about 5 years ago due to significant landslips and erosion and a temporary diversion was put in place that routed the trail along the nearby road. CCC decided that repairing the route was not financially viable. The alignment of the trail along the road would have led to all the land between the road and the estuary becoming part of the coastal margin. NE does not believe that that would be in the best interests of the landowners as it is likely that NE would not have found sufficient reason to grant a direction to exclude access from this land.
164. NE has been in regular conversation with Heritage England and the Hadrian's Wall National Trail management team. Prior to the installation of any new infrastructure in the vicinity of sites of archaeological interest, further consultation will be held to ensure that any infrastructure will not damage any archaeology.
165. The route at S034 to S036 would be contained within an area of scrub. NE intends to create a fenced and gated corridor through this scrub specifically to avoid the existing cattle tracks that exist down the slope. These measures will not affect areas of grazing or the movement of cattle.

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166. The proposed route along the eastern edge of the field at the top of the slope at S034 is the most appropriate as it is direct, relatively accessible for people with limited mobility and, in NEs view, more sustainable in the longer term than a route closer to the edge of the river at the bottom of the slope.
167. Users of the HWNT were previously following a route through part of the field at S034 and would already have been coming into contact with any livestock being kept in the field. By aligning the route at the top of the slope it will be easier for stock and walkers to avoid coming into close proximity to each other as explained at section 8.2.9 of the Approved Scheme. This is less likely to be the case if the route were to be aligned on land bounded by steep slopes on one side and the river bank on the other.
168. With regard to the proposed modification, maps supplied by CCC indicate that the riverside path managed until recently as HWNT is not on the definitive line of the public right of way in this area. NEs proposed route follows the definitive line as closely as possible, deviating only to take account of bank erosion and path sustainability issues.
169. NE does not agree that either of the objectors' land forms part of the curtilage of adjacent buildings.
170. Access would be restricted to the line of the trail and there would be no right to take fruit from trees. Also the path will often cross land where vehicles or machinery are used and the concerns are not particularly unique or unusual. The proposals are consistent with the approach contained within the Approved Scheme at section 8.13. The trail will be along the edge of the field/orchard closest to the river and visitors are likely to avoid areas where work is taking place. Operators of machinery will normally be expected to check for approaching visitors and stop work temporarily to allow people to pass through safely.
171. These sections of the trail will be subject to "roll-back" due to the erosion taking place along the river. If the trail did "roll-back" NE do not consider that it would affect the ability of the landowner to manage his land, given how it is currently managed. NE will work with local access authorities to meet maintenance and management requirements.

Further information provided by NE

172. Following my site visit, during which I walked the route along the riverside previously used as the HWNT, I requested further information from NE regarding why this route was not considered suitable or sustainable if reinstated and NE provided the following additional information.
173. Sections S034 to S037. The route previously managed as the HWNT is still in relatively good order, despite lack of management for some time. However the definitive map points to the conclusion that the HWNT was incorrectly aligned and established in this area at some point in the past. Whilst it would be acceptable, from the point of view of public safety/convenience and probably sustainability, to align the coastal path on this same existing walked route, NEs view is that it is more appropriate to have just one walking route in this area. Since CCC has made it clear that it wishes to see the HWNT on the definitive line of the public footpath, on level ground just to the top of the river bank slope, it

seems logical to conclude that this is also the most appropriate route for the coastal path.

174. Section S038. This differs from the definitive public footpath/HWNT line only in as much as is necessary to link it safely and sustainably to the proposed route sections either side.
175. Section S039. The HWNT in this area is just about passable with care. However, NEs view is still that it does not present a reasonably safe, convenient and sustainable route for the coastal path in the future. Additionally the former route of the HWNT is inconsistent with the route of the public right of way as shown on the definitive map.
176. The erosion/land-slip on the HWNT in the vicinity of sections S040 and S041 was the cause of the original diversion of the HWNT. NEs view backed by advice from CCC is that it is not possible to re-establish a safe and reasonably convenient national trail on the slope above the river due to the extreme instability of the slope below.

Responses to Schedule 6 Notices

The Objectors

177. [redacted]'s agent submitted a response on his behalf. It provided more detail with regard to certain issues which were discussed further at the hearing. They are covered in the discussion section of this report. Mr Read did not respond and did not attend the hearing.

Cumbria County Council

178. Public footpath 103008 was claimed by Beaumont Parish Council as part of the process of preparing the first definitive map under the National Parks and Access to the Countryside Act 1949. A route following the definitive line of 103008 can be identified on maps as early as the first edition OS map 1868.
179. On 4 July 1974 public footpath 103008 was surveyed by CCC and the legal alignment was found to be clear and available along the top of the wood. The tenant, [redacted], was contacted regarding defects to stiles and would have been aware of the legal alignment. The survey makes no reference to steps on the alignment followed by the HWNT.
180. On 3 July 1990 Beaumont Parish Council contacted the Carlisle City Council Rights of Way Officer regarding a number of path improvement suggestions including the installation of steps up from Monkhill Beck. However, the steps were not installed on the legal alignment.
181. It is believed that the lower route was used and maintained in preference to the definitive line by Carlisle City Council for inclusion in one of a number of promoted walking routes. All records prior to 2008 were lost when the offices were flooded in 2005 and when East Cumbria Countryside Project folded in 2008.
182. Public footpath 103008 is currently subject to a Temporary Traffic Regulation Order (TTRO) under the provisions of the Road Traffic Regulation Act 1984. On 5 May 1982 and on 16 December 1982 Beaumont Parish Council reported to CCC that the path was impassable due to landslip and requested signage to be removed. A further slippage in 2002 after the HWNT had opened required the

diversion of 65m of the public footpath onto agricultural land owned by Mr Baxter. After each slippage remedial work was undertaken to restore and reopen the path. Following the landslide in 2012 the path was closed via a TTRO.

183. On 22 September 2015 a meeting was held between CCC, NE, the tenant of North View Farm and the landowner's land agent, when it was agreed in principle, pending a revised offer from CCC, that a revised and shorter diversion through the orchard would be possible if the path was fenced.
184. The provision of a fenced corridor through S039, 40 and 41 would address landowners concerns regarding safety of path users from livestock and farm machinery and concerns about trespass and potential loss of crop.
185. Section S034 follows the definitive line of public footpath 103008 and any proposed strip grazing would need to take account of this and be installed in such a way as to not illegally obstruct the existing public footpath.
186. The proposed route offers views over the Solway Plain.
187. The proposed installation of mill flagging at S036 to provide either a stepped or level ramped path surface is a commonly used and accepted technique on the HWNT. There are similar stone steps elsewhere on HWNT and no reported injuries. Any proposed works would be to an approved design and subject to scheduled monument consent granted by Historic England under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. The steps used by HWNT between Braelees and Monkhill Beck are not on the legal alignment of public footpath 103008.

[redacted]

188. [redacted] is a retired National Trails Project Manager. He comments that the field through which section S039 would pass is close to the farmstead and regularly used as maternity units and recovery areas for ill and recovering stock. In his view these areas would certainly be of high risk to the public which would be greatly increased if dogs were permitted.
189. [redacted] supports the provision of a fenced route and states that compensating the landowners for such a route would be cheaper than undertaking stabilisation works on the Riverside Route and a better experience for walkers than using the road.

Ramblers'/Open Spaces Society

190. The route on this section corresponds with the HWNT and no issues have arisen from use of that trail. Should a more inland route be chosen this path would remain a public right of way.
191. Walkers and naturalists are familiar with crossing fields containing agricultural stock and if this objection is accepted as a principle then we foresee significant problems for NE in applying government policy as set out in the Approved Scheme.
192. There is no safe alternative and walkers should avoid the local road network as far as is possible.

Discussion

193. The objections raise a number of common themes and I shall therefore consider them together.

Farm management

194. In addition to the information already provided in writing, at the hearing [redacted] and [redacted] described [redacted]'s farming practices in some detail. [redacted] as a dairy farm of about 70 milking cows together with the followers-on required to replace them. He has 3 bulls (a Belgian Blue and 2 Limousin), all of which he states can be very nasty. At any one time, it is usual that one of the bulls will be in field S039 with cows. Calves are produced all year round and suckler cows are kept in field S039 as it is close to his property. The field is not large and [redacted] is understandably concerned about the safety of walkers passing through this field. I was shown a video of a walker describing how she was trampled by a cow and showing her extensive injuries and of cows recorded running at 22 mph.

195. [redacted] also expressed concern about the impact of disturbance by walkers. It was explained that cows come into season every 21 days but are in oestrus for as little as a few hours. If a cow misses being served by the bull then another 21 days will be lost and missed conceptions can cost about £250 per cow. Anything which adds to costs reduces the viability of a dairy farm.

196. Issues relating to bulls and cattle are dealt with in Sections 8.1 and 8.2 of the Approved Scheme. [redacted]'s bulls are beef or dual purpose and are not recognised dairy breeds in respect of which the approved scheme states that "intervention is most likely to be necessary". However, Section 8.1.6 makes it clear that before reaching a decision NE should take into account a number of factors. These include the degree of enclosure, as bulls may feel more threatened in confined areas, and the temperament of the particular bulls. Section 8.1.8 states that "We may align the trail so that it avoids a field where a bull is normally kept" and in relation to where beef bulls are run with cattle "we are likely to do this if the field is so small that it would be impossible for the livestock and access users to avoid each other".

197. Section 8.2.8 states that "Intervention is most likely to be necessary when cattle are calving or have calves at foot" and 8.2.9 states that "the need for intervention may be greater in narrow or constrained areas where cattle tend to congregate". Paragraph 8.2.13 states that "Exceptionally, we may align the trail so that it avoids a field in which cattle are usually kept.... We will consider this option if the field is so small that it would be impossible for the cattle and access users to avoid each other".

198. There is no doubt that there are many public rights of way through fields used for grazing cattle. However I do not agree with NEs position that the situation here is neither unique nor particularly unusual. To the contrary it is a small field, close to the farmstead and used for a number of specific farming purposes which add both to the potential danger to the public and to the disturbance to the livestock and potential consequences of that.

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199. At the hearing NE accepted that the field was small and stated that it would be preferable if the trail was fenced off from the rest of the field. I note that this is the position supported by [redacted] in his representation and also by CCC both in relation to this section and the sections passing through [redacted]'s land. I agree that in the particular circumstances described to me it would not be advisable for an unfenced trail to pass through [redacted]'s field at S039.
200. However, the fencing off of the strip of land which would be needed to accommodate the trail is unacceptable to [redacted]. It would reduce the useable land in an already small field which, being close to the homestead, is of particular importance to him. He is also concerned that walkers would remain visible to the cattle and that, although separated from them, the presence of them would still result in disturbance and potentially loss of income as explained in paragraph 67. [redacted]'s field, through which S040 and S041 passes is also small and he has expressed concern about any reduction in the useable area of his field.
201. [redacted] submits that NEs proposals are contrary to section 5.2.4 of the Approved Scheme which states that "while we may discuss with land owners or occupiers the scope for minor changes to their land management practices that would avoid conflicts with access, the legislation does not take land away from land owners or interfere with their freedom to manage it. Land owners maintain full control to manage their land as they see fit".

Curtilage

202. Given that it appears to be agreed by all parties that sections S039 to S041 should be fenced off from the fields, issues relating to curtilage are of little relevance. However, both [redacted] and [redacted] have claimed that the fields are the curtilage of land covered by buildings and are therefore excepted land. For completeness, I shall comment briefly.
203. Certain categories of land are excepted from coastal access rights under Schedule 1 to the Countryside and Rights of Way Act 2000 as amended by the Access to the Countryside (Coastal Margin) (England)Order 2010 (S.I. 2010/558). Land covered by buildings or the curtilage of such land is excepted in full.
204. Mr Rushton on behalf of [redacted] refers in particular to the cases of Attorney General v Calderdale BC [1983] JPL 310, Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions [2000] 2 P.L.R 84, [2001]Q.B.59 and Dyer v Dorset County Council, Court of Appeal. He submits that the animal building situated in the field through which the proposed route passes at S039 is part of a group of buildings under one ownership and the land around it is intimately connected with the building by virtue of its function of providing an outdoor area when needed for animal husbandry.
205. I accept that the curtilage of a building is not necessarily small and that whether or not an area of land is within the curtilage of a building is a matter of fact and degree. NE accepts that areas enclosed between buildings may amount to curtilage but does not agree that a substantial field, albeit accessed from a building used for animal husbandry, could be described as the curtilage of that building.

206. At my site visit I considered the buildings and associated land relating to both objections and in my opinion, as a matter of fact and degree, none of the fields through which the proposed route would pass are the curtilage of land covered by buildings. Accordingly the fields are not excepted land.

The HWNT and the definitive map

207. [redacted] submits that the trail should follow the route of the HWNT prior to its temporary diversion. In response to his original objection NE stated that CCC had decided that repairing the route was not financially viable. However in response to my request for further information, NE clarified that some sections were still in relatively good order despite lack of management for some time. It was only at S040 and S041 that, in NE's and CCC's opinion, it was not possible to re-establish a safe and reasonably convenient national trail.

208. At the hearing NE accepted that in relation to S034 to S038 there was a reasonably good case that the HWNT was a better alignment and had better views than the proposed route. It was stated that the only reason for not using the HWNT in this area was because a different route was shown on the definitive map and that the main aim was to ensure that dual routes did not exist over the land.

209. At my site visit it was apparent that there was some dispute as to the definitive line of the existing public right of way across part of [redacted]'s land. Further documentation has been provided to me and it is clear that the definitive line does not, at least in places, match the walked route of the HWNT. [redacted] has submitted user evidence which claims that the Riverside Route, accepted as the route of the HWNT, has always been the walked route. However, the question whether the route shown as the definitive line is correct is not a matter for me to determine. It is not disputed that the HWNT followed the Riverside Route until temporarily diverted along a nearby road.

210. Both NE and CCC acknowledge the discrepancy and state that it would be preferable to have only one route and that that should be the definitive line. However, until diverted, the walked line of the HWNT was the Riverside Route proposed by the objectors and there is no evidence of use of the definitive line. The Approved Scheme states at section 4.7.1 that "Where there is an existing national trail along the coast – or another clear walked line along the coast, whatever its status – we normally propose to adopt it as the line for the England Coast Path so long as it is safe and practicable for the public to use; it can be used at all times and the alignment makes sense in terms of other statutory criteria and principles".

211. Section 4.7.2 goes on to state that "where the definitive line of a public right of way differs from the line already walked on the ground, it is the walked line that we normally propose, in discussion with the landowner, to use as the route".

212. In this case it is clear that the walked line, promoted as a National Trail until recently, differs from the definitive line. [redacted] states that what is described to him as the definitive line is never walked, but that the route used as the HWNT has been walked for as long as he can remember. As a matter of principle I do

not accept the position taken by both NE and CCC that in order to ensure that there is only one route, the definitive line should be used.

213. I agree with the opinion expressed by NE at the hearing that in relation to sections S034 to S039 the views from the HWNT are better than from the proposed trail. The HWNT is closer to the river and provides fine views of riverine scenery. The proposed trail, being situated in agricultural fields elevated above the river, would provide views of the wider area, but it is difficult to describe these views as coastal. The limited views of riverine scenery available in winter would be screened from view by trees for many months of the year. [redacted], on behalf of the Ramblers', stated a preference for the proposed route as in his opinion it would provide a contextual setting and could be easier for more elderly walkers, but I note that he has not walked either route in recent years.
214. In relation to Sections S039 to S041 CCC accepted that the whole of the HWNT through this area was repairable. In the absence of any geotechnical survey, or indeed any proper consideration of soil conditions or bank stability, precise costs are unknown but a figure of £10,000 - £20,000 was suggested by CCC. In relation to [redacted]'s land CCC stated that the work was mainly maintenance related but that the policy of CCC was to move away from the river in the interests of long term sustainability.
215. NE state that proposed route would be more accessible for people with limited mobility and I note that the Ramblers' agree with this. However, I agree with [redacted] that the "stepping stones" referred to on the proposed route would not be on the flat and also that there are other steep areas and steps a little distance to the south which would need to be negotiated prior to reaching this section of the trail. Section 4.3.8 of the Approved Scheme states that NE will "make the trail as easy to use as we reasonably can for disabled people and others with reduced mobility, whilst accepting that such opportunities will often be constrained by practical limitations such as the rugged nature of the terrain".
216. The proposed route would, in part, be on top of the course of the Roman Wall. The Hadrian's Wall World Heritage Site Partnership Board, whilst welcoming the increased and better access the proposals will provide to the western part of the Hadrian's Wall historic site, raises concerns about the long term financial support provided for National Trails and also the possible damage to archaeological remains along the route. However, the board states that it would look to Historic England to address any specific points of risk to the archaeological remains.
217. NE stated that the proposals had been agreed with Historic England and that the wall could be protected by infrastructure over it. However, no costings are available and Scheduled Monument Consent would be required before any works could be undertaken. Although it seems that damage to the archaeological remains could be avoided, use of the Riverside Route would avoid any works to protect the remains being necessary.

Alternative Route

218. [redacted] suggested in his objection that the rerouted HWNT, which follows a minor road, could be used. I agree that this route would avoid the public safety and land management concerns raised in respect of the proposed route. Furthermore, although NE state that using this route would result in all the land

between the road and the river becoming coastal margin, no consideration has been given to whether any of the land should be excluded by direction. However, this route provides no views of the river.

Conclusions

219. The scenery in this area is not characteristically coastal. Much of the alignment proposed fails to provide clear views of the River Eden or of riverine scenery. In spring and summer the views will be even more limited due to the presence of trees in leaf. The proposed route results in significant public safety and land management issues. An alternative route using the original walked line of the HWNT would provide superior riverine views and avoid the public safety and land management issues. It would also negate the requirement for works which would affect archaeological remains.
220. The reasons for failing to align the trail along the original route of the HWNT appear to relate to the viability of that route and to a desire to avoid 2 routes in the area. However, little consideration appears to have been given to the feasibility or cost of repairing the relevant sections of the HWNT or of maintaining that route in the long term. No reports, or written information of any kind, have been provided to me and the information provided at the hearing suggests that the entire section would be repairable, with the majority of the costs relating to maintenance caused by normal wear and tear.
221. Although it appears that aligning along the original HWNT may, due to the existence of public footpath 103008, result in 2 routes across [redacted]'s land, this is not a matter which appears to be of concern to [redacted]. Aligning along the original walked line of the HWNT would accord with sections 4.7.1 and 4.7.2 of the Approved Scheme.

Recommendation

222. Having regard to these and to all other matters raised, I conclude that the proposals fail to strike a fair balance as a result of the matters raised in relation to the objections. However, a modification which aligned the trail along the original walked line of the HWNT may, subject to an assessment of the feasibility of repairing the damaged sections, meet the coastal access requirements. I therefore recommend that, if minded to approve the proposals, the Secretary of State considers whether this modification would meet the coastal access requirements.

[redacted]

APPOINTED PERSON

APPEARANCES

FOR NATURAL ENGLAND:

[redacted] – Senior Adviser, Coastal Access delivery NW
[redacted] – Coastal access - national delivery and programme
[redacted] – Lead Adviser, Coastal Access delivery NW

OBJECTORS:

[redacted] – representing [redacted]
[redacted]
[redacted]
[redacted]

INTERESTED PARTIES:

[redacted] – Open Spaces Society and Ramblers'
[redacted] – Countryside Access, Cumbria County Council

DOCUMENTS SUBMITTED AT HEARING

1. NE Bundles of documents
2. Photographs of trail and farm
3. Submission re curtilage

This report has been made void following the publication of a Modification Report that addressed the concerns originally raised by the objector(s). Although this report is no longer relevant to the final approved route, it is being published for transparency and public record.



The Planning Inspectorate

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

by [redacted] MA (Cantab) Solicitor

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

Date 13 March 2018

Marine and Coastal Access Act 2009

Objection by Burgh Marsh Management Committee

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Objection Reference: MCA/GAL0810/11

Burgh Marsh

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 19 September 2016 to chapter 2 of the Report, Gretna to Allonby, has been made by the Burgh Marsh Management Committee. The land in the Report to which the objection relates is route sections ref. GAL-2-S067 to GAL-2-S071.
- 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 the report fail to strike a fair balance.

Procedural Matters

223. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby Report (the Report) to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved access to the coast between Gretna and Allonby.

224. The period for making formal representations and objections to the Report closed on 19 September 2016 and 11 objections were received within the specified timescale. 10 of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference MCA/GAL0810/11. The remaining objections are considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.

225. I carried out a site inspection on 6 February 2017 when I was accompanied by a representative of the Burgh Marsh Management Committee and representatives from NE. Following the site visits I requested further information from NE. On 22 May 2017 a notice was published (the Schedule 6 Notice) stating that I was minded to determine that the proposals in the report fail, in the respects specified in the objection, to strike a fair balance as a result of the matter or matters specified in the objection and inviting further representations.

226. I held a hearing into the objection on 6 December 2017. At the hearing NE provided a bundle labelled General Evidence Documents and a bundle relating to the objection which contained some material not previously provided to me or the objector (the Bundles). Despite NE's failure to draw my attention to the fact that the Bundles contained new information I was able to raise any relevant matters and am satisfied that no prejudice has been caused.

Hearing held on 8 December 2017
Site visits made on 7 February 2017

File Refs: MCA/GAL0096/02 and MCA/GAL0789/08

Main Issues

227. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:
- (e) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (f) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
228. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
229. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (g) the safety and convenience of those using the trail,
 - (h) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (i) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
230. 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.
231. 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
- (o) the nature of the land which would become part of the coast,
 - (p) the topography of the shoreline adjacent to those waters,
 - (q) the width of the river upstream to that limit,
 - (r) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters,

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- (s) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land,
 - (t) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint and
 - (u) the existence of a ferry by which the public may cross the river.

232. NE's Approved Scheme 2013⁴ ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.

233. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

234. The proposed trail between Gretna and Allonby is almost entirely above the seaward limit of the Solway Firth's estuarial waters, the terrain and natural environment of which pose a number of particular challenges. Much of the estuary is dominated by large areas of saltmarsh and mudflats, as are the river estuaries leading from the Solway Firth. Considerable parts of the Solway Firth are designated for nature conservation or heritage preservation, including the Solway Firth Special Area of Conservation, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and Marshes Site of Special Scientific Interest and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.

235. 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 as that 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. However, in all circumstances, consideration will be given to whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.

236. The Approved Scheme also notes at section 10.4.1 that several of the Estuary Criteria relate to its overall character. It states that when considering an estuary in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.

237. NE proposes to align the trail along the entire southern side of the Solway Firth. The part of the trail subject to Chapter 2 of the Report runs from Knockupworth Bridge, where the trail would cross the River Eden, to Bowness-on-Solway. The objection relates to route sections GAL-2-S067 to GAL-2-S071 which cross Burgh Marsh and are shown on maps 2f, g, h and i. As all sections of the route referred to in this report have the prefix GAL-2, for ease of reference I shall use the S0 number only. The trail would join Burgh Marsh at Old Sandsfield, pass the King Edward 1st Monument (the Monument), continue on the marsh past

⁴ Approved by the Secretary of State on 9 July 2013

Dykesfield and Boustead Hill and join the road at Easton Marsh cattle grid. The distance across the marsh is in excess of 7km.

238. Burgh Marsh is common land managed by the Burgh Marsh Management Committee on behalf of stint owners. It is described by the management committee as a tidal salt marsh which is grazed by sheep in winter and by cattle in summer. In order to avoid disturbance to birds a direction requiring people to keep their dogs on leads on both the route and the coastal margin is proposed, with the restriction in operation all year round.
239. An optional alternative route is proposed following roads through Burgh by Sands so that walkers can avoid crossing the marsh when the main route is flooded. This route is similar to the HWNT and to the Cumbria Coastal Way. The latter includes an alternative route from Dykesfield, across the marsh, to the Monument, described in a note as a possibility which "may be shorter but should be avoided at high water".
240. From Dykesfield to Easton Marsh cattle grid (and beyond) a road runs adjacent to the marsh and on the landward side of the road there is an embankment.

The Objection

241. The Burgh Marsh Management Committee raises a number of issues as follows.
242. Danger to life. Unpredictable, fast flowing tides can cover the marsh in a very short time. Wind speed, direction and land saturation have a huge effect on tidal height, timing and force. Even with information boards showing expected heights of high tides there is a huge element of unpredictability. It is easy to become cut off by creeks which fill very quickly and even locals get caught out.
243. Contact should be made with local life boat services to ensure that they can provide adequate cover in an emergency.
244. Increased foot fall from walkers and dogs will inevitably affect nesting birds and other wildlife in this sensitive habitat.
245. There will be an increase in litter, particularly dog waste. There are no bins on the route.
246. The route requires many new bridges and kissing gates. With the ferocious tides these will need constant repair and replacement as they get washed away. This will be costly.
247. The Hadrian's Wall Path also crosses the area. Although it is being proposed as an "alternative route" it would make more sense to make this the only route. Walkers would then be safe from all tides on top of the flood bank crossing the marsh, all the problems associated with extra walkers in the marsh will be avoided and costs will be drastically reduced.

Representations

248. The Open Spaces Society and the Ramblers' stated that they welcomed the proposals. The Hadrian's Wall World Heritage Site Partnership Board stated that it "welcomes the intention to harmonise the routes of the HWNT and the ECP wherever feasible, including the opportunity to improve the safety and

experience of walkers on the HWNT by moving its line onto the top of the flood defences across Burgh Marsh” (at S072 to S074).⁵

249. The Burgh by Sands Parish Council expressed concern about a number of matters including cost and public safety as follows.
250. There are 38 proposed bridges and 3 kissing gates on this section of the trail and that in order to survive high and storm tides, the bridges would have to be substantial structures. Rail and wooden sleepers will not survive the speed and velocity of Spring Tides. There is continual erosion of paths and existing bridges. The cost of installation of heavy materials in remote areas will exceed the proposed budget. The initial cost and continual maintenance of this section of the path could be invested in upgrading the more suitable HWNT. If the combined paths went along the old Railway/Canal bund across Burgh Marsh to Easton (maps h and i) this would afford a much better and safer view of the coast and give a boost to businesses along the way.
251. Sections of the proposed footpath (maps 2f, g, h and i) suffer inundation on both sides before the path itself is flooded. This could mean that walkers could be cut off from the landward side. If they then try to walk back to the landward side they could be unaware of the dangers of hidden deep channels and dubs with the potential for loss of life to walkers and animals.
252. The Coastal Access Team and the Maritime and Coastguard Agency need to be confident that the present rescue capability will be sufficient to service even a slight increase in walkers to the salt marshes.
253. The information boards placed at each footpath linking the existing footpath network with the new coastal way should have vital information (High Tides) in other languages. This will mean that walkers can mix and match routes more safely. There is however a caveat to this in that the tides can vary depending on weather conditions.
254. Parts of the route (map 2f, g, h and i) are open marsh land and rough grazing. There is a requirement for durable and prominent way markers along this section.
255. Burgh Marshes are an environmentally sensitive area and the increased use will disturb wildlife and the litter left by walkers will present a hazard to a variety of species of sheep and cattle. Neospora in dog excrement can be transmitted to cattle. This causes abortions and remains in the gene pool.
256. Proper facilities (toilets and waste bins) need to be placed and maintained by NE as this places a burden on Parish Councils and residents.
257. Speeding traffic on the marsh road is a problem and is hazardous to walkers at present. A speed limit would be desirable. Walkers currently resort to walking along the road in adverse weather conditions and an increase in footfall will only exacerbate the issue.

⁵ At SO69 I understand that the HWNT follows the road, not the embankment. The proposed route of the ECP follows neither, but crosses the marsh.

258. [redacted], farmer and local resident, raised concerns about all parts of the report which deal with estuaries or tidal grazing land, in particular the section on Burgh Marsh subject to this objection. He refers specifically to public safety and the natural dangers posed by saltmarsh and flats.

Natural England's comments on the objection

259. Many areas of low-lying coast will be subject to flooding due to a combination of tides and adverse weather. NE agrees that due to the nature of the coast on the Solway estuary, much of which is extremely low-lying, the proposed main route will periodically be affected by floods. At these times the optional alternative route along the road can be used. Information boards will alert walkers to the potential dangers of walking on the salt marsh, will remind them to check tide timetables and will contain maps showing access/egress points.

260. NE has taken many factors into account including the alignment of the Cumbria Coastal Way and the tendency of the marsh to flood from the landward edge on a rising high tide which clearly presents a significant risk to less knowledgeable visitors. Burgh Marsh is already accessible under CROW 2000 and NE is not aware of any significant issues that have arisen during the last 10 years or more of public access rights over this area.

261. NE believes that whilst there is a potential risk that walkers may encounter rising tides, it should be possible to retreat to drier ground from any part of the proposed route and it should be possible to negotiate intervening drains. Although the corner of the marsh around Dykesfield, between the proposed trail and the road/higher ground is probably often difficult to cross on foot, this area is relatively small and it will take walkers only a few minutes to pass this area before easier means of egress to higher, drier ground becomes available. NE believes that the proposed route is consistent with para 7.15 of the approved Scheme.

262. NE has consulted with various stakeholders including the coastguard.

263. NE is confident that its proposals will not lead to any significantly increased disturbance or damage to wildlife. The restriction currently in force over Burgh Marsh requiring dogs to be kept on leads to protect ground nesting birds is proposed to be replaced by a similar restriction throughout the year.

264. NE is not required to consider additional facilities as part of its proposals (para 4.3.12 of the Scheme). The provision of bins will be for local authorities to consider.

265. The proposals involve the installation of many new small footbridges across the marsh. NE believes that the costs of installation and maintenance are proportionate to the public benefits to be accrued by following a route over the marsh rather than along roads some distance inland. Cumbria County Council has designed a small footbridge that should require minimal maintenance.

266. With regard to the proposed modification, this would take the coastal path a considerable distance inland. This would not be consistent with the criteria within the Approved Scheme but would also create a massive area of additional coastal margin, most of which would be farmland. This would be a much easier and cheaper solution but NE does not believe that it would strike a fair balance.

Further information provided by NE

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267. Following my site visit I requested further information from NE regarding its assessment of the risk to the public, in particular when the marsh floods from the landward edge on a rising high tide and in particular in the vicinity of Dykesfield where it was clear that walkers could be cut off from adjoining land for some distance.
268. NE stated that they had made an assessment of each individual marsh, and with respect to Burgh Marsh provided the following information.
269. We note that all of the land in question currently benefits from access rights under the Countryside and Rights of Way Act 2000 and has done so since 2005. We have not been made aware of any serious incidents involving walkers on the marsh over that period. We accept that there is a potential risk that walkers may encounter rising tides whilst on our proposed route, but that it should be possible to retreat to drier ground from any part of the proposed route in this event, in our view. Whilst there are intervening drains between the proposed route and higher inland areas, we believe that it should always be possible to negotiate these.
270. In reaching this conclusion we discussed our general approach to marsh access with various stakeholders, including the Cumbria Local Access Forum, the Coastguard and the Royal National Lifeboat Institution, as well as the Burgh Marsh Management Committee in relation specifically to Burgh Marsh. Each of these bodies tended to support our conclusions (although it seems that the marsh management committee may have subsequently come to a different view).
271. Whilst the corner of the marsh around Dykesfield, between the proposed trail and the road/higher ground, is probably often difficult to cross on foot, this area is relatively small. It will take walkers only a few minutes to pass this area before easier means of egress to higher, drier ground becomes available, in either direction.
272. NE has also proposed to install information boards at either end of this and other marsh routes, and at any other appropriate points of access, advising walkers of the need to be aware of tidal movements. These boards will contain maps indicating main access/egress points and will advise walkers to follow the optional alternative route in its entirety if it seems likely that the main route will become impassable due to tidal conditions within the expected transit time. Waymark posts and small bridges will ensure that the proposed main route is easy to follow, thus further reducing any risk to walkers.
273. NE believes that the route is consistent with the advice contained at part 7.15 of the Approved Scheme.

Responses to Schedule 6 Notice

274. Burgh Marsh Management Committee did not submit a response to the notice.
275. The Ramblers'/Open Spaces Society support the proposed route, mentioning the opportunities it would provide for people to view wildlife and interact with nature. It is stated that no evidence has been provided to justify the concerns relating to litter or danger to life and suggests that there are around 24 high tides each year which may inundate the marsh, with half being overnight when walkers are unlikely to be present. Walkers are aware of tidal patterns. The Cumbria Coastal Way (CCW) uses only part of the marsh as there was insufficient funding to provide the necessary footbridges. It also had a greater focus on coastal villages and cultural

history, now subsumed into the HWNT which is different in concept to the England Coastal Path. The trails should be kept separate to cater for users of the 2 different types of trail.

Discussion

Flooding and Public Safety

276. Section 7.15 of the Approved Scheme is headed "Salt marsh and flats" and prior to the hearing NE maintained that the proposed route was consistent with this section. However, following the hearing into the objection ⁶ I was provided with a copy of NEs Priority Habitats Inventory dataset which describes the habitat of the part of the marsh closer to the channel of the River Eden as Coastal Saltmarsh and the area further inland as Coastal and Floodplain Grazing Marsh⁷. The majority of the trail is aligned through the area shown as Coastal and Floodplain Grazing Marsh, crossing small areas of Coastal Saltmarsh in places. NE now states that its approach is consistent with the guidance provided in Section 7.8 of the Approved Scheme.
277. The categories in the Priority Habitats Inventory dataset do not necessarily correspond with the various types of land cover and landform described in Section 7 of the Approved Scheme, which refers at 7.15 to salt marsh and flats and at 7.8 to grazing marsh. However I recognise that the habitat provided on the marsh is not uniform. In particular some areas are inter tidal, some are only covered by the sea at very high tides and some are never flooded. Section 7.8 describes grazing marsh as "wet grassland with ditches which are used to maintain high water levels for grazing and/or nature conservation purposes.....Salt marsh (which may also be grazed) is considered separately in section 7.15". In my opinion much of the area of Burgh Marsh crossed by the proposed trail is more appropriately described as salt marsh, as stated by NE prior to the hearing. However, for completeness I shall refer to advice in Section 7.8 where appropriate.
278. Section 7.15.2 states that "the trail will not normally be aligned on flats and salt marsh. There are usually safer, more convenient alternatives to landward. On estuaries and defended coasts, this will normally be an embankment." Section 7.15.3 states that occasionally the trail may cross an area of salt marsh or flat, an example being "for short sections on undefended coasts where there is no embankment to follow, so that the route is reasonably direct".
279. Section 7.8.2 states that "Grazing marsh does not usually provide a convenient walking surface because it is wet for all or part of the year. For this reason the trail will normally follow a flood defence embankment – provided there is one – adjacent to the grazing marsh on the seaward side. The trail may be on the landward side of the grazing marsh if it is the most convenient route available".
280. With regard specifically to public safety, Section 7.15.12 states that "areas of salt marsh and flat often pose dangers that are neither well-understood nor readily apparent to many visitors to the area. We will typically use our separate power to exclude access from such areas on the grounds that they are unsuitable for public

⁶ The document was handed in at the close of a hearing into another objection which was held later in the week.

⁷ The areas are delineated on plans to that dataset.

access". Paragraph 7.15.13 states that "We will not align the trail across salt marsh or flat unless we consider it reasonably safe to do so".

281. NE accepts that the corner of the marsh around Dykesfield "is probably often difficult to cross on foot" and in my opinion this is the area which presents the most safety concerns. Indeed I note that the area around the Monument does not flood.
282. At the hearing, [redacted], for the Burgh Marsh Management Committee stated that around Dykesfield was a real danger area, as the creeks fill up behind the proposed trail and a walker could get cut off quite easily. She described how the tide varies according to weather conditions meaning that tidal information, even if properly understood by visitors, will not always be correct. She stated that the tides are dangerous even to those familiar with the marsh and that she can still get caught out. She recalled an incident when 100 sheep were lost. Indeed, due to the wind, a flood warning had been issued on the day of the hearing even though the tide was lower than on the previous day. It is clear that if a walker was caught out by the tide on the marsh around Dykesfield there could well be no safe route back to higher land. At my site visit I walked this part of the route and the distance and ground conditions are such that I do not accept NEs view that it would take walkers "only a few minutes" to pass this area.
283. Members of the South Solway Wild Fowlers stated that probationary members are not allowed on the marsh during their first year due to safety concerns as a result of tides and quick sand.
284. I note that there have been access rights to the marsh for over 10 years and no reported incidents. Due to the existence of those rights, NE does not expect to see a significant increase in local access to the marsh. However, an increase in footfall is expected along the trail and this is likely to be people unfamiliar with the area. In my opinion these are the people who are most likely to be at risk.
285. NE state that advice was sought from HM Coastguard and the RNLI who supported their proposals to exclude access to intertidal areas but not to saltmarsh. At the hearing, reference was made to e-mails from HM Coastguard and RNLI.⁸ The e-mails are not specific to Burgh Marsh and request support for the use of NEs powers to exclude coastal access rights to all of the intertidal areas from the seaward edge of all marshes to the mean low water mark. HM Coastguard responded in favour of the approach "as the Marshes in question all have areas of quick sand below the mean high water mark"" and RNLI concurred "with limiting access in this area to that currently permitted. From the Institutions point of view, allowing public access to marshes and mudflats in the intertidal zone could potentially increase the risk of being cut off by the tide for those unfamiliar with the area and this type of terrain".
286. The correspondence only concerns inter-tidal areas and is dated December 2015, prior to publication of the Report. No specific advice has been sought following the concerns raised in relation to Burgh Marsh and in particular the area around Dykesfield.
287. Section 4.2.1 of the Approved Scheme states that NEs "key principle is that visitors should take primary responsibility for their own safety when visiting the

⁸ Tab 10 of the General Evidence Documents Bundle

coast....and should be able to decide for themselves the level of personal risk they wish to take". However, I consider that the dangers on this part of the proposed route will not be readily apparent to many visitors and the consequences could be severe.

Cost

288. This part of the trail would involve the installation of 38 bridges and 2 culverts. At the hearing I was informed that each bridge would cost about £1400, a total of £53,200 and each culvert about £3000. This does not include the cost of maintenance and I note the concerns raised about the damage which could be caused to bridges by high tides, and the possible need to move them on a regular basis.

Livestock

289. The marsh is grazed in the winter by sheep and in the summer by cattle. However, it is an extensive area and this should reduce any potential conflict. [redacted] stated that she does not walk on the marsh at the beginning of May when about 800 cattle first come out onto the marsh after the winter. I appreciate that as they are particularly excitable and lively at this time, and as there are no fences on the marsh, it may be more difficult to avoid them. However, this is only for a short period.

Wildfowlers

290. The South Solway Wildfowl Club has 150 members who have a right to shoot on the marsh from 1 September to 20 February. This mainly takes place in the area between Dykesfield and Sandsfield, access being gained near the Monument. Concern was expressed that members may be confronted by walkers. NE stated that the legal right to shoot would not be affected and signage could be erected to inform walkers that there may be people lawfully shooting on the marsh.

291. Concern was also expressed about the effect on walkers of shooting on the narrow part of the marsh. However anyone shooting on the marsh has a duty of care with respect to the public. The direction requiring dogs to be kept on leads would not apply to the lawful use of gundogs on the marsh.

Dogs

292. A number of local residents expressed concern about the requirement to keep dogs on leads. I was informed that numerous local responsible dog owners let well behaved dogs off lead on the marsh. Such dogs are kept under close control and there are very few incidents of sheep/cattle worrying and locals are considerate of both wildlife and stock. Local people would wish to continue with their usual practices.

293. I note that there is currently a requirement to keep dogs on leads associated with the access rights under CROW between 1 March and 31 July.

294. Section 8.6.12 of the Approved Scheme recognises that there is evidence of a link between dog faeces and Neosporosis in cattle. However, signs could be

erected to remind dog walkers to pick up after their dogs and to dispose of the waste carefully and this combined with the requirement for dogs to be kept on leads should minimise any issue. The provision of dog waste bins, and other litter bins, is a matter for the local authority.

Alternative Routes

295. The Burgh Marsh Management Committee and Burgh by Sands Parish Council both propose that the route should utilise the embankment adjacent to the road between Dykesfield and Easton Marsh cattle grid. I noted at my site visit that, due to it being on higher land, the views of the coast from the embankment are more extensive than from the proposed trail. Furthermore the embankment does not flood. In my opinion use of the embankment, as proposed from S071 onwards would be consistent with the Approved Scheme, both at Section 7.8 and 7.15.
296. However, there is no embankment between Dykesfield and Sandsfield, where the alternative route is inland with no views of the coast. NE state that consideration had been given to a route across the marsh from Dykesfield, in the position suggested as an alternative route for the CCW, but that this would entail crossing the Ridding Sough where it is not possible to put a bridge close to the water's edge. Various creeks in the vicinity of Dykesfield would also make it difficult.
297. Following the hearing NE suggested a modification to the published proposals in recognition that its proposals for warning walkers of tide-related risk and effectively guiding walkers along safer routes were not generally regarded as satisfactory. The optional alternative route proposed would follow the minor road from Holmes Mill/New Sandsfield through to Burgh by Sands, the suggestion being that it would be easier for walkers to gauge the state of the tide at New Sandsfield. The HWNT would still be available to walkers wishing to take a more direct route and maps at all suitable points would emphasise the risk factors and all the options available.
298. The Burgh Marsh Management Committee responded that this may be helpful to walkers arriving at Sandsfield at high tide. However, it could add confusion to some walkers and lead to poor decision making because they might chance it as there are other exit points from the marsh to the Holmes Mill-Burgh Road. In its opinion the modification does little to alleviate concerns about dangers on the main route crossing the marsh.
299. I note that it would be of little assistance to walkers starting to cross the marsh from the direction of Easton Marsh cattle grid.
300. Little consideration appears to have been given to the potential for the route to leave the marsh to join a more inland route in other locations in order to avoid the particularly difficult area around Dykesfield. This appears to be due to concerns about the extent of coastal margin which would be created. However, if required, there are various grounds on which a direction excluding access can be made, including land management and public safety.

Birds

301. NE accepts that human activity is likely to disturb both breeding and non-breeding birds in the area, but states that the marsh is already well-used for public recreation and has been legally accessible under CROW 2000 for more than 10 years. In addition NE state that the proposed route avoids key sensitive

areas where birds tend to roost during high tides and that there will be no new access rights over the adjacent Rockcliffe Marsh which already acts as a significant refuge for birds less tolerant of disturbance.

302. The RSPB has not objected to this section of the trail.

Conclusions

303. The proposed route adheres to the periphery of the coast and provides views of the estuary throughout. However, I am concerned that both the Burgh Marsh Management Committee and Burgh by Sands Parish Council, both of which bodies will be very familiar with the marsh, have raised serious safety concerns. My site visit led me to consider that these concerns were justified, particularly in relation to the area around Dykesfield and no evidence has been provided to allay my concerns.

304. The Approved Scheme makes it clear that the trail will not normally be aligned on flats and salt marsh and that neither salt marsh nor grazing marsh provides a convenient walking surface. I consider that Burgh Marsh is a good example of the difficult terrain which can be encountered in such areas, and that even with the numerous bridges proposed, there will be times when the marsh is difficult to cross and times when it is likely to be dangerous to attempt to do so. The dangers may not be readily apparent to many walkers, even if information is provided.

305. The alternative route proposed would take walkers away from the coast between Sandsfield and Dykesfield. It would however be more direct and from Dykesfield to Easton Marsh cattle grid the raised embankment could be used. This would accord with advice in sections 7.8 and 7.15 of the Approved Scheme and would provide better views of the estuary.

306. There may also be other routes which would allow walkers to use the drier, safer parts of the marsh but avoid, in particular, the Dykesfield area. However, little consideration appears to have been given to this due to concerns about the extent of the coastal margin

Recommendation

307. Having regard to these and to all other matters raised, I conclude that the proposals fail to strike a fair balance as a result of the matters raised in the objections. I consider that the modification proposed by the Burgh Marsh Management Committee and Burgh by Sands Parish Council, insofar as it would utilise the embankment adjacent to the road between Dykesfield and Easton Marsh cattle grid, would meet the coastal access requirements although I note that it would not connect with the remainder of the route to which this objection relates.

308. In respect of the route between Dykesfield and Easton Marsh cattle grid I recommend that, if minded to approve the proposals, the Secretary of State considers whether this modification would meet the coastal access requirements.

309. In respect of the remainder of the route to which this objection relates I conclude that there are no modifications which would meet the coastal access requirements and that further assessment is required. I therefore recommend in relation to this part of the route that the Secretary of State determines that

the proposals fail to strike a fair balance but that there is no modification which would satisfy the coastal access requirements.

[redacted]

APPOINTED PERSON

APPEARANCES

FOR NATURAL ENGLAND:

[redacted] – Senior Adviser, Coastal Access Delivery NW
[redacted] – Coastal Access - national delivery and programme
[redacted] – Lead Adviser, Coastal Access Delivery NW

OBJECTOR:

[redacted] – Burgh Marsh Management Committee

INTERESTED PARTIES:

[redacted] – Open Spaces Society and Ramblers'
[redacted] – Burgh on Sands Parish Council
[redacted] – Burgh on Sands Parish Council
[redacted] – Chairman, South Solway Wild Fowlers
[redacted] – Treasurer, South Solway Wild Fowlers

DOCUMENTS SUBMITTED AT HEARING

4. NE Bundles of documents
5. Representation by Burgh by Sands Parish Council
6. Extract from The Cumbria Coastal Way – Cicerone 2007
7. Note dated 6 December 2017 from [redacted]
8. Copy of e-mails from NE to Burgh Marsh Management Committee dated 7 and 10 December 2017
9. Maps showing habitat types on Burgh Marsh and line of proposed trail
10. Map showing suggested modification to optional alternative route

This report has been made void following the publication of a Modification Report that addressed the concerns originally raised by the objector(s). Although this report is no longer relevant to the final approved route, it is being published for transparency and public record.



The Planning Inspectorate

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

by [redacted] MA (Cantab) Solicitor

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

Date 13 March 2018

Marine and Coastal Access Act 2009

Objections by [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Objection Reference: MCA/GAL0096/02**Pond Farm -land adjacent to River Wampool and Angerton Marsh**

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 13 September 2016 to chapter 4 of the Report, Gretna to Allonby, has been made by [redacted]. The land in the Report to which the objection relates is route sections ref. GAL-4-S002 to GAL-4-S006 and GAL-4-S008 to GAL-4-S010.
- 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 the report fail to strike a fair balance.

Objection Reference: MCA/GAL0789/08**Angerton House Farm – land adjacent to River Wampool**

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 14 September 2016 to chapter 4 of the Report, Gretna to Allonby, has been made by [redacted]. The land in the Report to which the objection relates is route sections ref. GAL-4-S002 and GAL-4-S007.
- 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 the report fail to strike a fair balance.

Procedural Matters

310. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby Report (the Report) to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved access to the coast between Gretna and Allonby.

311. The period for making formal representations and objections to the Report closed on 19 September 2016 and 11 objections were received within the specified timescale. 10 of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objections reference MCA/GAL0096/02 and MCA/GAL0789/08. The remaining objections are considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.

Hearing held on 7 December 2017
Site visit made on 7 February 2017

File Ref: MCA/GAL0447/05

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312. I carried out a site inspection of route sections GAL-4-S002 to GAL-4-S010 on 7 February 2017 when I was accompanied by the respective landowners and representatives from Natural England.
313. Following the site visits I requested further information from NE. On 22 May 2017 notices were published (the Schedule 6 Notices) stating that I was minded to determine that the proposals in the report fail, in the respects specified in the objections, to strike a fair balance as a result of the matter or matters specified in the objections and inviting further representations.
314. I held a hearing into the objections on 7 December 2017. At the hearing NE provided a bundle labelled General Evidence Documents and a bundle relating to the objection (the Bundles). They contained some material not previously provided to me or the objectors. I was able to draw the documents to the attention of the objectors and am satisfied that no prejudice has been caused.

Main Issues

315. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:
- (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.
316. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
317. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (j) the safety and convenience of those using the trail,
 - (k) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (l) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
318. 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.
319. 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

- (v) the nature of the land which would become part of the coast,
- (w) the topography of the shoreline adjacent to those waters,
- (x) the width of the river upstream to that limit,
- (y) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters,
- (z) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land,
- (aa) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint and
- (bb) the existence of a ferry by which the public may cross the river.

320. NE's Approved Scheme 2013⁹ ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.

321. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

322. The proposed trail between Gretna and Allonby is almost entirely above the seaward limit of the Solway Firth's estuarial waters, the terrain and natural environment of which pose a number of particular challenges. Much of the estuary is dominated by large areas of saltmarsh and mudflats, as are the river estuaries leading from the Solway Firth. Considerable parts of the Solway Firth are designated for nature conservation or heritage preservation, including the Solway Firth Special Area of Conservation, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and Marshes Site of Special Scientific Interest and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.

323. 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 as that 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. However, in all circumstances, consideration will be given to whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.

324. The Approved Scheme also notes at section 10.4.1 that several of the Estuary Criteria relate to its overall character. It states that when considering an estuary

⁹ Approved by the Secretary of State on 9 July 2013

in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.

325. Chapter 4 of the Report relates to Whitrigg Bridge to Silloth and states at 4.3.1 that NE proposes to exercise its functions as if the sea included the estuarial waters of the Solway Firth, including the rivers Waver and Wampool, as far as the existing road bridge over the River Wampool and to a proposed new footbridge over the River Waver.
326. The objections relate to route sections GAL-4-S002 to GAL-4-S010 where the proposed route is along the southern bank of the River Wampool and through adjacent fields. As all sections of the route referred to in this report have the prefix GAL-4, for ease of reference I shall refer to the trail sections by the S0 number only. Both [redacted] and [redacted] have objected in relation to section S002 which I am informed is owned by [redacted] and rented by [redacted].
327. A long-term access exclusion to the coastal margin and a long-term access restriction requiring dogs to be kept on leads are proposed in order to avoid disturbance to birds.
328. Adjacent to route sections S002 and S005 the landward boundary of the coastal margin is proposed to coincide with the existing fence where it is landward of the trail.
329. Roll-back, meaning that the route of the trail would be able to change without further approval from the Secretary of State, is proposed and indeed the whole of the route between sections S001 to S015 is acknowledged as a more complex situation for roll-back due to it being within the Solway Firth SPA/SAC and associated SSSIs.
330. An optional alternative route would be available when the route from Whitrigg Bridge across Newton Marsh is affected by high tides. It would follow an existing public highway. NE state that this route, which follows the road from Angerton, through Newton Arlosh to Raby Cote and avoids Newton and Saltcotes Marsh, was considered as an option for the main trail but the proposed route was chosen because it is closer to, and maintains better views of the sea and also avoids creating an additional, large area of coastal margin.
331. NE state in the Report that the interests of owners and occupiers of land over which any coastal access rights would apply was a "key driver in the design of our proposals which were discussed in detail with the owners and occupiers of the affected land during "walking the course" and other processes". Unfortunately, when drawing up their proposals, NE did not have access to the land crossed by S002 to S010 due to a breakdown in relations early on in the process. The proposals for this part of the route are therefore based on views from nearby land and reference to data sources such as aerial photographs and maps.

Objections

[redacted] – GAL0096/02

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332. Suckler cows are kept on the land which are unpredictable and will be dangerous to walkers. 24 people have been killed by cattle in the past 4 years and many more injured. He reports that he had to be rescued from a bull by the fire brigade and spent 10 days in hospital and took 3 months to recover. Sometimes the farmers only enter the fields in tractors.
333. The farm is a traditional wintering area for thousands of geese, hundreds of swans and lapwing, curlew and skylarks which nest on a 6 acre area of marsh land that has not been touched for at least 20 years. Shooting is not allowed on the farm and there are fox holes which have been there for years.
334. At times of flooding and high tides the area of the proposed coastal path floods making it dangerous for walkers.
335. Accountability if anyone is killed or injured.
336. Interference with landowner's human rights.
337. The alternative route via the road would be better as it would not interfere with cattle or wildlife.

[redacted] – GAL0789/08

338. The fields are in full agricultural use and there will be issues of safety as walkers and/or dogs will come into contact with cattle. The erection of warning signs will be insufficient.
339. The disturbance of resident and migratory birds will be considerable.
340. The alternative route is within close proximity to the coast.

Representations

341. The RSPB states that the proposed route risks causing unacceptable levels of disturbance to SPA/SSSI birds species through the introduction of access onto a site that currently has no access. The RSPB considers that the limited access restrictions and exclusions do not constitute adequate mitigation and that in the absence of sufficient data to inform or contradict the risk the precautionary principle should be followed.
342. The RSPB considers that the alternative route is more suitable for use as the primary route, although the increased area of coastal margin which would result from adopting the alternative route as the primary route is not ideal. However, in its view, the linear nature of a route along a lane combined with signage denoting the access restrictions on the marsh as well as a pro-active approach to access management being taken by landowners will likely result in increased compliance from users of the route.
343. The Open Spaces Society and the Ramblers' welcome the proposals.

Natural England's comments on the objections

344. The proposals were made without the benefit of being able to walk along the proposed route between S002 and S010. NE designed the proposals based on

views from nearby land and by reference to data sources such as aerial photography and maps.

345. Most areas of low-lying coast will be subject to flooding, due to a combination of tides and adverse weather. NE agrees that the proposed main route will periodically be affected by floods which is why an optional alternative route is provided for use when the main route become unsuitable. Appropriate signage will alert walkers to the potential dangers and remind them to check tides.
346. The coast path will often cross land grazed by cattle and the situation is not unique or particularly unusual. The proposals are consistent with the approach in the Approved Scheme at parts 8.1 and 8.2. Although primarily for nature conservation reasons, rights will be restricted so that dogs must be kept on a lead.
347. In some sections the trail will be outside the fields, along the edge of the river. Unless and until any roll-back of the path might be necessary, walkers and dogs would be separated from stock. Other sections are within and along the edge of the fields as it appears that there is insufficient room to align the trail between the fence and the estuary. NE would be willing to discuss the possibility of adjusting the existing fence line in key locations so as to generate adequate width for a path on the seaward side of the fence. This would prevent stock and walkers from mixing.
348. The Access and Sensitive Features Appraisal concludes that any impacts on protected sites and species are not likely to be significant, when viewed against the protected sites as a whole and the distribution of such species across the whole of the Solway estuary. The alignment of the route and associated restrictions of access for people and dogs on either s25A or s26 grounds will separate walkers from the most sensitive areas.
349. The Government has provided a statement of compatibility with the European Convention on Human Rights.
350. Occupier's liability is specifically and considerably reduced in relation to visitors on land covered by coastal access rights (section 4.2.2 of the Approved Scheme). It is set at the same lower level owed to trespassers provided the visitor is only exercising the statutory right of access. Section 306 of the Marine and Coastal Access Act 2009 extends this exclusion of liability for land which is coastal margin in respect of a risk resulting from any physical feature. This does not affect liability under animals' legislation.
351. The nearby road fails to meet the key criteria within the Approved Scheme – namely that the route should normally adhere to the periphery of the coast and provide views of the sea ((para 4.1.1). It would also have the effect of creating a very large area of coastal margin. The proposed route minimises the extent of the margin and therefore any impact on local farming practices, whilst offering the most enjoyable route for walkers.

Further information provided by NE

352. At the site visit it became apparent that in relation to the parts of sections S002 to S010 where the trail is within the adjoining fields, there are places where

the riverbank is sufficiently wide that the trail could be realigned on the river side of the fence line. In other areas, consideration could be given to moving the fence line slightly to ensure separation between the trail and the fields. NE and the objectors expressed the intention to meet in order to survey the land. Following the site visit I wrote to NE requesting details of progress but was informed that no site visit had taken place as it had not been possible to agree a convenient date with [redacted].

353. I also requested further information with regard to NE's appraisal of the bird species present in the area and its consideration of the likely impact of the proposed route upon them. NE responded that, as with the appraisal relating to the northern side of the Wampool estuary, they were able to conclude that the overall package of proposals would not have a likely significant impact. This conclusion was based partly on the proposed alignment at the back edge of the marsh¹⁰ (and including features of the terrain and vegetation that will tend to reduce any disturbance effect) and partly on the proposals to exclude access from the coastal margin and to require dogs to be kept on leads throughout the year.

Responses to Schedule 6 Notices

The Objectors

354. [redacted] submitted a response which did not raise any new matters. [redacted] did not respond to the notice, but he did attend the hearing.

Ramblers'/Open Spaces Society

355. Walkers and naturalists are familiar with the issues of crossing fields containing agricultural stock. If this objection is accepted as a principle then we foresee significant problems for NE in applying Government policy as set out in the Approved Scheme.
356. There is a significant amount of the Solway coast where NE has not extended the spreading room to cover areas which they have considered as too sensitive due to the disturbance of birds. We regard the interaction of people with nature as a paramount consideration and this section of the route provides such an opportunity.
357. The alternative route was rejected by Cumbria County Council for the Cumbria Coastal Way because of concerns for the safety of walkers. The Cumbria Coastal Way follows a route further inland to Angerton. [redacted] states that he has used the alternative route on several occasions and that it is not a route which he is keen to use again or would encourage the public to use. The route provides few, if any, real views of the coast and walkers attention is on safety which means that no attention can be given to the landscape or wildlife of the area.
358. If the alternative route becomes the main trail then the fields between the road and coast would become spreading room. The fields would in all probability be used by birdwatchers and other naturalists to access the coast. Use of the road would prove to be less of a fair balance than the current proposal.

¹⁰ The response also relates to route section SO11 and this comment is more relevant to that section.

Discussion

359. The objections raise a number of common themes and I shall therefore consider them together.

Farm management and safety

360. [redacted] and [redacted] have made it clear that they would like walkers to be segregated from the cattle, mainly due to concerns about public safety. [redacted] has beef bulls and suckler cows and has described the dangers to walkers in his objections. Although the fields are not particularly small and I accept that it is not unusual for walkers to cross fields containing cattle, [redacted] and [redacted] are clearly concerned about the characteristics of the cattle kept. NE stated at the hearing that they believed that it would be preferable for both landowners and walkers if the trail was separated from the adjoining fields by the fence line and I agree.

361. I am informed that following the site visit NE attempted on a number of occasions to arrange a meeting with [redacted] and [redacted] but could not find a date or time convenient for [redacted]. No attempts have been made since mid-April 2017. [redacted] stated at the hearing that there had been a break down in trust between himself and NE very early on in the process. The fact that NE had not been permitted access to the land when drawing up the proposals and that the route was designed from maps and aerial photography is indicative of this breakdown in relations. However, in the absence of a site survey the extent to which the trail could be realigned to avoid the fields and the extent to which the fence line may have to be moved to accommodate the trail remains unclear.

362. At the hearing [redacted]'s main concern appeared to be the cost of moving the fence and future maintenance of it. NE clarified that they would replace the fencing along the entire affected section and that in order to keep people and dogs out of the adjoining fields it would be barbed wire topped with netting below of a design to be agreed. Future maintenance would be [redacted]'s responsibility.

363. [redacted] stated that in his opinion the fence along the entire section of S007 would have to be moved into the adjoining field if a sufficiently wide trail was to be accommodated along the river bank. This section is through a field that has been owned by his family for 7 generations and he expressed concern about the amount of land that he would, in effect, be giving away and without any compensation. He pointed out that there was a constant battle with nature in the area due to tidal damage and erosion of banks and that it would only be a matter of time before the trail would be impassable and walkers would either cross the fence or the fence line would have to be moved further into the field resulting in the loss of even more land.

Nature Conservation

364. NE stated that it had been difficult to get the right balance along this stretch of the trail because of the high usage of the Wampool estuary, in particular by wintering barnacle and pink footed geese which graze on the marshes. As the winter progresses the barnacle geese graze in adjacent agricultural fields. It was

accepted that any pedestrian access will cause some disturbance and may result in a change in their feeding habits. It was also acknowledged that greylag geese are present all year round and some nest in the area. However, they are not a species for which the Solway is notified.

365. Shelduck, skylark, lapwing and oystercatcher all breed in the area and form part of the SSSI interest. It was accepted that the trail would have an impact upon individual pairs. However, they are all found elsewhere within the Solway, where they would continue to breed and therefore NE had concluded that the overall impact on the species in the area would be small. NE also stated that there was scope for planting hedges and providing visual barriers to reduce the impact on individual pairs.
366. I note the concerns of the RSPB in respect of this part of the route.
367. [redacted] and [redacted] pointed out that the area is at present untouched and that their family value the wildlife and do not want it to be disturbed. [redacted] pointed out that the geese which graze in the fields are a benefit and now do the job which historically would have been done by sheep. However, due to the fact that the tide covers the fields it is not possible to keep sheep.
368. [redacted] for the Ramblers' stated that there was a need for people to reconnect with nature and that the birds would get used to the presence of people. Such interaction is beneficial to people's mental health. However, I agree with [redacted] that the disturbance of birds whilst feeding or nesting is more likely to amount to interference than interaction.
369. I accept that the impact on the designated sites as a whole may not be significant. However, it is clear that use of these sections of the route will result in some disturbance to birds, and that there will be an impact on protected sites and species.

Flooding

370. [redacted] and [redacted] stated that under normal tides the riverbank path would be flooded 2 or 3 times per year. This could be more frequent depending on the extent of west winds. They pointed out that the Solway estuary is an extraordinary area and that the tide can come in faster than a galloping pony. In their opinion it would be quite possible to start a walk and within 15 minutes be stuck with no way out except through the adjoining fields stocked with cattle.
371. I accept that flooding will occur and that if stranded a walker is likely to resort to crossing the fence line into the adjacent fields. However, the provision of signage warning of tidal dangers should minimise such occurrences.

Alternative route

372. The objectors have proposed that the alternative route should be the primary route. It follows a road which in places is some distance from the estuary. Although good views of the estuary are available from particular vantage points, along much of the road the views are limited. The Ramblers' expressed concern about use of the road due to traffic and the lack of views. I accept that the proposed route provides significantly better views of the river estuary.

373. Use of the road as the main trail would result in a large area of coastal margin which NE state would impact on farming practices. The suggestion that his fields would fall within the coastal margin and that there could be public access to them is a matter of great concern to [redacted]. However, there are various grounds on which a direction excluding access can be made, including land management and public safety and it does not appear that this is a matter which has been considered in any detail.

Occupiers' Liability

374. [redacted] expressed considerable concern about the possibility of liability in the event of an incident involving walkers and cattle. Section 4.2.1 of the Approved Scheme states that the key principle is that "visitors should take primary responsibility for their own safety....and should be able to decide for themselves the level of personal risk they wish to take". Section 4.2.2 clarifies that land subject to coastal access rights benefits from the lowest level of occupiers' liability known under English law and that this "makes it extremely unlikely in normal circumstances that an occupier could successfully be sued in relation to injury on land with coastal access rights".

375. The Government has provided a statement of compatibility with the European Convention on Human Rights.

Conclusions

376. The proposed route provides good views of the river. It attempts to adhere to the periphery of the estuary, although in places it crosses into adjacent fields. NE agrees with the objectors that for safety reasons it would be preferable for the route to be separate from those fields. A route which avoided the need to keep crossing between the riverbank and adjacent fields would also be more convenient for walkers.

377. It was clear from my site visit that in places the riverbank is wide enough for the route to be realigned to avoid the need to enter the fields. It is unfortunate that the land has not been surveyed to ascertain the extent to which that would be possible. It was also clear that in places the existing fence line would need to be moved to provide sufficient width along the riverbank for the trail. Although both NE and the objectors consider that there are benefits in separating walkers and livestock, concerns have been expressed that this course of action would result in a loss of useable land. [redacted] referred to it as a land take without compensation.

378. It is likely that route between S002 and S010 will occasionally flood and although it is intended that information will be provided to walkers, there are obvious dangers. It is also clear that there is likely to be some disturbance to wildlife, including an impact on protected species. Use of the alternative route would avoid these concerns, but it does not adhere to the periphery of the coast and views of the estuary are limited.

379. Due mainly to the concerns about the route passing through fields of livestock rather than adhering to the riverbank I consider that the proposals as published fail to strike a fair balance. However, realignment of the route on the riverbank side of the fence line between S002 and S010, including moving the fence line

where necessary, would ensure the safety of walkers and livestock and would not compromise farming practices.

Recommendation

380. Having regard to these and to all other matters raised, I conclude that the proposals fail to strike a fair balance as a result of the matters raised in the objections. A modification which aligned the trail on the riverbank side of the fence line, which would involve moving the fence line in places, may meet the coastal access requirements. However, it may result in the fence line needing to be moved further into the objectors' land than would be acceptable to the objectors. I recommend that, if minded to approve the proposals, the Secretary of State considers whether this modification would meet the coastal access requirements.
381. If on consideration it is determined that it would not, a modification which aligned the primary route along the alternative route would provide more limited views of the estuary but may meet the coastal access requirements. The route as modified in this way would however fail to connect with route section GAL-4-S011 and consideration would need to be given to a connecting route. Consideration would also need to be given to management of the coastal margin.
382. Accordingly, I further recommend that, if minded to approve the proposals and it is determined that the modification referred to in paragraph 71 would not meet the coastal access requirements, the Secretary of State considers whether a modification which aligned the primary route along the alternative route would meet the coastal access requirements.

[redacted]

APPOINTED PERSON

APPEARANCES

FOR NATURAL ENGLAND:

[redacted] – Senior Adviser, Coastal Access delivery NW
[redacted] – Coastal access - national delivery and programme
[redacted] – Lead Adviser, Coastal Access delivery NW
[redacted] – Bird Expert and SSSI officer for the Solway
[redacted] – Access and Sensitive Features

OBJECTORS:

[redacted]
[redacted]
[redacted]

INTERESTED PARTIES

[redacted] – Open Spaces Society and Ramblers'

DOCUMENTS SUBMITTED AT HEARING

11.NE Bundles of documents

This report has been made void following the publication of a Modification Report that addressed the concerns originally raised by the objector(s). Although this report is no longer relevant to the final approved route, it is being published for transparency and public record.



The Planning Inspectorate

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

by [redacted] MA (Cantab) Solicitor

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

Date 13 March 2018

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Gretna to Allonby

Objection Reference: MCA/GAL0447/05

Raby Grange, Kirkbride, Wigton

- On 25 July 2016 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 15 September 2016 to chapter 4 of the Report, Gretna to Allonby, has been made by [redacted]. The land in the Report to which the objection relates is route sections ref. GAL-4-S018 and GAL-4-S019.
- 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 the report fail to strike a fair balance.

Procedural Matters

383. On 25 July 2016 Natural England (NE) submitted the Coastal Access Gretna to Allonby Report (the Report) to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved access to the coast between Gretna and Allonby.

384. The period for making formal representations and objections to the Report closed on 19 September 2016 and 11 objections were received within the specified timescale. 10 of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference MCA/GAL0447/05. The remaining objections are considered separately. In addition to the objections, a total of 18 representations were received and these are considered where relevant.

385. I carried out a site inspection on 7 February 2017. As [redacted] would not permit any representatives from NE access to his land I was accompanied solely by [redacted]. Indeed representatives from NE were not permitted onto the land at any time prior to drawing up the proposals.

386. Following the site visits I requested further information from NE. On 22 May 2017 a notice was published (the Schedule 6 Notice) stating that I was minded to determine that the proposals in the report fail, in the respects specified in the objection, to strike a fair balance as a result of the matter or matters specified in the objection and inviting further representations.

387. I held a hearing into the objection on 7 December 2017. At the hearing NE provided a bundle labelled General Evidence Documents and a bundle relating to the objection which contained some material not previously provided to me or the objector (the Bundle). I was able to draw the documents to the attention of the objector and I am satisfied that no prejudice has been caused.

Main Issues

388. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:
- (i) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (j) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
389. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
390. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (m) the safety and convenience of those using the trail,
 - (n) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (o) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
391. 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.
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- (cc) the nature of the land which would become part of the coast,
 - (dd) the topography of the shoreline adjacent to those waters,
 - (ee) the width of the river upstream to that limit,
 - (ff) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters,
 - (gg) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land,

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- (hh) whether it is desirable to continue the English coastal route to a particular physical feature or viewpoint and
- (ii) the existence of a ferry by which the public may cross the river.
393. NE's Approved Scheme 2013¹¹ ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
394. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

395. The proposed trail between Gretna and Allonby is almost entirely above the seaward limit of the Solway Firth's estuarial waters, the terrain and natural environment of which pose a number of particular challenges. Much of the estuary is dominated by large areas of saltmarsh and mudflats, as are the river estuaries leading from the Solway Firth. Considerable parts of the Solway Firth are designated for nature conservation or heritage preservation, including the Solway Firth Special Area of Conservation, the Upper Solway Flats and Marshes Special Protection Area, the Upper Solway Flats and Marshes Ramsar Site, the Upper Solway Flats and Marshes Site of Special Scientific Interest and Scheduled Monuments associated with the Hadrian's Wall World Heritage Site.
396. 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 as that 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. However, in all circumstances, consideration will be given to whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.
397. The Approved Scheme also notes at section 10.4.1 that several of the Estuary Criteria relate to its overall character. It states that when considering an estuary in relation to those criteria, NE will look for particular stretches or features of the river or adjoining land that are more characteristic of the coast than of a river, and therefore more relevant to the Coastal Access Duty.
398. Chapter 4 of the Report relates to Whitrigg Bridge to Silloth and states at 4.3.1 that NE proposes to exercise its functions as if the sea included the estuarial waters of the Solway Firth, including the rivers Waver and Wampool, as far as the existing road bridge over the River Wampool and to a proposed new footbridge over the River Waver.
399. The objection relates to GAL-4-S017 and 18. For ease of reference I shall refer to the trail sections by the S0 prefix only. The trail would leave a minor road at S017 and would descend a steep embankment by a new flight of steps, to follow a disused railway line to the new footbridge. In relation to this section NE proposes a long-term access exclusion requiring dogs to be kept on leads in

¹¹ Approved by the Secretary of State on 9 July 2013

order to avoid disturbance to birds.¹² The exclusion would be in operation all year round.

400. NE considered aligning the route between S015 and S019 along the northern bank of the River Waver, around the edge of Rabycote Marsh. NE state that they opted for the proposed route as it is more direct and avoids an area of nature conservation interest on Rabycote Marsh, where unacceptable disturbance to birds and consequent impacts on the designated site could not be ruled out. Furthermore the proposed route avoids land which NE consider unsuitable for public access to the east of Rabycote Marsh.
401. NE state in the Report that the interests of owners and occupiers of land over which any coastal access rights would apply was a "key driver in the design of our proposals which were discussed in detail with the owners and occupiers of the affected land during "walking the course" and other processes". Unfortunately NE did not have access to [redacted]'s land prior to publishing their proposals due to a breakdown in relations early on in the process and did not therefore "walk the course". The proposals are therefore based on views from nearby land and reference to data sources such as aerial photographs and maps.
402. After publication of the Report, [redacted] did allow a representative of NE to walk the proposed route.

The Objection

403. The coastal path is meant to be as near to the coast as possible. The proposed route deviates well away from the coast along an old railway line.
404. At times of high tides and flooding the whole field including the proposed route floods quite deeply making it dangerous/impossible for walkers to use. There are also areas of quicksand.
405. Where the proposed route comes up from the railway next to a narrow fenced space where cattle are kept, cattle could get spooked by passing walkers and dogs putting both cattle and walkers in potential danger. Letters from livestock auctioneers advise that public safety and animal welfare could be severely compromised as the parcel of land is fenced on 3 sides with no escape option for either livestock or the public. In times of flooding the livestock use the elevated old railway as an escape route.
406. Many birds, including geese, herons and swans nest and breed along the proposed route, more so than on the marsh.
407. It would be better if the path came across from Newton Arlosh Marsh to Border Marsh (also known as Red Flat Marsh) making use of the public footpath down to Skinburness Hotel as proposed by the Skinburness and Calvor Marsh Committee.

Representations

408. The Ramblers' state that they welcome the proposals.

Response from Natural England

¹² Under s26(3) of the Act

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409. The route should be close to the coast but a wide range of factors must be taken into account, including the interests of the public and owners/occupiers, potential impacts on sensitive features, safety and convenience, as well as constraints such as the availability of river crossings (part 4.5 of the Approved Scheme) and the desirability that the route is relatively direct (4.3.1).
410. Notices will be installed at key locations either side of the Waver estuary advising walkers that the route may be affected by high tides or extreme weather events. Walkers will be able to continue their journey via existing rights of way, minor roads and the nearby "New Bridge". This was not proposed as the main route as it would not be compliant with the Approved Scheme, not least since it would lead to much larger areas of land falling within the coastal margin.
411. When NE eventually visited the site after the proposals had been published, young cattle were encountered in the narrow strip of land on the disused railway and they moved out of the way. Paragraph 8.2.13 of the Approved Scheme notes that exceptionally NE may avoid aligning the route through small areas occupied by cattle. The northern part of the disused railway line is relatively narrow, but it forms part of a significantly larger enclosure. Paths through such areas are relatively common and issues arising are rare.
412. It is accepted that many species of birds associated with the Special Protection Area often roost and feed over a wide area of land outside the protected site. The advice from NE nature and conservation was that the area of Rabycote marsh, just to the west, is the most important site for geese in this general vicinity.
413. NE has not received a proposed modification from the Skinburness and Calvor Marsh Committee. The modification appears to involve bridging the estuary further downstream. Initial advice from Cumbria County Council was that whilst it may be possible to bridge downstream, the proposed location was regarded as the most favourable taking into account the stability of the banks and other such factors. In addition a bridge in the vicinity of Brownrigg and Raby Cote would require the creation of a new path along the western bank of the Waver across an area of saltmarsh that NE considers unsuitable for public access. Additionally any such proposal would be likely to cause significant disturbance to the barnacle geese recorded as using Rabycote Marsh at certain times of year.

Further information provided by NE

414. Following my site visit I requested further information from NE in particular in relation to the alternative location for a bridge proposed by [redacted] ([redacted]'s route). I pointed out that [redacted]'s objection included a letter from Councillor Markley supporting [redacted]'s objection. It was written following a visit by [redacted] MP to [redacted]'s land and requested that the route be reconsidered with a view to constructing the new footpath nearer the coast line. I requested details of the consideration given to [redacted]'s route and the reasons why it had been discounted. Specifically I requested that this include any evidence or advice received by NE in relation to whether it would be possible to install a bridge in the suggested location, why the area of saltmarsh which would be crossed was considered unsuitable for public access given that the proposed route would also cross saltmarsh and the comparative disturbance of barnacle geese and other species on [redacted]'s route and the proposed route.

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415. NE stated that a new bridge was considered at some point between the junctions of sections S027 and S028, close to Rumbling Bridge. This was the furthest point downstream considered potentially appropriate for a new bridge from a purely technical installation point of view. NE did not ask for a full geophysical survey as NE had already concluded that an increase in access over Rabycote marsh would be unacceptable for nature conservation reasons. Furthermore, much of the land farmed at Raby Cote is in arable rotation and thus excepted from new access rights. NE was therefore obliged to identify a suitable route further inland than might otherwise have been the case.
416. The location proposed by the objector was not considered to be an option due to the width of the river channel in that area. Any bridge here would have to span in excess of 100m, entailing significant engineering challenges and a cost many times greater than the proposed location.
417. The area of marsh seaward of the proposed trail as far south as S016, including the area of marsh immediately west of Raby Cote farm, is unsuitable for access due to the nature of the marsh and the existence of various muddy creeks. The area is similar in appearance to the bulk of Newton and Saltcoates Marsh to the north. Conversely south of this point and over Rabycote Marsh, the appearance was found to be more that of stable grazing marsh with no significant hidden dangers.
418. There is evidence to suggest that Rabycote Marsh, as well as the immediately adjoining agricultural fields, are the prime locations for Pink-footed and Barnacle geese, mostly over the winter months. NE were unable to conclude that any proposal involving a route through this area would be unlikely to have a significant effect, therefore NE were obliged to draw up the proposals accordingly. Whilst the Rabycote Marsh area and adjoining fields are within the coastal margin, NE considers that access levels and patterns in this area are unlikely to change significantly as a result of the proposals.

Responses to Schedule 6 Notice

419. No response was received from [redacted].
420. The Ramblers' state that they have some sympathy with the objector to the extent that the proposed route is further inland than would normally be expected. However, they support the proposal as it appears to be the only logical route and helps walkers to obtain refreshment and visit the remains of Holme Cultram Abbey. It is accepted that the route provides few, if any, real views of the coast. However the Ramblers' state that it provides views of the River Waver where it is tidal and takes the first bridging point across the river.
421. Walkers and naturalists are familiar with the issues of crossing fields containing agricultural stock and concern is expressed that if the objection is accepted there will be significant problems for NE in applying Government policy as set out in the Approved Scheme. Reference is made to an otter holt near the mouth of the River Waver and it is suggested that [redacted]'s route could be more damaging to wildlife.

422. Other National Trails have tidal estuaries that need crossing and many walkers plan to avoid high tides. There are about 24 high tides per year which cause water to flow over coastal marshes and half of those will be at night.

Discussion

Location of the route

423. The proposed crossing point of the river is located a considerable distance upstream. For the most part, the sections of the route across [redacted]'s land are not close to the river estuary and provide little or no views of it. [redacted] stated at the hearing that there was a location further downstream where there was an island where 2 smaller bridges could be constructed. He also pointed out that the proposed footbridge crosses the river close to a sewage works and only a few feet from the sewerage pipe outlet.
424. The Bundles contain a document from CCC¹³ which outlines 3 possible river crossing points. NE stated that the preference was for Option 3 as on inspection it looked as if the river banks were most stable there and indeed had been stable for a long period as that was where the railway had been constructed. Option 3 was costed at £25,000 and is the option included within the proposed route.
425. However, on the face of the document it appears that Option 1, located further downstream close to Rumbling Bridge and costed at £50,000 was the favoured option. In relation to this option the document states "historical mapping indicates that the alignment of the river at this point has not altered for much over a hundred years. This means that a footbridge installed here is unlikely to be at risk of being washed out. Another benefit of this point is that access to the site for construction is notably better than at other points".
426. NE clarified that initially there was a slight preference for Option1 but that Option 3 was settled upon largely due to nature conservation sensitivities on Raby Marsh and difficulties in securing a logical route from Option 1, due to the presence of cattle and geese and the need to cross the salt marsh.
427. NE confirmed that the focus had been on the 3 options. CCC had provided initial verbal advice that the river channel was too wide seaward of Option 1. No further advice has been sought either in response to [redacted]'s objection or my request for further information. No further information was available at the hearing and no representative from CCC was present.
428. I accept that it may be the case that it would not be feasible to cross the river downstream of the proposed route due to the particular sensitivities of the area, including the need to cross saltmarsh and the presence of protected species. It may also be the case that the cost of crossing further downstream would not be proportionate to the extra public enjoyment of the coast that would result. However, without the benefit of further information I am unable to comment upon these matters. [redacted] is understandably frustrated and angry that a proposal he put forward as an alternative route in his objection in 2016 has not been properly considered.

¹³ River Waver. Crossing Point Options. David Clare, Countryside Access Officer, 5/05/15.

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429. After the hearing had closed¹⁴, NE proposed looking into [redacted]'s route with CCC. They stated that as well as considering the bridge they would have to review and update the Access and Sensitive Features Appraisal. However, NE has had a considerable length of time to consider [redacted]'s proposal and has failed to do so and I must report upon the information available to me.
430. Both Councillor Markley and the Ramblers' have commented upon the extent to which the proposed route is inland. Given the distance upstream and the lack of views of coastal scenery, or even of the river from some of the route, I query whether the cost of the route proposed is proportionate to the extra public enjoyment of the coast that would result.

Cattle

431. [redacted] keeps cattle in the area which would be crossed by the route throughout the summer. He has a beef bull and about 38 cows plus young stock. Part of the route is through a narrow corridor which is fenced on 3 sides. NE accepts that this will increase the risk of interaction between cattle and walkers. I note that when a representative of NE walked the route accompanied by [redacted] there were a few cattle present in this area and that they moved away onto the lower area of the disused railway line. However, this one occasion when [redacted] was present cannot be taken as evidence that incidents are unlikely to occur.
432. A letter from livestock auctioneers included with [redacted]'s objection states that the presence of people in the narrow area could easily cause distress to cattle resulting in injury to themselves by jumping a fence or injury to members of the public due to the temperament of the cattle. Although there is access to a larger enclosure from the narrow fenced area, I consider that it is not unlikely that cattle would feel threatened if confronted by walkers in this area. I also note that the cattle will move to the higher ground taken by the route when other areas are flooded, thereby also increasing the potential for conflict.
433. Issues relating to bulls and cattle are dealt with in Sections 8.1 and 8.2 of the Approved Scheme. [redacted]'s bull is not a recognised dairy breed in respect of which the Approved Scheme states that "intervention is most likely to be necessary". However, Section 8.1.6 makes it clear that before reaching a decision NE should take into account a number of factors. These include the degree of enclosure, as bulls may feel more threatened in confined areas, and the temperament of the particular bulls. Section 8.1.8 states that "We may align the trail so that it avoids a field where a bull is normally kept" and in relation to where beef bulls are run with cattle "we are likely to do this if the field is so small that it would be impossible for the livestock and access users to avoid each other".
434. Section 8.2.8 states that "Intervention is most likely to be necessary when cattle are calving or have calves at foot" and 8.2.9 states that "the need for intervention may be greater in narrow or constrained areas where cattle tend to congregate". Section 8.2.13 states that "Exceptionally, we may align the trail so that it avoids a field in which cattle are usually kept.... We will consider this

¹⁴ But prior to the close of the hearing which took place the following day into a different objection

option if the field is so small that it would be impossible for the cattle and access users to avoid each other”.

435. There is no doubt that there are many public rights of way through fields used for grazing cattle. However, I do not accept the Ramblers’ view that accepting that the trail should not pass through this area compromises NE in relation to other areas. In my opinion there are particular circumstances in this case which significantly increase the risk. Aligning the trail to avoid this area would accord with advice in the Approved Scheme.

Birds and other wildlife

436. [redacted] described how some 40 to 50 geese have been killed on the wires which cross the railway line, which wires are now to be put under ground. He also stated that geese are rarely present on Red Flatt due to the noise made by the factory in that area. He confirmed that the otter holt is close to Rumbling Bridge, in the vicinity of Option 1 in the CCC document.
437. NE accepted that geese would use [redacted]’s land and that use of the trail would result in some disturbance. However, they stated that satellite tagging of geese showed that there was more usage of the marsh closer to the estuary. The Bundles contain an undated note “Background to nature conservation reasons for avoiding new access provision in the area of Raby Cote Marsh”. This states that the coastal margin at Rabycote Marsh is not part of the Upper Solway Flats and Marshes SSSI, Upper Solway Flats and Marshes SPA, Solway Firth SAC or Upper Solway Flats and Marshes Ramsar site but is used by notified and qualifying features of all of those designations.
438. The note states that the SSSI officer has indicated that Rabycote Marsh is used by Pink Footed and Barnacle Geese and that information from the RSPB indicates concerns around Rabycote where several thousand geese favour fields immediately north and south of the Farm. The note also states that Mawby (2008) reports that the marsh and fields are frequently used by geese for winter feeding. The photograph submitted by [redacted] with his objection shows Pink-footed and Barnacle geese in his fields.
439. The note points out that numerous small disturbances would be more damaging in terms of bird survival and population size than fewer large disturbances and expresses concern about dogs off lead. It concludes that in relation to the winter feeding areas in the fields behind the marsh “the proposed line of the ECP is well screened by an existing hedge line”. The author of the note was not present at the hearing.
440. I accept that the proposed route has some screening and note that a direction is proposed requiring dogs to be kept on leads. However, it appears to be accepted that the area is used by species which are a qualifying feature of the SPA and other designations and that there would be some disturbance.

Flooding and Alternative Route

441. At the time of my site visit in February 2017 parts of the proposed route were very wet underfoot. It is not disputed that [redacted]’s fields occasionally flood and it is clear that there will be times when the route will become impassable. No alternative route is proposed but I note that walkers would be able to use existing rights of way and minor roads in the area to avoid this part of the route.

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442. NE state that the existing rights of way and minor roads were not proposed as the main route as such a route would not be compliant with the Approved Scheme, not least since it would lead to much larger areas of land falling within the coastal margin. I note that the crossing point of the River Waver would be even further upstream and that views of the estuary would be limited. The route would however avoid potential conflict with cattle, avoid wet ground, and avoid disturbance to birds.
443. I accept that if the existing rights of way and minor roads became the main trail, a large area of coastal margin would be created. However, if required there are various grounds on which a direction excluding access can be made, including land management and public safety. Alternatively, although interruptions to the trail should be kept to a minimum, consideration could be given to ending the trail at a point further downstream of the River Waver.¹⁵

Conclusions

444. It is clear that it has been particularly difficult to propose a route around the River Waver estuary, due to large areas of saltmarsh, the presence of protected species, designated sites, the presence of cattle and the lack of an existing crossing point.
445. The proposed route crosses the River Waver a considerable distance upstream. Where it crosses [redacted]'s land there are no coastal views and views of the river are very limited. In his objection [redacted] proposed an alternative crossing point. I am aware that given the sensitivities of the marshes there may be good reasons why a route which crosses the river further downstream, as proposed by [redacted], may not be possible. However, in the absence of any evidence of consideration having been given to [redacted]'s suggestion I am unable to comment further on his proposal.
446. In addition to the distance upstream and lack of views of the coast or river I also have concerns about the safety and convenience of those using this part of the trail due to the potential conflict between walkers and cattle in a confined space and the condition of parts of the land. The potential impact on wintering birds also adds to my concerns.

Recommendation

447. Having regard to these and to all other matters raised, I conclude that the proposals fail to strike a fair balance as a result of the matters raised in the objections. There are no modifications which would meet the coastal access requirements and further assessment is required. I therefore recommend that the Secretary of State determines that the proposals fail to strike a fair balance but that there is no modification which would satisfy the coastal access requirements.

[redacted]

APPOINTED PERSON

¹⁵ As proposed in Option 3 in the Report Overview

APPEARANCES

FOR NATURAL ENGLAND:

[redacted] – Senior Adviser, Coastal Access delivery NW
[redacted] – Coastal access - national delivery and programme
[redacted] – Lead Adviser, Coastal Access delivery NW
[redacted] – Bird Expert and SSSI officer for the Solway
[redacted] – Access and Sensitive Features

OBJECTORS:

[redacted]

INTERESTED PARTIES

[redacted] – Open Spaces Society and Ramblers'

DOCUMENTS SUBMITTED AT HEARING

- 12.NE Bundles of documents
- 13.Extracts from The Cumbria Coastal Way – Cicerone 2007