



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 24 July 2024

Marine and Coastal Access Act 2009

Objections by: [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

Site visit made on 17 October 2023

File Ref: MCA/WBH/O/52/WBH0234

**Objection Ref: MCA/Weybourne to Hunstanton/O/52/WBH0234
Blakeney Chapel to Wells Lifeboat Station**

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An undated objection received by Natural England on 14 May 2018 to chapter 2 of the Report has been made by [redacted]. The land in the Report to which the objection relates is route sections WBH-2-S009 and WBH-2-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 do not fail to strike a fair balance.

Procedural Matters

1. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton.
2. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018 and seventy-five objections were received within the specified time. Of those seventy-five objections, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently withdrawn. Various representations were also received, and I address these below where they refer to the specific section of the trail before me.
3. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.
4. I made a site visit on 17th October 2023 when I was accompanied by representatives from NE and from Norfolk County Council.

Main Issues

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act) and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
6. 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.

Site visit made on 17 October 2023

File Ref: MCA/WBH/O/68/WBH1072

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7. The second objective is that, in association with the trail a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
8. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - a. the safety and convenience of those using the trail,
 - b. the desirability of 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.
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. 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

11. The part of the trail that is the subject of chapter 2 of the Report, runs from Blakeney Chapel to Wells Lifeboat Station as shown on maps 2a to 2i. It generally follows existing walked routes, including public rights of way and the existing Pedders Way and Norfolk Coast Path National Trail (the NCPNT), for most of its length. However, the proposed route departs from the alignment of the NCPNT in places and in order, amongst other matters, to avoid a set of steps at Morston Downs where there exists a change in land levels.
12. This part of the coast includes a number of sites that have been designated for nature conservation or heritage preservation including: the Wash and North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Protection Area; the North Norfolk Coast Ramsar site; the North Norfolk Coast Site of Special Scientific Interest; and Blakeney Chapel Scheduled Ancient Monument.

The Objection

13. The Objector considers that the proposed route crosses over private land, and disputes whether the route section WBH-2-S009 should be described as being part of the trail that uses an "*other existing walked route*" as shown on map 2b of chapter 2 of the Report. The Objector maintains that that section of the route is not an existing walked route in public use, but rather has been a route for private use by the landowner. The Objector notes that there is another existing right of way at the property that follows a different route, stating that that existing right of way is rarely used. The Objector raises further concerns that NE's proposal would cross over land which it is maintained comprises garden land, and that no consideration has been given to the landowner's future plans to redevelop the property, thereby limiting usage of that property as a family home.

14. Additionally, the Objector considers that proposed inclusion of route sections WBH-2-S009 and WBH-2-S010 is unnecessary. In that regard, it is maintained that this section of the trail should be over a section of the existing NCPNT which, by reason of a change in land levels due to erosion, should be infilled so as to make it accessible. The Objector has put it to me that such works would remove the need to realign the trail around and away from that eroded section of the NCPNT. The Objector proposes a modification to the proposals contained within the Report, for the alignment of this section of the trail onto an alternative route that continues to follow the line of the NCPNT.

Representations

15. Both the Ramblers and the Local Access Forum welcome the proposal to include aligning the proposed route inland at route sections WBH-2-S009 and WBH-2-S010, in order to avoid the existing set of steps which form part of the NCPNT. However, the Local Access Forum raises concerns that within the proposal there is no description of the surface proposed for those route sections, nor any budget allocated for carrying out works.

Natural England's Response to the Objection

16. NE confirms the existence of a public bridleway at the property, and provides details of its alignment supported by maps and aerial photographs. NE maintains that the definitive alignment of the existing bridleway would be diagonally across land at the property, connecting with the south-east corner of route section WBH-2-S010. However, from aerial photographs it appears that that part of the existing bridleway that crosses over land at the property has no indication of use, and that instead a 'desire line' has been created by users which connects the bridleway to the south-east corner of section WBH-2-S009. NE believes that walkers have been using the proposed route sections WBH-2-S009 and WBH-2-S010, and that aerial photographs suggest that there has been public use of the existing public right of way which connects Morston Road to the NCPNT at the property. Additionally, NE notes that part of the proposed section WBH-2-S010 has been surfaced as part of improvements by the Environment Agency.
17. In terms of the Objector's contention that the alignment of the proposed route would be over land that may be redeveloped as garden, NE maintains that the land has no obvious usage, being covered in natural vegetation, and positioned outside of the hedged curtilage of the Objector's property. NE advises that that land is not excepted land under paragraphs 2 or 4 of Schedule 1 to the Countryside and Rights of Way Act 2000 (the CROW Act). Furthermore, NE advises that any change in land use for future use as garden would need to take into account continued use of WBH-2-S010 and the existing public right of way through its function as a bridleway, as well as taking into account current use of WBH-2-S009 by the public. NE confirms that the presence of coastal access rights would not prevent land from being lawfully developed in the future, and that should such a position occur, then the line of the trail could be amended by means of a variation report to the Secretary of State.
18. With regards to the Objector's proposed alternative alignment for these sections of the trail, NE advises that the proposal would follow an existing flood defence bank and that the existing NCPNT route has not been eroded to any significant amount but rather is located on a lower section of ground seaward of the flood defence bank. NE

further states that the proposed route is now more frequently used by the public in order to avoid muddy conditions on the section of the adjacent NCPNT which is located on that lower ground seaward of the flood defence bank.

19. NE has further put it to me that in order to raise the land level of the existing adjacent NCPNT by infilling, a new flood defence bank would be created, and which would require its construction in accordance with the Environment Agency's specifications which are not required in respect of the trail. Such a new flood defence bank would also require adoption by the Environment Agency for maintenance responsibilities. The existing set of steps could not be economically replaced with a ramp given the need to provide a gradual incline over an excessive length, with a ramp being made of soil simulating a flood defence structure.

Natural England's Comments on the Representations

20. NE advises that they are grateful to the Ramblers and the Local Access Forum for their views on the proposal. NE has noted that the current surface of route sections WBH-2-S009 and WBH-2-S010 comprises bare soil and that the surfaces of adjoining sections have been previously upgraded and are wheelchair accessible. In that respect, NE has recommended that the surface of route sections WBH-2-S009 and WBH-2-S010 be upgraded to the same standard as the adjoining sections, and further advises that the costs of such works would amount to approximately £12,000.00.

Further Information provided by the Objector and NE

21. Further submissions were provided by the Objector prior to the date of my visit. Those submissions seek to provide further comments on NE's original responses to the objections, and maintain that the need to realign the existing NCPNT is as a result of the erosion of an existing flood bank at that location as evidenced by the wet and muddy conditions on that existing line of the National Trail. In that respect, the Objector has put it to me that it would be in the long term public interest to have that eroded flood bank infilled so as to maintain the integrity of the NCPNT.
22. The Objector further confirms that they have submitted a planning application that includes proposals for a new dwelling, and which seeks to extend the garden area. The Objector maintains that both section WBH-2-S009 and the abovementioned 'desire line', as noted by NE in their response, is over private land within the curtilage of the property. The existing bridleway follows a different route and is not used by the public due to lack of signage and presence of vegetation.
23. NE were given an opportunity to provide comments following receipt of the above additional submissions. In those respects, NE provided a copy of a 'Concept Landscape Masterplan' that, it maintains, is part of the planning application as mentioned by the Landowner in their original objection. NE advises that the landscape plan shows trees and native scrub planting between the proposed new dwelling and the proposed section of the trail. NE believes that such planting would provide a level of privacy that is comparable to the current circumstances.
24. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats.

25. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.
26. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.
27. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled "*National Landscapes*". There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapter 2 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk Coast National Landscape (NCNL), and I have used both terms where relevant in this report.
28. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so far as it relates to this report and the recommendation made, the amendment now requires relevant authorities "*in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB*".
29. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL's purposes were unchanged and reflect "*the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty*" as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

Privately Owned Land and Potential future Development

30. The evidence before me indicates that the definitive alignment of part of an existing bridleway would be diagonally across land at the Objector's property, connecting with the south-east corner of route section WBH-2-S010. However, on my site visit I noted that it was not possible to make use of that section of the existing bridleway due to the presence of fencing and thick vegetation. The proposed section WBH-2-S010 would follow the definitive alignment of part of the existing bridleway. As such, it appears that the public have used a route over the proposed section WBH-2-S009 in order to connect with the NCPNT and the definitive alignment of the existing bridleway. This is supported by aerial photographic evidence which appears to show

that part of the existing bridleway which diagonally crosses the Objector's land, has no indication of use, and that instead a 'desire line' has been created by users which connects the bridleway to the south-east corner of section WBH-2-S009.

31. Notwithstanding the above, it is necessary to consider whether the land over which the proposed sections WBH-2-S009 and WBH-2-S010 would be aligned, comprises garden land, and whether the presence of coastal access rights would prevent further development of that area.
32. As I observed on my site visit, the land over which proposed section WBH-2-S009 would be aligned, appeared to comprise a trodden path and natural vegetation. At the date of my visit, that parcel of land was located outside of an area of land associated with the dwelling which appeared to be enclosed by hedges. Given that the land in question does not include areas of lawn, flower borders or other cultivated plants, and is unenclosed, the land is not considered to be garden land as clarified in section 8.18 of the Scheme. As the land is not considered to be garden land, that land is not excepted land for the purposes of coastal access rights, under Schedule 1 of the CROW Act.
33. Additionally, section 5.5 of the Scheme confirms that the presence of coastal access rights would not prevent further development of land in the ownership of the Objector. In that regard, in the event that planning permission is given for extending the garden space, then Natural England has confirmed that the access arrangements would be revisited, and a variation report submitted as necessary.
34. For the above reasons, I am satisfied that the presence of coastal access rights would not prevent land from being lawfully developed in the future. I, therefore, conclude that the proposal does not fail to strike a fair balance as a result of the matters raised in relation to the objection.

Objector's proposed Modified Route

35. As noted above, the Objector's proposed alternative route would see the trail aligned with the NCPNT, thereby negating the need to include the proposed route sections WBH-2-S009 and WBH-2-S010. However, the relevant section of the NCPNT crosses over an area of muddy, uneven ground, with users of the NCPNT having to also negotiate a substantial set of steps.
36. Conversely, the proposal would see the trail aligned with the existing flood bank, resulting in a section of the trail that would remain level with its connecting sections, and which would not require that users negotiate the aforementioned set of steps. Consequently, NE's proposed alignment of route sections WBH-2-S009 and WBH-2-S010 would provide improved accessibility when compared to a position which aligned the trail with the NCPNT in this area. Infilling of the area would result in the flood bank being moved closer to the sea and there is no evidence or confirmation before me that such a new flood defence bank could be constructed in that area. I therefore agree with NE's conclusions for discounting the alternative alignment of the route as put to me by the Objector.

Other Matters

37. In respect of the concerns raised in the representations regarding surface description, it is noted that NE proposes that the surface of route sections WBH-2-S009 and

WBH-2-S010 be upgraded. For those sections of the trail, the Report describes the surface as “*Bare Soil (compacted)*”. NE have advised that following the recommended upgrade, the surface would still remain as compacted soil. Consequently, following the upgrade of the surface, the description would remain the same as included within the Report. As such, no further amendments or modifications to the Report would be required in terms of the surface description of these sections of the trail.

38. The proposed route includes parts of the coast which have been designated for nature conservation. As noted above, NE has provided a draft revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. The draft revised HRA carried out by NE indicates 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.
39. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.
40. In this instance, the proposals as shown on map 2b of the Report would make use of existing public rights of way, highway or other existing walked routes, with a proposed upgrade to the surface for part of the trail. No additional infrastructure in the form of gates, signage or fencing is proposed in respect of the trail as shown on map 2b of the Report. As such, the proposals would support and increase the understanding, valuation and care of the designated area, conserving and enhancing the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

41. For the reasons given above, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections.
42. Nonetheless, if the Secretary of State is minded to approve the proposals, I recommend that the surface of route sections WBH-2-S009 and WBH-2-S010 be upgraded to the same standard as the adjoining sections. Furthermore, as above I have only been provided with a draft revised HRA relating to the coastal access proposals between Weybourne and Hunstanton. Consequently, and as described further in Appendix A of this report, in considering whether or not to approve the proposals, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals on the integrity of the above identified protected habitats. In that regard, it will be necessary for NE to provide, to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required certifications.
43. I will therefore recommend that a determination is made that the proposals should be approved subject to the satisfactory confirmation of matters contained within Appendix A of this report, and with the recommendation that the surfaces of proposed route sections WBH-2-S009 and WBH-2-S010 are upgraded to improve wheelchair access between Blakeney and Morston.

Recommendation

44. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. However, I only recommend that a determination to that effect is made once the Secretary of State is satisfied, following an Appropriate Assessment, that the proposals would not have an adverse effect on the integrity of the protected habitats identified in paragraph 12 of this report.

[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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.
4. However, it should be noted that the revised and updated Habitats Regulations Assessment has not been certified by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.
5. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

6. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

7. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

8. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

9. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

10. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton are fully compatible with the relevant European sites' 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.

11. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to approve the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

12. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.



The Planning Inspectorate

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

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

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

Date 24 July 2024

Marine and Coastal Access Act 2009

Objection by: [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

Objection Ref: MCA/Weybourne to Hunstanton/O/68/WBH1072 Blakeney Chapel to Wells Lifeboat Station

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- An objection dated 13 May 2018 to chapter 2 of the Report has been made by [redacted]. The land in the Report to which the objection relates is route sections WBH-2-S043 RD to WBH-2-S059.
- The objection is made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that, subject to suggested modifications and subject to the satisfactory confirmation of matters contained within Appendix A of this report, the proposals set out in the Report do not fail to strike a fair balance.

Procedural Matters

45. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton.
46. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018 and seventy-five objections were received within the specified time. Of those seventy-five objections, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently withdrawn. Various representations were also received, and I address these below where they refer to the specific section of the trail before me.
47. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.
48. I made a site visit on 17th October 2023 when I was accompanied at various times by representatives from NE and from Norfolk County Council.

Main Issues

49. 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.
50. The first objective is that there is a route for the whole of the English coast which:
 - c. consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - d. (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

Site visit made on 17 October 2023

File Ref: MCA/WBH/O/50/WBH0088

<https://www.gov.uk/planning-inspectorate>

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.

51. 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.
52. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - d. the safety and convenience of those using the trail,
 - e. the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - f. the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
53. 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.
54. 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

55. The part of the trail that is the subject of chapter 2 of the Report, runs from Blakeney Chapel to Wells Lifeboat Station as shown on maps 2a to 2i. It generally follows existing walked routes, including public rights of way and the existing Norfolk Coast Path National Trail (NCPNT) for most of its length. This part of the coast includes a number of sites that have been designated for nature conservation or heritage preservation including: The Wash and North Norfolk Coast Special Area of Conservation; The North Norfolk Coast Special Area of Conservation; The North Norfolk Coast Special Protection Area; The North Norfolk Coast Ramsar site; The North Norfolk Coast Site of Special Scientific Interest; and Blakeney Chapel Scheduled Ancient Monument.

The Objection

[redacted] - MCA/Weybourne to Hunstanton/O/68/WBH1072

56. The objection raises concerns regarding NE’s proposals to exclude coastal access rights over saltmarsh seaward of route sections WBH-2-S043 RD to WBH-2-S059 as detailed on Map G within the Report. The objector is concerned that excluding coastal access rights over that area would prevent use of the harbour and the creeks across the saltmarsh by members of Wells Sailing Club.
57. The objector maintains that the proposed exclusion would be unnecessary for nature conservation or for reasons of safety. The objection further raises concerns regarding the consultation process regarding the proposal to exclude the above-described sections of saltmarsh, with the contention that the documents within the Report were inaccessible and impenetrable.

Representations

58. Full representations were received from Norfolk County Council, the Local Access Forum, the Open Spaces Society and Ramblers Association. Those representations broadly concern the same themes.
59. All those representations raise concerns regarding the exclusion of coastal access rights as detailed on Map G of the Report, within an area which hosts sailing events and in respect of preventing access to two existing public rights of way, as well as preventing access to that area for traditional and informal activities such as samphire collection, bait collecting and cockling. Norfolk County Council, the Local Access Forum and the Ramblers Association also wish NE to review and clarify the position of the trail between sections WBH-2-S051 and WBH-2-S056, where it appears that the trail crosses over a road and then crosses back again.

Natural England's Responses to the Objection

The effect of the proposed coastal access rights exclusion on the existing use of the land

60. The following statutory restrictions to exclude new coastal access rights were proposed by NE within the Report:
- a. Between sections WBH-2-S035 to WBH-2-S059, Map G shows a proposed exclusion under section 25A of the Countryside and Rights of Way Act 2000 (the CROW Act) on the saltmarsh seaward of Stonemeal Creek, to discourage access use by those unfamiliar with the network of creeks and channels on the saltmarsh and unexpected danger from the tides.
 - b. Between sections WBH-2-S035 to WBH-2-S059, Map G shows a proposed exclusion under section 26(3)(a) of the CROW Act on saltmarsh in the margin between the trail and Stonemeal Creek, to protect breeding and wintering birds from disturbance.
61. The proposed exclusion of coastal access rights over the saltmarsh seaward of route sections WBH-2-S043 RD to WBH-2-S059 would have no effect on existing local rights or commercial uses of the land in the area. NE clarifies that position within the Report, which provides that coastal access rights, and any national or local restrictions on them, would not affect any existing access arrangements that may currently exist at the local level - for example: by formal agreement with, informal permission from or traditional toleration by the owner of the land; or through any pre-existing legal right that remains in force.
62. However, in that regard NE acknowledges that the text used within the Report could be open to misinterpretation and has therefore amended the wording of subsequent proposal reports to provide greater clarity. NE sent further reassurances to objectors regarding the effect of the proposed exclusion of coastal access rights by letter.
63. Following further review of these and other objections and representations, as well as receipt of further data, NE state that they obtained a clearer picture of the current pattern and low level of access use across the saltmarsh, north and south of

Stonemeal Creek. NE subsequently concluded that, by taking the additional information into account, the saltmarsh, as shown on Map G within the Report, does not attract casual recreational access use from current users of the adjacent section of the NCPNT, and consequently the proposed formal exclusion under section 25A of the CROW Act is not necessary.

64. Furthermore, NE advises that it completed a revised HRA which, it is maintained, has taken the above change into account for the assessment of the way the saltmarsh would be used and has concluded that there are no likely significant effects on the conservation objectives of the affected protected habitats. Therefore, NE considers that the proposed exclusion under section 26(3)(a) of the CROW Act is unnecessary.
65. Accordingly, NE requests that the proposals be approved subject to a modification that they do not include the section 25A saltmarsh and flats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Map G of the Report, but with informal management measures in the form of bespoke signs where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing the saltmarsh.

Consultation Process

66. As part of the prescribed NE process, all landowners and tenants (of land that was registered with the Land Registry) who NE assessed might be affected by the proposals, were contacted. Landowners were invited to events held at local libraries, with consultations being carried out with the Town Council, staff at the Wells Lifeboat station and the Coastguard. In terms of the concern that the proposal reports were in an inaccessible format, NE notes that it is a statutory document such that the process and outside of NE's control. However, additional guidance notes and contact details for further enquiries were also published.

Natural England's Comments on the Representations

67. In terms of the representations which concern the exclusion of coastal access rights as detailed on Map G of the Report, NE accepts that the details provided could be misinterpreted, but maintains that those details should be considered in light of the whole Report. NE advises that the proposed exclusions would not prevent or prohibit access to those saltmarsh areas for traditional and informal activities such as samphire collection, bait collecting and cockling, nor would restrict or prevent use of existing public rights of way.
68. As described above, NE confirmed that they would make a request that the proposals be approved subject to a modification that they do not include the section 25A saltmarsh and flats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Map G of the Report, but with informal management measures in the form of bespoke signs where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing the saltmarsh.
69. With regards to the safety of walkers of the trail crossing over a road and back again between sections WBH-2-S051 and WBH-2-S056, NE confirms that the 2009 Act requires that specific regard is had to the safety and convenience of users of the England Coast Path. NE considered aligning the route on the seaward side of the road (the Quay) but found that, in places, the pavement was only 60cm wide. NE considered that the pavement in those places would be too narrow and therefore

proposed that the trail crossed over the road and follow a well used pavement where there are quayside shops. Furthermore, NE acknowledges that it would have responsibility to provide signs which would ensure that those unfamiliar with the area can follow the most suitable route.

Further Information provided by NE

70. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. NE advised that that revised HRA has taken account of alterations to the original proposals including the suggested modification to remove the abovementioned exclusions under sections 25A and 26 of the CROW Act.
71. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.
72. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.
73. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled "*National Landscapes*". There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapter 2 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk Coast National Landscape (NCNL), and I have used both terms where relevant in this report.
74. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so far as it relates to this report and the recommendation made, the amendment now requires relevant authorities "*in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB*".
75. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL's purposes were unchanged and reflect "*the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty*" as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

The effect of the proposed coastal access rights exclusion on the existing use of the land

76. As noted above, whilst the proposed exclusions under the CROW Act on grounds of safety and nature conservation were contained within the Report, NE has subsequently considered further data and the details provided within objections and representations, and has concluded that the exclusions concerning the saltmarsh are unnecessary.
77. NE therefore requests that the proposals be approved subject to a modification that they do not include the section 25A saltmarsh and flats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Map G of the Report, but with informal management measures in the form of bespoke signs where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing the saltmarsh.
78. It is acknowledged that the wording contained within subsequent reports may provide greater clarity with regards to proposed exclusion of coastal access rights having no effect on existing local rights or commercial uses of the land in the area. However, in this instance the modification proposed by NE would provide certainty and clarity to landowners and local residents that those affected areas would not be subject to any access exclusion onto the saltmarshes. As such, the proposed modification would overcome the concerns raised in the objections and representations described above.
79. Based on the information that is before me, it appears to be unlikely that the saltmarsh would attract casual recreational use from the high number of current users of the adjacent section of the NCPNT. Consequently, I agree with NE that by providing new rights of access on the coastal margin saltmarsh, it would not make the saltmarsh more attractive for recreational access use. In my view the exclusion under section 25A of the CROW Act would therefore be unnecessary, but that provision of additional signage where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing those areas, would be necessary.
80. Nonetheless, given that there could be potential for additional recreational access use over the saltmarsh, it is necessary to consider the effects and potential impacts on protected habitats that would result from the removal of that section 25A exclusion. In light of the additional information received by NE following objections to the Report, consideration must also be given to whether the originally proposed exclusion under section 26(3)(a) is now necessary in order to protect the breeding and non-breeding interests of protected habitats.
81. The revised HRA provides that the breeding bird interests of the only protected habitat applicable to this area, being the North Norfolk Coast Special Protection Area, are breeding Sandwich Tern, Little Tern, Common Tern, Avocet, Bittern and Marsh Harrier. However, the revised HRA provides that the specific special breeding bird interest is unlikely to use the saltmarsh area during the summer and that overwintering birds - such as geese, knot and wigeon – at the population level are unlikely to suffer from winter disturbance.

82. There are a limited number of points of access onto the saltmarsh, with the revised HRA confirming that where there is limited access onto the marsh, such areas are not critical habitats for the success of feature birds. The revised HRA further notes that the proposals present no enhanced risk above the baseline environmental pressures. In conclusion that the proposed exclusions would not be necessary, the revised HRA provides that, in view of the site conservation objectives, the access proposal will not have an adverse effect on the integrity of the North Norfolk Coast Special Protection Area, or other protected habitats within the wider area, either alone or in combination with other plans or projects.
83. In light of the conclusions of the revised HRA, it appears that the exclusions under sections 25A and 26(3)(a) of the CROW Act are unnecessary. However, as noted above, I have not been provided with a copy of the revised HRA which includes the necessary signed certifications.
84. Consequently, I must consider that the revised HRA that is before me, remains in draft form. Therefore, I must recommend that if the Secretary of State is minded to approve the proposals subject to a modification that removes the section 25A saltmarsh and flats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Map G of the Report, then the Secretary of State will need to obtain a signed, certified copy of the revised HRA. That signed, certified copy of the revised HRA will be necessary in order for the Secretary of State, as the Competent Authority, to perform the duties contained within the Conservation of Habitats and Species Regulations 2017 (as amended).
85. In summary of this matter, subject to the proposed modification by NE as described above, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections and representations. However, if minded to approve the proposals subject to that modification, further assessment of the implications of the proposals on the integrity of the above identified protected habitats, by the Competent Authority will be necessary. Appendix A to this report provides further information on that matter.

Consultation Process

86. The concerns raised regarding the consultation process and the proposal to exclude the above-described sections of saltmarsh, and the contention that the documents within the Report were inaccessible and impenetrable, are acknowledged.
87. However, NE has confirmed that they contacted all relevant registered landowners and tenants, providing invitations to events and discussions at local libraries. Subsequently, NE received the representations as summarised above from interested parties and organisations. Furthermore, in terms of the format of reports, NE confirms that these result from a statutory process, and that guidance notes to include contact details for enquiries were provided. As such, the evidence indicates that NE has developed the proposals in consultation with those who manage the land, landowners and others who have relevant expertise or local knowledge in accordance with the Scheme.

Other Matters

88. In respect of the safety of walkers of the trail crossing over a road and back again between sections WBH-2-S052 RD and WBH-2-S054 RD, from observations made

on my visit it appeared that the pavement seaward of the quay was narrow in places. The evidence before me also indicates that some quayside operations are conducted within this area on occasions. I noted that visibility in both directions along the quay was good for pedestrians wishing to cross the road, with traffic calming measures dictating that vehicle speeds were low along this stretch of highway. As such, with the provision of the suggested additional signage, I do not consider that the proposed crossing points would be unsafe. I therefore have no concerns in this regard.

89. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.
90. In this instance, the proposals as shown on map 2i of the Report would make use of existing public rights of way, highway or other existing walked routes. Additional signage is proposed in respect of the trail as shown on map 2i of the Report. However, such information signs are commonplace throughout the NCNL and do not draw the eye away from the qualities of the surrounding landscape. I am satisfied that its provision would not be harmful in terms of conserving the landscape and scenic beauty of this designated area. As such and overall, the proposals would support and increase the understanding, valuation and care of the designated area, conserving and enhancing the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

91. For the reasons given above, having regard to these and all other matters raised, I conclude that the proposals, subject to modifications that they do not include the section 25A saltmarsh and flats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Map G of the Report, but with informal management measures in the form of bespoke signs where the trail meets any access points onto the saltmarsh and which advises the risks of accessing the saltmarsh, do not fail to strike a fair balance as a result of the matters raised in relation to the objections or representations.
92. However, in considering whether or not to approve the proposals subject to that modification, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals in respect of the integrity of the above identified protected habitats. In that regard, it will be necessary for NE to provide to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required signed certifications.

Recommendation

93. I recommend that, following confirmation of the matters contained within Appendix A of this report, if the Secretary of State is minded to approve the proposals, the proposals should be approved with the modification of the kind referred to in the above Overall Conclusions.

[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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.

4. However, it should be noted that the revised and updated Habitats Regulations Assessment does not contain signed certifications by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.

6. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

7. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

8. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

9. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

10. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

11. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton 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.

12. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to modify the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

13. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.



The Planning Inspectorate

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

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

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

Date 24 July 2024

Marine and Coastal Access Act 2009

Objection by: Holkham Nature Reserve Ltd

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

Objection Ref: MCA/Weybourne to Hunstanton/O/50/WBH0088 Wells Lifeboat Station to Burnham Overy Staithe

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 16 May 2018 to chapter 3 of the Report has been made by Holkham Nature Reserve Ltd. The land in the Report to which the objection relates are route sections WBH-3-S001 to WBH-3-S014.
- The objection is made under paragraphs 3(3)(a), 3(3)(d), 3(3)(e) and 3(3)(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, subject to the suggested minor modifications, do not fail to strike a fair balance.

Procedural Matters

94. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018 and seventy-five objections were received within the specified time. Of those seventy-five objections, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently withdrawn. Various representations were also received, and I address these below where they refer to the specific section of the trail before me.
95. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.
96. I made a site visit on 17th October 2023 when I was accompanied at various times by [redacted] on behalf of Holkham Estate, and representatives from NE and from Norfolk County Council.

Main Issues

97. 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.
98. 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.

Site visit made on 18 October 2023

File Refs: MCA/WBH/O/61/WBH1125 and MCA/WBH/O/69/WBH0365

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.

99. 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.
100. 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.
101. 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.
102. 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

103. The part of the trail that is the subject of chapter 3 of the Report, runs from Wells Lifeboat Station to Burnham Overy Staithe as shown on maps 3a to 3e. It generally follows existing walked routes, including public rights of way and the existing Norfolk Coast Path National Trail (the NCPNT) for most of its length. However, there are places where the walked line differs from the approved alignment of the NCPNT route in order to take account of coastal erosion and other processes. The route provides views of the sea and estuary creeks at Holkham Meals and Overy Marshes.
104. This part of the coast includes a number of sites that have been designated for nature conservation or heritage preservation including: The Wash and North Norfolk Coast Special Area of Conservation; The North Norfolk Coast Special Area of Conservation; The North Norfolk Coast Special Protection Area; The North Norfolk Coast Ramsar site; and The North Norfolk Coast Site of Special Scientific Interest.

The Objection

105. The objection concerns a number of themes. In the first instance, the Objector maintains that following an initial site visit and consultation with NE, it was agreed that the area south of sections WBH-3-S009 and WBH-3-S010 would be excluded from the landward spreading room. These areas comprise pinewoods managed under a Woodland Grant Scheme and provides habitat for a diverse range of sensitive species. Furthermore, there are privately owned beach huts within the area and there are concerns over privacy and security. As such, a number of long-standing exclusion measures have been employed within this area by the Holkham Estate. Given that

the Report includes those areas as falling within the landward spreading room, the Objector contends that a mistake has been made within the Report.

106. In those respects, the Objector further suggests a modification of the proposals contained within the Report, and which would exclude coastal access rights on land south of sections WBH-3-S009 and WBH-3-S010.
107. The Objector further maintains that if the removal of the landward spreading room south of sections WBH-3-S009 and WBH-3-S010 cannot be agreed, then the landward boundary south of sections WBH-3-S004 to WBH-3-S006 should be the trackway and not the ditch as shown on maps 3a and 3b of chapter 3 of the Report. The Objector contends that such an arrangement would provide consistency with the landward boundary margin applied to other sections of the trail contained within chapter 3 of the Report.
108. A further theme of objection has been raised which concerns the proposals to exclude coastal access rights in respect of certain areas of saltmarsh. The Objector also suggests that the exclusion or restriction of coastal access rights should be extended to cover other areas on this section of the coast, and which have not been proposed as part of the Report. In those respects, the Objector suggests that areas of dune and an area of Wells beach should be subject to a restriction not to allow dogs in the interests of preventing disturbance to seals and wintering shore lark, and that coastal access rights within a separate area of dune should be excluded to allow for re-establishment of marram grass following a previous storm surge.
109. The Objector also proposes a change to the alignment of the trail at section WBH-3-S003, maintaining that that short section of the trail should be moved northwards, away from the edge of a car park used for visitors, to a location within a tree line where a recently constructed path separates visitors from moving vehicles.

Representations

110. Full representations were received from Norfolk County Council, the Local Access Forum, the Open Spaces Society, the Ramblers Association, Burnham Overy and Norton Wildfowlers Association, and Brancaster Common Rights Holders Gun Club.
111. All those representations raise concerns regarding the exclusion of coastal access rights as detailed on Map J of the Report, within an area which hosts sailing events and in respect of preventing access to those areas for traditional and informal activities such as samphire collection, bait collecting and cockling. The Ramblers Association further raises concerns that no passages for users have been provided through extensive areas which are to have restricted access, as shown on Map H of the Report.
112. Norfolk County Council, the Local Access Forum and the Ramblers Association further suggest that a change to the alignment of the trail at section WBH-3-S003 is necessary, maintaining that that section of the trail should be moved northwards, away from a visitors' car park and be located within a tree line where a recently constructed path separates users of the trail from that car park. Modifications are proposed in that regard. Norfolk County Council have also suggested that additional signage is required on various sections of the trail as shown on Maps 3b, 3c, 3d and 3e of the Report, in order to provide clarity for users of the trail. Norfolk County Council further seeks additional information regarding a kissing gate (included on

Map 3a of the Report), and questions the inclusion of an “*Existing bollard in satisfactory condition*” on proposed section WBH-3-S009.

113. Further to the above, the Open Spaces Society maintains that additional spreading room should be provided south of sections WBH-3-S001 to WBH-3-S013, in order to provide users of the trail with the opportunity to understand the character and history of this section of the coast.

Natural England’s Response to the Objection

Landward Spreading Room

114. NE notes the comments received regarding the inclusion of landward spreading room, and advises that they cannot find any reference to correspondence with the landowner which had concluded that areas of land should fall within the margin. The area landward of sections WBH-3-S009 and WBH-3-S010 is dune and is therefore automatically included in the coastal margin under the requirements of the relevant legislation.
115. Following receipt of further specialist advice, NE concluded that the area had been correctly mapped as being dune and as such falls within the landward coastal margin by default. The presence of a pine plantation, or any associated woodland management activities, would not alter the default position as set down in the legislation. Current fencing around key species would deter access and there would be no obligation on behalf of the landowner to make the land accessible. Should unexpected conflicts arise, then the case for restricting access rights can be considered again in the future. With regards to private beach huts, NE confirms that land covered by buildings, or the curtilage of such land, is excepted from coastal access rights under schedule 1 of the Countryside and Rights of Way Act 2000 (the CROW Act), as amended by the provisions of The Access to the Countryside (Coastal Margin)(England) Order 2010.
116. NE agrees that, for reasons of consistency, the landward boundary of the coastal margin adjacent to proposed sections WBH-3-S004 to WBH-3-S006 should be to the edge of the track and not to the ditch as outlined in the Report. Consequently, NE proposes a modification to the proposal set out in the Report and has provided Modification Maps and Descriptions in that regard.

Proposed Exclusion of Coastal Access Rights in the margin

117. The Report proposed excluding coastal access rights in the margin on the saltmarsh and mudflats at Burnham Overy Staithe and Wells-next-the-Sea, in order to discourage access use by those unfamiliar with the unexpected danger from tides within that area. However, following publication of the Report, NE further reviewed the objections and representations, and obtained additional data. As a consequence of that review, a clearer picture of the current pattern and low level of access use across the saltmarsh and mudflats was obtained.
118. In that respect, NE concluded that the saltmarsh and mudflat areas do not attract casual recreational access use from the NCPNT, and providing a right of access would not make it more attractive for recreational use. Accordingly, NE concluded that the exclusion under section 25A of the CROW Act is not necessary.

119. NE further advises that it completed a revised Habitats Regulations Assessment which concluded that, when taking into account the way the saltmarshes and flats would be used, there would be no likely significant effects on the conservation objectives of affected protected habitats. Consequently, NE confirms that the proposed exclusion under section 26(3)(a) of the CROW Act, as contained within the Report, is unnecessary. NE therefore requests that the proposals be recommended for approval subject to modifications not to include the above described saltmarsh and mudflats and nature conservation exclusions. However, NE proposes that additional signage be provided advising walkers of the risks associated with accessing the saltmarsh and mudflat areas.

Additional Restrictions of Coastal Access Rights

120. NE has separately considered the application of additional exclusions and restrictions as suggested by the Objector. With regards to the potential restriction on coastal access rights seaward of proposed sections WBH-3-S001 to WBH-3-S004 and which includes a seal haul-out area, NE confirms that specialist advice was sought. The area is managed seasonally by Holkham Nature Reserve, with fencing and signage to discourage walkers and accompanying dogs from causing disturbance to the seals. As such, NE proposes that a land management restriction under section 24 of the CROW Act for people with dogs on that section of beach all year round, is provided, and which would replicate the Nature Reserve's existing access management measures.

121. However, NE advises that proposed directions to exclude coastal access rights from the area north of section WBH-3-S006 so as to avoid disturbance of wintering shore lark, are unnecessary. In that regard, NE maintains that existing local management arrangements, including fenced off areas, would not be enhanced by applying further restrictions in that area.

122. NE further notes that areas of dune north of sections WBH-3-S001 to WBH-3-S004, and those areas north of sections WBH-3-S006 and WBH-3-S007, have been fenced off following a previous storm surge and so that vegetation can re-establish itself on those areas of dune. NE advises that the arrangements for fencing off those areas can continue, but that should any unexpected conflict arise, then consideration of formal exclusions in those areas can be made in the future.

Modifications proposed by Objector

123. NE agrees that a modification to the alignment of proposed section WBH-3-S003 is necessary in order to physically separate walkers from traffic movement associated with the visitors' car park. NE therefore requests that a recommendation is made, modifying the proposal so that the alignment of this route section is within the tree line, located north of the car park. NE has provided Modification Maps and Descriptions in that regard.

Natural England's Comments on the Representations

124. In terms of the representations which concern the exclusion of coastal access rights as detailed on Maps G and J of the Report, NE accepts that the details provided could be misinterpreted, but maintains that those details should be considered in light of the whole Report. NE advises that the proposed exclusions would not prevent or prohibit access to those saltmarsh and mudflat areas for

- traditional and informal activities such as samphire collection, bait collecting and cockling, nor would restrict or prevent use of existing public rights of way.
125. Nonetheless, following receipt of further data and upon further review of these representations, NE obtained a clearer picture of the current pattern and low level of access use across the saltmarsh and mudflats. In that respect, NE concluded that, by reason of the low level of access use across those areas and given the subsequent findings of a revised HRA, there are no likely significant effects on the conservation objectives of the affected protected habitats. Consequently, NE confirms that the proposed exclusions under sections 25A and 26(3)(a) of the CROW Act, contained within the Report, are unnecessary.
126. Accordingly, NE confirmed that they would make a request that the proposals be approved subject to a modification that they do not include the section 25A saltmarsh and mudflats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Maps G and J of the Report. However, NE advises that informal management measures in the form of bespoke signs where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing the saltmarsh, should be provided.
127. In terms of the proposed direction to restrict access on the stretch of coast as shown on Map H of the Report, NE confirms that the proposed restricted area would be cordoned off for reasons of protecting breeding birds. NE further confirms that signs will be provided which would advise walkers of the extent of the restricted area. Users would therefore be informed as to the restriction and that no passages through that area are provided during certain times of the year.
128. NE acknowledge the representations regarding moving a section of the proposed trail away from, and north of, the visitors car park and notes that similar concerns had been raised in objections by the landowner. In that respect, NE confirms that they agree with the proposed modification and, as such, suggest that a request is made to the Secretary of State that the proposals are modified to realign that section of the trail.
129. In respect of additional signage as referred to by Norfolk County Council, NE confirms that proposals for improved waymarking have been considered and are contained within the Report. NE further confirms that the 'bollard', as noted on section WBH-3-S009, is part of an equestrian route which is promoted by the landowner and does not form part of the NCPNT's signage. Additionally, since the date of the Report, the kissing gate at proposed route section WBH-3-S004 has been removed and therefore is no longer needed.
130. NE advises that the proposals do not include additional spreading room south of sections WBH-3-S001 to WBH-3-S006 as that land does not fall within the categories of coastal land types included as coastal margin landward of the trail. For the trail between section WBH-3-S007 to WBH-3-S009, NE confirms that they have used their discretion to create additional coastal margin in that area. Additionally, NE advises that the landward spreading room between sections WBH-3-S007 to WBH-3-S013 already incorporates areas already enjoyed by the public.

Further Information provided by NE

131. Following my site visit, NE advised that further discussions were held with the Objector with regards to proposed new additional exclusions and restrictions on access, as well as further discussions in respect of realigning another section of the trail at the café located close to the Beach Road visitors' car park.
132. NE acknowledges that section WBH-3-S003 as included in the original proposals, passes through an area used for seating associated with a café. Consequently, NE proposes a modification which realigns the relevant section of the trail to pass around that seating area and onto a footway which comprises an existing walked route in this area. NE has provided a Modification Map and updated Table Description in that regard.
133. Further to the Report, NE has considered the application of additional directions to exclude access at Holkham Gap, and in order to replicate existing visitor management measures. Since the proposals were published, the landowner has introduced a seasonal dog restriction at Holkham Gap, requiring that dogs are kept on leads between 1 April and 31 August each year. Furthermore, the landowner has been actively managing an area of saltmarsh at Holkham Gap which is used by wintering shore lark and snow bunting, excluding public access from 1 October to 31 March each year. NE has provided a Modification Map and additional details for inclusion in the Restrictions and Exclusions table of the Report. NE requests that these proposed additional restrictions, under section 24 of the CROW Act for the purposes of the management of the land, are considered as part of this report.
134. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats.
135. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.
136. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.
137. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled "*National Landscapes*". There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapter 3 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk Coast National Landscape (NCNL), and I have used both terms where relevant in this report.
138. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions

with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so far as it relates to this report and the recommendation made, the amendment now requires relevant authorities “*in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB*”.

139. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL’s purposes were unchanged and reflect “*the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty*” as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

Landward Spreading Room

140. Whilst acknowledging the longstanding presence of pinewoods on land south of sections WBH-3-S009 and WBH-3-S010, and notwithstanding that the area is managed under a Woodland Grant arrangement, from the evidence before me including the citation of the North Norfolk Coast Site of Special Scientific Interest, the relevant area of land would comprise dune. Section 7.10 of the Scheme provides an overview of the approach to be taken in respect of dune land types and, amongst other matters, confirms that unless such areas fall within categories of excepted land, all dunes will be included as spreading room whether seaward or landward of the trail.
141. Woodland management works would not be affected by inclusion of this area within the landward spreading room. The provision of fencing around key species or sensitive areas would not be prohibited by reason of the land falling within the area of landward spreading room and, as such, there is nothing to prevent the Objector from continuing with its informal land management measures in that area. Furthermore, and as noted within the Scheme, land covered by buildings or the curtilage of such land, is a category of land that is excepted from coastal access rights under Schedule 1 of the CROW Act. The glossary to the Scheme confirms that buildings would include structures such as beach huts. Consequently, coastal access rights would not extend to the land associated with the privately owned beach huts located within the dunes.
142. In light of the above, I do not find that it would be necessary to exclude coastal access rights associated with spreading room south of sections WBH-3-S009 and WBH-3-S010.
143. Nonetheless, in terms of identifying the boundary landward of the trail I agree that, for reasons of consistency, the extent of the landward coastal margin south of sections WBH-3-S004 to WBH-3-S006 should be the trackway and not the ditch as shown on maps 3a and 3b of chapter 3 of the Report and as described within table 3.2.1 of the Report. In that regard, NE has suggested a modification to the proposal and has provided Modification Maps WBH MR1a and WBH MR1b which shows the extent of the landward boundary margin south of sections WBH-3-S004 to WBH-3-S006 to the edge of the trackway rather than ditch. I will, therefore,

recommend that, if the Secretary of State is minded to approve the proposals, that the proposals are approved subject to this modification. The Modification Maps and relevant Description Table are included as Appendix A to this report.

Proposed Exclusion of Coastal Access Rights in the margin

144. As noted above, whilst the proposed exclusions under the CROW Act on grounds of safety and nature conservation were contained within the Report, NE has subsequently considered further data and the details provided within objections and representations, and has concluded that the exclusions concerning the saltmarsh are unnecessary.
145. NE therefore requests that the proposals be approved subject to a modification that they do not include the section 25A saltmarsh and flats exclusion or the section 26(3)(a) nature conservation exclusion as shown on Maps G and J of the Report, but with informal management measures in the form of bespoke signs where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing the saltmarsh.
146. It is noted that Map G only concerns matters contained within chapter 2 of the Report. The objections considered by this report concern only matters relevant to chapter 3 of the Report. Therefore, within this report I shall only consider the necessity or otherwise of the section 25A saltmarsh and flats exclusion as shown on Map J of the Report. However, it should be noted that consideration of the exclusions as shown on Map G of the Report are contained within a separate report and recommendations to the Secretary of State in respect of matters concerning chapter 2 of the Report.
147. Based on the information that is before me, it appears to be unlikely that the saltmarsh would attract casual recreational use from the high number of current users of the adjacent section of the NCPNT. Consequently, I agree with NE that by providing new rights of access on the coastal margin saltmarsh, it would not make the saltmarsh more attractive for recreational access use.
148. In my view the exclusion under section 25A of the CROW Act would not therefore be required, but that provision of additional signage where the trail meets any access points onto the saltmarsh, and which advises the risks of accessing those areas, would be necessary. The removal of the exclusion would also satisfy the concerns as raised in the objections and representations. I will therefore recommend that the proposals be modified to remove the section 25A saltmarsh and flats exclusion as shown on Map J of the Report.

Additional Restrictions of Coastal Access Rights

149. In terms of restricting access to areas of dune at Wells and at Holkham Gap, the current informal management measures, to include fencing off of areas, appears to be effective at keeping members of the public from entering areas where dunes are re-establishing themselves following a previous storm surge. In those respects, I concur with NE that those informal management measures would not be enhanced by the provision of formal exclusions. Whilst the relevant areas of land would fall within the coastal margin, the landowner maintains control to manage that land as they see fit, with no obligation on the landowner to make that land accessible for

access use. Consequently, I agree that no additional formal exclusions or restrictions on access in those areas are necessary.

150. There are informal land management measures, which includes a dog exclusion zone, seaward of proposed sections WBH-3-S001 to WBH-3-S004. That dog exclusion zone is supported by signage and by wardens during the summer months, and includes a seal haul-out area. In those regards, I agree that for reasons of ensuring that seals are not disturbed by dogs and in order to support existing informal land management measures, it is necessary and appropriate to restrict coastal access rights under section 24 of the CROW Act for the purposes of the management of the land by the Objector.
151. Furthermore, there are informal land management measures at Holkham Gap, seaward of proposed sections WBH-3-S006 to WBH-3-S010. These restrict public access to an area of beach between 1 October and 31 March each year in order to protect overwintering shore lark and snow bunting, as well as restricting dogs to leads on the beach between 1 April and 31 August each year. In those regards, I agree that in order to support existing informal land management measures, it is necessary and appropriate to restrict coastal access rights under section 24 of the CROW Act for the purposes of the management of the land by the landowner.
152. NE has provided Modification Maps and additional details for inclusion in the Restrictions and Exclusions table of the Report, and I will recommend that, if the Secretary of State is minded to approve the proposals, that the proposals are approved subject to these additional modifications. The relevant Modification Maps “*Map M: Wells-next-the-Sea Proposed directions to exclude access Chapter 3: Wells Lifeboat Station to Burnham Overy Staithe*”, and “*Map N: Holkham Gap Proposed directions to exclude access Chapter 3: Wells Lifeboat Station to Burnham Overy Staithe*”, as well as the associated additional details for inclusion in the Restrictions and Exclusions table of the Report, are included as Appendix B to this report.

Modifications proposed by Objector

153. I agree that, in the interests of the safety of users of the trail, it is necessary to relocate a section of the proposed trail away from, and north of, the Beach Road visitors car park. I will, therefore, recommend that, if the Secretary of State is minded to approve the proposals, that the proposals are approved subject to these modifications. Modification Map WBH MR1a shows the agreed necessary modification which realigns section WBH-3-S003 of the proposed trail away from, and north of, the Beach Road visitors car park. In those regards, NE has also provided an updated Description Table. The Modification Maps and relevant Description Table are included as Appendix A to this report.

Additional Modifications proposed by NE

154. I am satisfied that it would be appropriate and necessary to modify the alignment of the trail at Wells Beach café in order to avoid an area used for customer seating. The modified section of the trail would use an established existing walked route around the café seating area where users of the trail would not have to negotiate obstructions in the form of picnic tables. NE has provided the necessary Modification Map and updated Table Description, and I will recommend that, if the Secretary of State is minded to approve the proposals, that the proposals are approved subject to

this additional modification. The relevant Modification Map WBH MR6 and associated Description Table are included as Appendix A to this report.

Other Matters

155. Map H of the Report identifies an area of beach where NE has proposed an exclusion under section 26(3)(a) of the CROW Act to be applied between the 1 April and 15 August each year, for reasons of protecting ground nesting birds. Consequently, it would not be appropriate to provide any passages through that area of beach given that such access would have the potential to disturb the ground nesting birds at that location. Additional signage would be provided advising walkers of the extent of the restricted area and, as such, walkers would be able to make informed decisions as to the route they can take across the beach in this area.
156. It appears from the evidence before me that the bollard shown on Map 3b of the Report relates to an equestrian route which does not affect access to the proposed trail. With regards to the kissing gate, as shown on Map 3a of the Report, as at the date of my site visit, no such structure was present on section WBH-3-S004 of the trail. Consequently, there is no need to consider those matters further in respect of this report.
157. In terms of the contention that additional spreading room should be provided south of certain sections of the trail, it appears from the evidence before me that such land does not fall within the categories of coastal land types that should be included as coastal margin landward of the trail. As such, I agree with NE that additional spreading room south of sections WBH-3-S001 to WBH-3-S013 should not be included as part of the proposals.
158. The proposed route includes parts of the coast which have been designated for nature conservation. As noted above, NE has provided a draft revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. The draft revised HRA carried out by NE indicates 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 C to this report provides further information on these matters.
159. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.
160. In this instance, the proposals as shown on maps 3a to 3e of the Report would make use of existing public rights of way, highway or other existing walked routes. Additional signage is proposed in respect of the trail that is the subject of chapter 3 of the Report. However, such information signs are commonplace throughout the NCNL and do not draw the eye away from the qualities of the surrounding landscape. I am satisfied that its provision would not be harmful in terms of conserving the landscape and scenic beauty of this designated area. As such and overall, the proposals would support and increase the understanding, valuation and care of the designated area, conserving and enhancing the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

161. Given that it appears to be unlikely that the saltmarsh would attract casual recreational use from the high number of current users of the adjacent section of the NCPNT, I recommend that the proposals be modified to remove the section 25A saltmarsh and flats exclusion as shown on Map J of the Report.
162. In the interests of consistency, I also recommend that the proposals are modified to show the extent of the landward coastal margin south of sections WBH-3-S004 to WBH-3-S006 to the edge of the trackway and not the ditch as shown on maps 3a and 3b of chapter 3 of the Report. The relevant Modification Maps (*WBH MR1a* and *WBH MR1b*) and Description Table are included at Appendix A to this report.
163. In the interest of safety of users and convenience of use, I further recommend that the proposals are modified in order to relocate a section of the proposed trail away from the Beach Road visitors' car park, and to realign part of the proposed trail away from an area used for customer seating associated with Wells Beach café. The relevant Modification Maps (*WBH MR1a* and *WBH MR6*) and Description Table are also included at Appendix A to this report.
164. Additional directions to restrict and exclude access at Wells Beach and at Holkham Gap under section 24 of the CROW Act, are necessary and appropriate in order to support existing informal land management measures. I therefore recommend that the proposals are modified to include these additional directions which are shown on the relevant Modification Maps (*Map M: Wells-next-the-Sea* and *Map N: Holkham Gap*) and to include the Restrictions and Exclusions Table details as set out at Appendix B to this report.
165. For the reasons given above and having regard to these and all other matters raised, I conclude that the proposals, subject to these minor modifications, do not fail to strike a fair balance as a result of the matters raised in relation to the objections.
166. These modifications would be minor in nature, would resolve a number of the objection themes as raised, and would further provide greater clarity for users of the trail in terms of route alignment and where there is restricted access to the coastal margin. I consider that these minor modifications would satisfy the coastal access requirements and that no party would be prejudiced if these modifications were considered as part of this report.
167. However, in considering whether or not to approve the proposals subject to those minor modifications, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals in respect of the integrity of the above identified protected habitats. In that regard, it will be necessary for NE to provide to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required signed certifications.

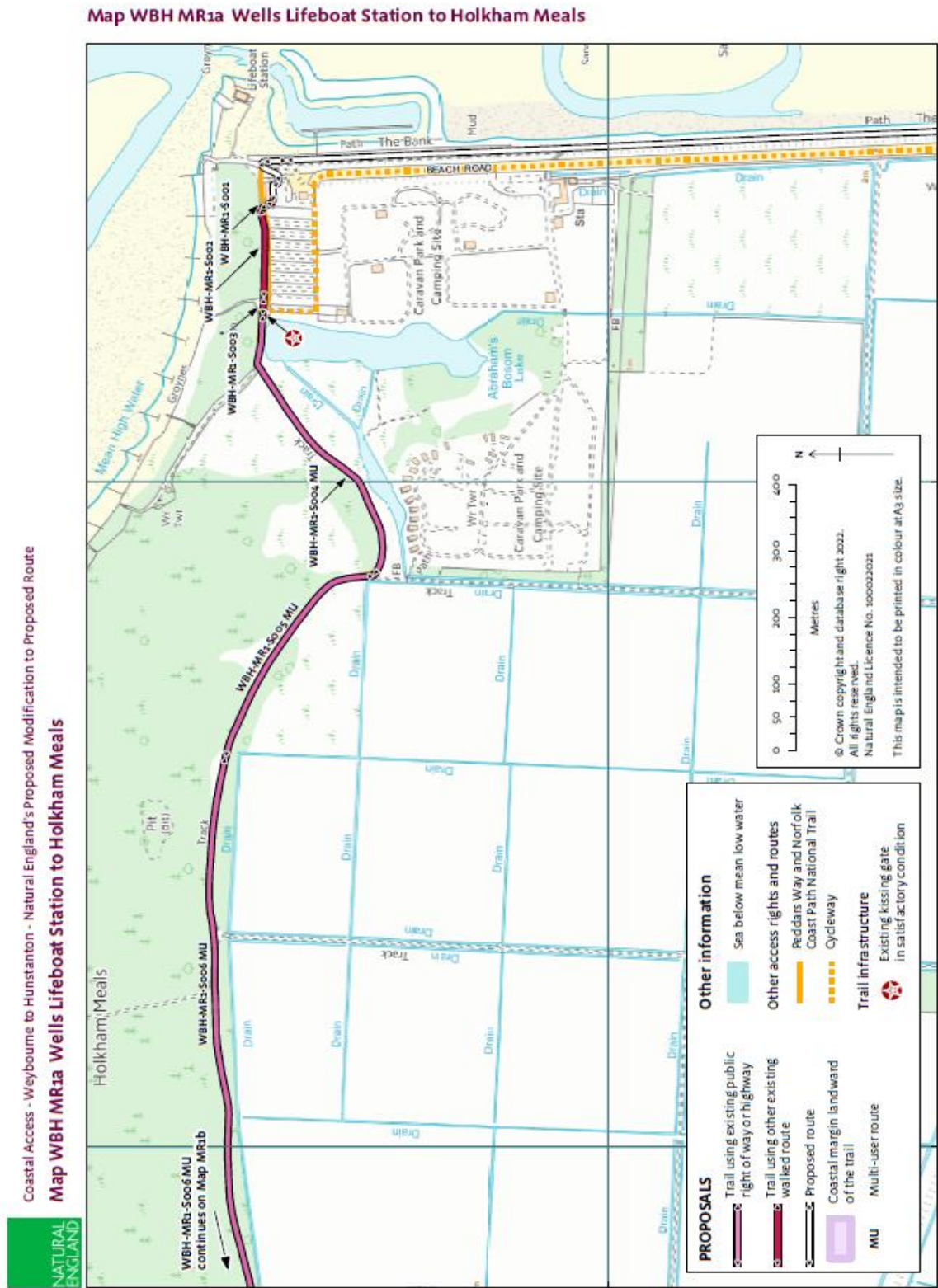
Recommendation

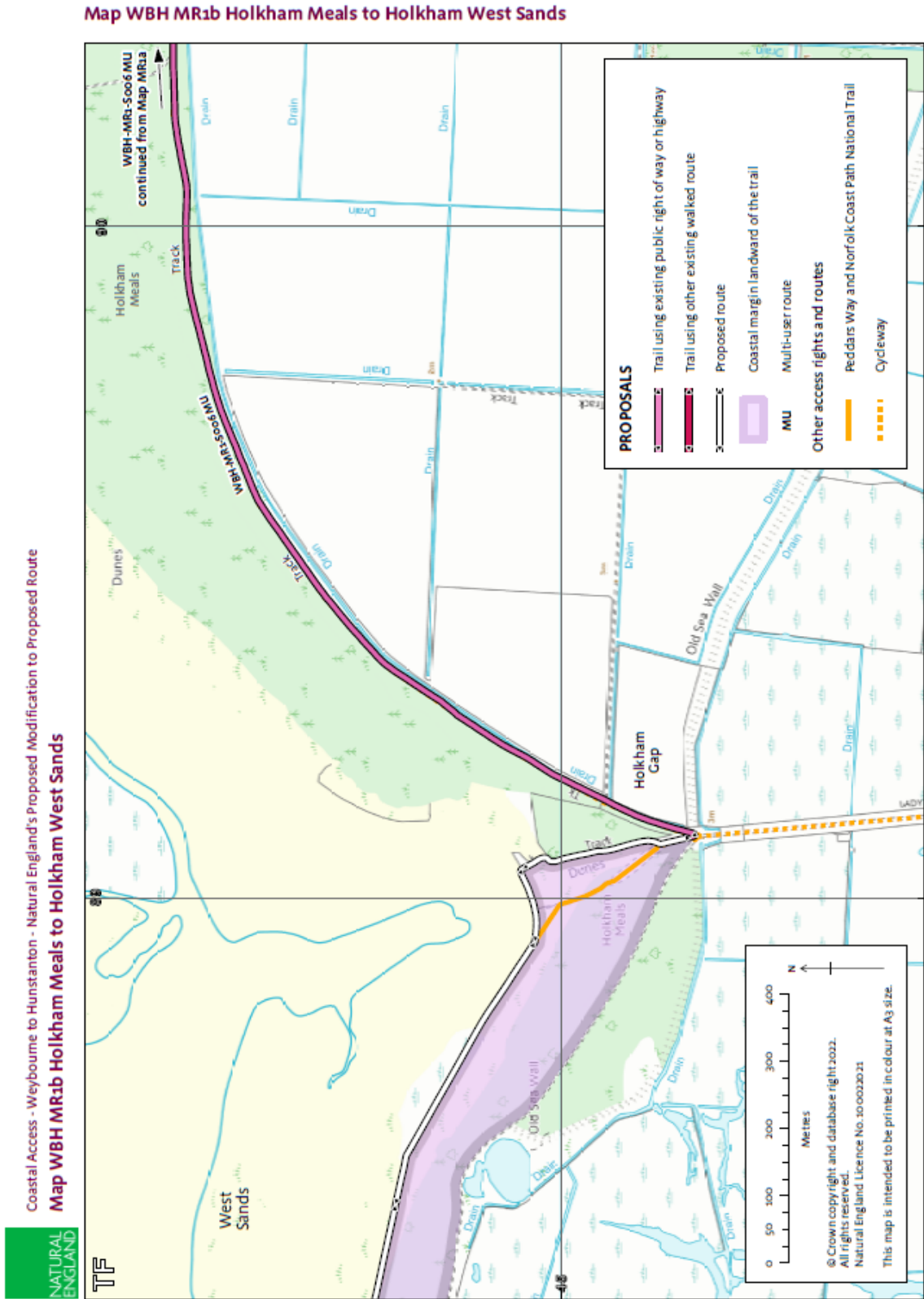
168. I recommend that, following confirmation of the matters contained within Appendix C of this report, if the Secretary of State is minded to approve the proposals, the proposals should be approved with the modifications of the kind described in the above Overall Conclusions.

[redacted]

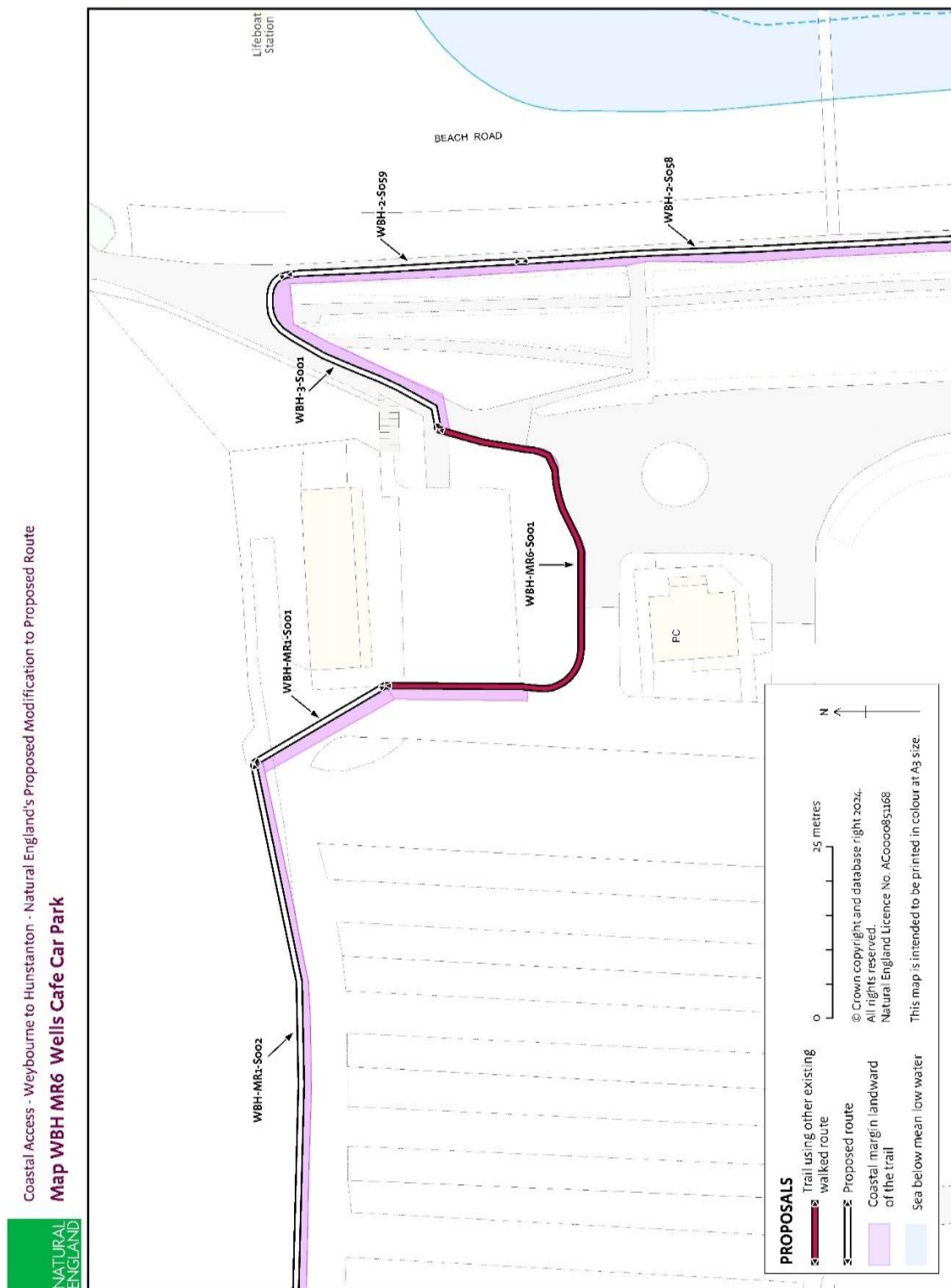
APPOINTED PERSON

APPENDIX A: Modification Maps





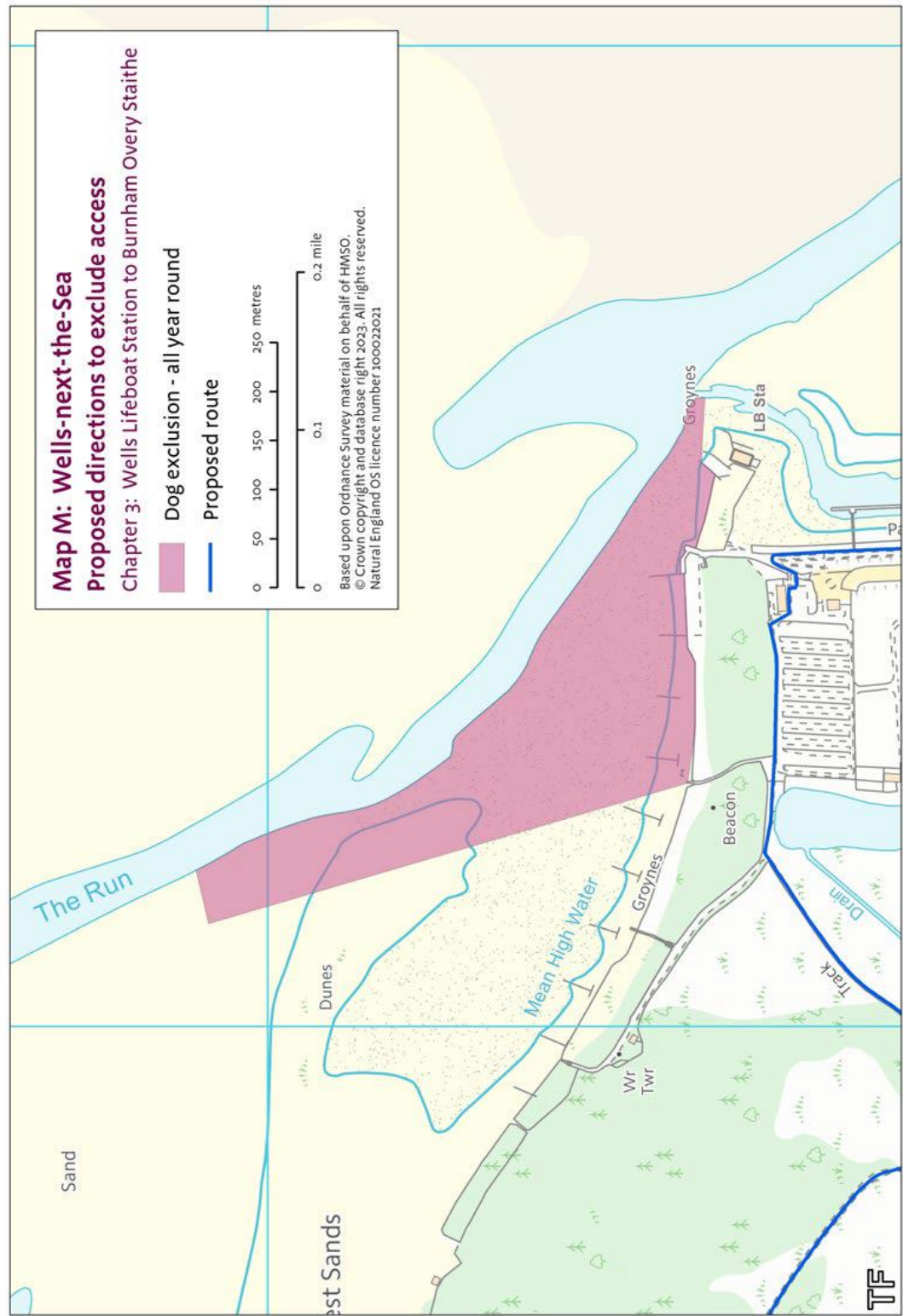
Map WBH MR6 Wells Cafe Car Park

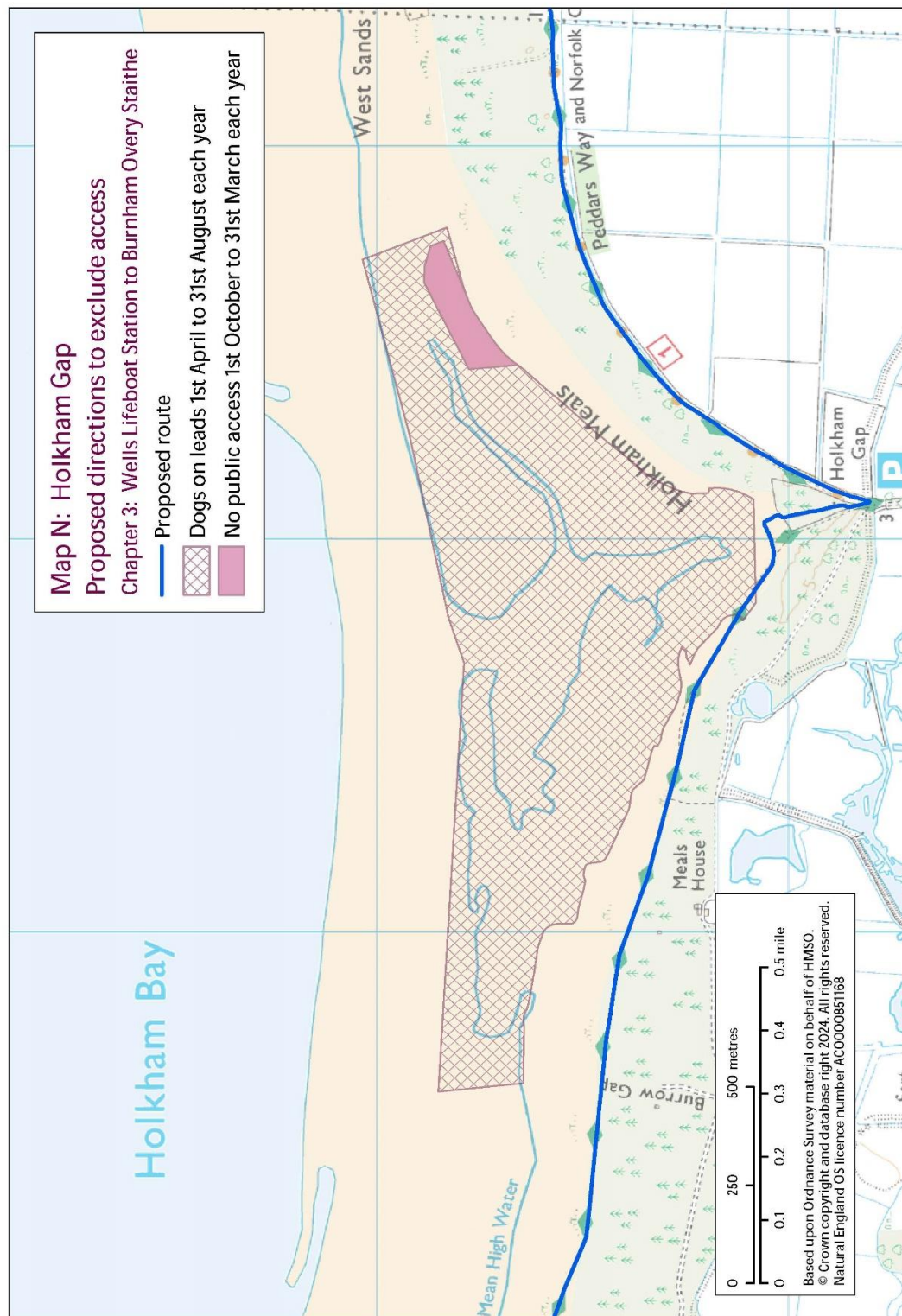


APPENDIX A: Description Table

1	2	3	4	5	6b	6c	7
Map(s)	Route section numbers	Current status of this section	Current surface of this section	Roll-back proposed? (See Part 9 of Overview)	Landward boundary of margin (See maps)	Reason for landward boundary discretion	Proposed exclusions or restrictions
WBH-MR1a	WBH-MR1a-S001	Other existing walked route	Tarmac	Yes - normal	Landward edge of access road	Clarity and cohesion	None
WBH-MR1a	WBH-MR1a-S002	Other existing walked route	Bare soil (compacted)	Yes - normal	Fence line	Clarity and cohesion	None
WBH-MR1a	WBH-MR1a-S003	Other existing walked route	Compacted aggregate	Yes - normal	Seaward edge of the car park	Clarity and cohesion	None
WBH-MR1a	WBH-MR1a-S004	Other existing walked route	Compacted aggregate	Yes - normal	Seaward edge of the car park	Clarity and cohesion	None
WBH-MR1a	WBH-MR1a-S005	Other existing walked route	Compacted aggregate	Yes - normal	Landward edge of the track	Clarity and cohesion	None
WBH-MR1a to WBH-MR1b	WBH-MR1a-S006	Other existing walked route	Compacted aggregate	Yes - normal	Landward edge of the track	Clarity and cohesion	None
WBH-MR6	WBH-MR6-S001	Other existing walked route	Tarmac	Yes - normal	Landward edge pavement	Clarity and cohesion	None

APPENDIX B: Modification Maps





APPENDIX B: Restrictions and Exclusions

Report chapter	Location/extent	Type of restriction	Purpose of restriction	Grounds and relevant section of CROW	Duration
3	Wells Beach Part of the coastal margin seaward of the trail – see map M	No dogs	Visitor management	Land management 24	All year
3	Holkham Gap Part of the coastal margin seaward of the trail – see map N	Dogs on leads	Visitor management	Land management 24	1 April to 31 August each year
3	Holkham Gap Part of the coastal margin seaward of the trail – see map N	No public access	Visitor management	Land management 24	1 October to 31 March each year

APPENDIX C: 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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.

4. However, it should be noted that the revised and updated Habitats Regulations Assessment does not contain signed certifications by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.

5. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

6. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

7. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

8. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

9. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

10. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton are fully compatible with the relevant European sites' 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.

11. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to approve the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

12. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.



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 24 July 2024

Marine and Coastal Access Act 2009

Objections by: [redacted] & [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

**Objection Ref: MCA/Weybourne to Hunstanton/O/61/WBH1125
Burnham Overy Staithe to Brancaster**

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 16 May 2018 to chapter 4 of the Report has been made by [redacted]. The land in the Report to which the objection relates is route section WBH-4-S015 FP.
- The objection is made under paragraph 3(3)(d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

**Objection Ref: MCA/Weybourne to Hunstanton/O/69/WBH0365
Burnham Overy Staithe to Brancaster**

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- An objection dated 16 May 2018 to chapter 4 of the Report has been made by [redacted]. The land in the Report to which the objection relates is route section WBH-4-S015 FP.
- The objection is made under paragraph 3(3)(d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

Procedural Matters

169. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton.

170. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018 and seventy-five objections were received within the specified time. Of those seventy-five objections, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently withdrawn. Various representations were also received, and I address these below where they refer to the specific section of the trail before me.

171. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.

172. I made a site visit on 18th October 2023 when I was accompanied at various times by [redacted], [redacted] and representatives from NE and from Norfolk County

Site visit made on 18 October 2023

File Ref: MCA/WBH/O/18/WBH0879

<https://www.gov.uk/planning-inspectorate>

Council.

Main Issues

173. 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.
174. The first objective is that there is a route for the whole of the English coast which:
- c. consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - d. (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

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

175. 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.
176. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- d. the safety and convenience of those using the trail,
 - e. the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - f. the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
177. 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.
178. 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

179. The part of the trail that is the subject of chapter 4 of the Report, runs from Burnham Overy Staithe to Brancaster, as shown on maps 4a to 4e. It generally follows existing walked routes, including the existing Norfolk Coast Path National Trail (the NCPNT), for most of its length. However, whilst this section of the proposed route follows the coastline quite closely for a majority of its length, there are extensive areas of saltmarsh seaward of the trail which mean that the sea is often only seen in the distance.
180. This part of the coast includes a number of sites that have been designated for nature conservation or heritage preservation including: the Wash and North Norfolk

Coast Special Area of Conservation; the North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Protection Area; the North Norfolk Coast Ramsar site; the North Norfolk Coast Site of Special Scientific Interest; and the Roman Fort at Brancaster (Branodunum) Scheduled Ancient Monument.

The Objections

[redacted] - MCA/Weybourne to Hunstanton/O/61/WBH1125

181. The objection concerns the description of “*Various*” given to the landward boundary of margin by NE in the Report for section WBH-4-S015. The Objector advises that their garden space is adjacent to the existing coast path and that they have always kept the space between the garden and the coast path open so as to allow for the movement of kayaks and boats to and from the marsh and the property. The Objector is concerned as to whether the description of “*Various*” means that they would need to construct a new boundary to ensure that walkers on the England Coast Path would not enter into the private garden space.
182. In light of these concerns, the Objector proposes a modification to the Report which provides that if a boundary is marked or clear by any form, then no access rights will exist over it on this section of the trail.

[redacted] - MCA/Weybourne to Hunstanton/O/69/WBH0365

183. The objection raises the same concerns as described above and in respect of the description of “*Various*” given to the landward boundary of margin by NE in the Report for section WBH-4-S015. The Objector similarly is concerned about the rear garden of their property opening onto the existing coast path and whether a new boundary feature would be required to ensure that walkers on the England Coast Path would not enter into the private garden space. The Objector further proposes a modification to the Report, and which provides a description that if a boundary is marked or clear by any form, then no access rights will exist over it on this section of the trail.

Representations

184. Both the Norfolk Local Access Forum and Norfolk County Council raise concerns regarding the surface of section WBH-4-S015 FP of the England Coast Path. Norfolk County Council further raises concerns regarding the tipping of garden waste on this stretch of the trail and requests that NE provide a statement of how that organisation will enforce the provisions of the Wildlife and Countryside Act 1981 with regards to the protected habitats of European Sites.

Natural England’s Responses to the Objections

185. NE acknowledges the location of gardens adjacent to the saltmarsh and the NCPNT. NE advises that the proposal for WBH-4-S015 uses the same alignment as the NCPNT in this area.
186. In terms of boundary treatments, NE advises that residents would not need to erect new boundaries between their garden spaces and the alignment of the trail. NE notes that the seaward boundaries of the properties adjacent to section WBH-4-S015 have a variety of physical forms to include hedges and fences and, due to the

complexities of recording multiple forms of boundaries on this single section of the trail, NE took the decision to identify those boundary types as “*Various*”.

187. Nonetheless, NE has noted that, in January 2022, the Access Authority improved the route of the NCPNT, at section WBH-4-S015, by replacing the unsurfaced path through vegetation with a new sealed walking surface. The edge of the new sealed surface now provides a clear boundary to use as the landward extent of the coastal margin. As such, and in response to the Objectors’ suggested modification, NE requests that changes are made to the proposed description of the landward boundary of margin within the Report, from “*Various*” to “*Edge of Track*”, with a further modification being made to the description of the surface for section WBH-4-S015.

Natural England’s Comments on the Representations

188. In terms of the concerns raised regarding the surface of the trail for section WBH-4-S015 FP, NE confirms that largescale surface improvements were made by the Norfolk Trail Team in 2022 involving widening and surfacing the path.
189. With regards to the tipping of garden waste, NE advises that following their investigation it was concluded that that garden material is not being dumped on the protected habitat of the adjacent saltmarsh. Whilst NE acknowledges that such material is being tipped up to the boundary with the saltmarsh and agrees that it appears unsightly, NE maintains that the garden material is being dumped on the homeowner’s land and therefore they are not acting illegally. Furthermore, NE advises that the garden waste material poses no threat to the designated features of the protected habitat.

Further Information provided by NE

190. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats.
191. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.
192. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.
193. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled “*National Landscapes*”. There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapter 4 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk

Coast National Landscape (NCNL), and I have used both terms where relevant in this report.

194. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so far as it relates to this report and the recommendation made, the amendment now requires relevant authorities *“in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB”*.
195. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL’s purposes were unchanged and reflect *“the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty”* as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

Landward Boundary of Margin Description

196. Within the Report, the proposal describes the landward boundary of margin as *“Various”*. As noted above, NE has acknowledged that improvements have since been made to the surface of section WBH-4-S015, and I was able to observe those improvements, and the sealed walking surface, on my visit. From observations made along the length of section WBH-4-S015, it was apparent that the edge of the sealed walking surface of the path provided a clear boundary that could be used to describe the landward extent of the coastal margin.
197. In light of the above, NE requests that the proposal is modified to change the description of the landward boundary of margin within the Report, in addition to changes to be made to the description of the surface. In that regard, NE requests that table 4.2.1 contained within the Report be modified, with the description of the *“Current surface of this section”* being amended from *“Bare soil (compacted)”*, to *“Aggregate (compacted)”*. Additionally, NE also requests that table 4.2.1 of the Report be further modified with the description of the *“Landward boundary of margin”* being amended from *“Various”* to *“Edge of Track”*. These amendments to table 4.2.1 of the Report are included as Appendix A to this report.
198. Furthermore, NE has submitted a revised map entitled *“Map WBH MR2a Brancaster Staithe”*, which modifies the reference for section WBH-4-S015 to WBH-MR1-S001FP in relation to the above changes in description. The revised map for this section of the trail is included as Appendix B to this report.
199. I consider that the proposals contained within the Report do not fail to strike a fair balance as a result of the matters raised in relation to the objections. However, the requested modifications are necessary in order to reflect the changes on the ground that have occurred since the date of the Report, and would provide greater clarity for landowners and users of the trail. I consider that these minor modifications would satisfy the coastal access requirements and allay concerns.

200. The requested modifications have not been advertised. However, the suggested modifications are minor in nature and would resolve the objections as raised. The suggested modifications would further provide confirmation of those matters as raised in the submitted representations with regards to the description given to the improved sealed walking surface of the trail. I, therefore, consider that no party would be prejudiced if this modification was considered as part of this report.

Other Matters

201. The proposed route includes parts of the coast which have been designated for nature conservation. As noted above, NE has provided a draft revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. The draft revised HRA carried out by NE indicates 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 C to this report provides further information on these matters.

202. In terms of the concerns raised with regards to the dumping of garden waste material, I have not been provided with any evidence that persons who reside within the area, have deposited such material onto the NCPNT. In the event that such actions are being taken, then whether or not any offences have been committed in that regard, would be for other authorities to consider. I have therefore not considered that matter further in respect of this report or recommendation.

203. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.

204. In this instance, the proposals as shown on map 4d of the Report would make use of existing public rights of way, highway or other existing walked routes, with a proposed upgrade to the surface for part of the trail. No additional infrastructure in the form of gates, signage or fencing is proposed in respect of the trail as shown on map 4d of the Report. As such, the proposals would support and increase the understanding, valuation and care of the designated area, conserving and enhancing the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

205. Modifications to change the description of the surface of proposed section WBH-4-S015 from "*Bare soil (compacted)*", to "*Aggregate (compacted)*" and to change the description of the "*Landward boundary of margin*" from "*Various*" to "*Edge of Track*", as contained within table 4.2.1 of the Report, are necessary and appropriate in order to reflect the existing position on the ground. The relevant Modification Map (*Map WBH MR2a Brancaster Staithe*) and Description Table are included at Appendices A and B to this report.

206. For the reasons given above, having regard to these and all other matters raised, I conclude that the proposals, subject to these minor modifications, do not fail to strike a fair balance as a result of the matters raised in relation to the objections.

207. However, in considering whether or not to approve the proposals subject to those minor modifications, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals in respect of the integrity of the above identified protected habitats. In that regard, it will be necessary for NE to provide to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required signed certifications.

Recommendation

208. I recommend that, following confirmation of the matters contained within Appendix C of this report, if the Secretary of State is minded to approve the proposals, the proposals should be approved with the modifications of the kind described in the above Overall Conclusions.

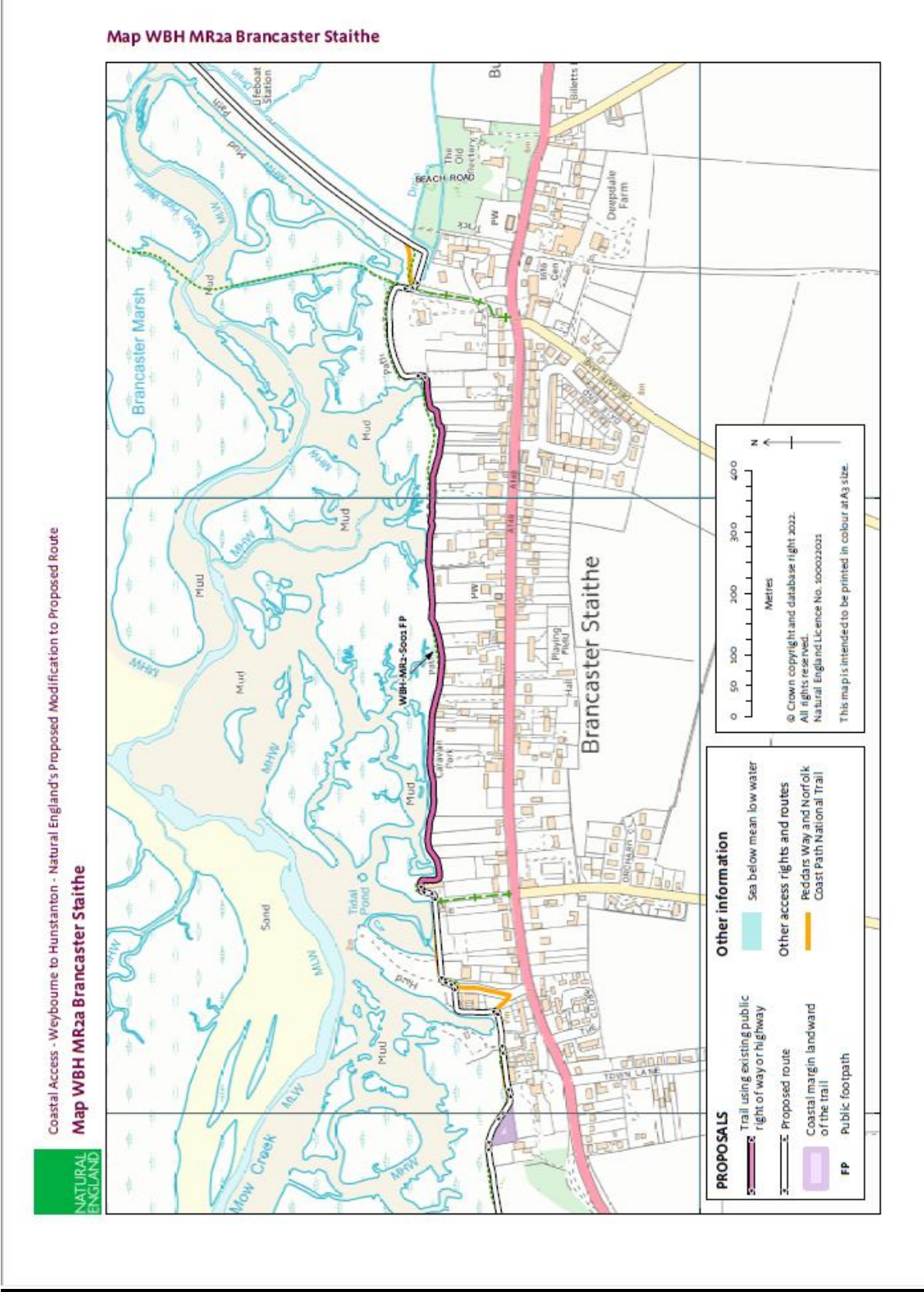
[redacted]

APPOINTED PERSON

Appendix A

1	2	3	4	5	6b	6c	7
Map(s)	Route section numbers	Current status of this section	Current surface of this section	Roll-back proposed? (See Part 7 of Overview)	Landward boundary of margin	Reason for landward boundary discretion	Proposed exclusions or restrictions
4d	WBH-MR2-S001 FP	Public footpath	Aggregate (compacted)	Yes - normal	Edge of track	Clarity and cohesion	None

APPENDIX B



APPENDIX C: 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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.
4. However, it should be noted that the revised and updated Habitats Regulations Assessment does not contain signed certifications by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.
5. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

6. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

7. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

8. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

9. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

10. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton are fully compatible with the relevant European sites' 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.

11. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to approve the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

12. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.

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 Communities and Local Government

Date 24 July 2024

Marine and Coastal Access Act 2009

Objection by: [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

**Objection Ref: MCA/Weybourne to Hunstanton/O/18/WBH0879
Burnham Overy Staithe to Brancaster and Brancaster to Flaxley**

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 1 May 2018 to chapters 4 and 5 of the Report has been made by [redacted].
- The objection is made under paragraphs 3(3)(a) and 3(3)(c) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

Procedural Matters

209. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton.
210. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018 and seventy-five objections were received within the specified time. Of those seventy-five objections, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently withdrawn. Various representations were also received, and I address these below where they refer to the specific section of the trail before me.
211. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.
212. I made a site visit on 18th October 2023 when I was accompanied at various times by [redacted] and representatives from NE and from Norfolk County Council.

Main Issues

213. 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.
214. The first objective is that there is a route for the whole of the English coast which:
- e. consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - f. (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

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

Site visit made on 19 October 2023

File Refs: MCA/WBH/O/75/WBH1144, MCA/WBH/O/49/WBH0121 and MCA/WBH/O/47/WBH0117

<https://www.gov.uk/planning-inspectorate>

215. 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.
216. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- g. the safety and convenience of those using the trail,
 - h. the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - i. the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
217. 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.
218. 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

219. The part of the trail that is the subject of chapter 4 of the Report, runs from Burnham Overy Staithe to Brancaster, as shown on maps 4a to 4e. The trail that is the subject of chapter 5 of the Report, runs from Brancaster to Flaxley as shown on maps 5a to 5e. In terms of alignment, the trail generally follows existing walked routes, including the existing Norfolk Coast Path National Trail (the NCPNT), for most of its length. However, between Brancaster and Thornham, the alignment of the trail would depart from the route taken by the NCPNT and would provide a route which would be located closer to the coast. Nonetheless, whilst the proposed route follows the coastline quite closely for a majority of its length, there are extensive areas of saltmarsh seaward of the trail which mean that the sea is often only seen in the distance.
220. This part of the coast includes a number of sites that have been designated for nature conservation or heritage preservation including: the Wash and North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Protection Area; the North Norfolk Coast Ramsar site; the North Norfolk Coast Site of Special Scientific Interest; and the Roman Fort at Brancaster (Branodunum) Scheduled Ancient Monument.

The Objection

221. The objection concerns a number of themes. In the first instance, the Objector maintains that the consultation process was poorly conducted, and raises questions as to where public meetings were held in each of the coastal villages that would be affected by the proposals, that many of those who may wish to see and comment on the proposal do not have access to computers and that the Objector was not aware of anyone within Brancaster or Brancaster Staithe having been consulted on by NE or by Norfolk County Council.

222. The Objector further enquires as to what authority NE has to “*appropriate 2 metres*” of the Objector’s land without reference to the Secretary of State, and maintains that they have access to Brancaster Marshes and Scolt Head as a “*Commons Rights Holder*”. The objection raises a further concern with regards to the construction of the proposed path, with the contention that such a path would be submerged by the tide.
223. As noted in the heading above, the objection has been, in part, made under 3(3)(c) of Schedule 1A to the 1949 Act, which concerns the “*Inclusion, or failure to include, proposals for an alternative route, or the position of such a route or any part of it*”. However, no details have been provided regarding modifications for any alternative routes by the Objector.

Representations

224. The full representations received from Norfolk County Council, the Open Spaces Society and the Ramblers Association, raise concerns regarding the condition and narrowness of the wooden boardwalk of the existing NCPNT in this area, noting that users may have to depart from the boardwalk in order to allow others, travelling in the opposite direction, to pass by. As such, all of those representations suggest that the existing wooden boardwalk be improved, with passing places or by widening, in respect of its use for the England Coast Path.
225. Further to the above, Norfolk County Council also notes and recognises the benefit that the coastal margin landward of the trail at the Roman Fort, will enhance the enjoyment of future users of the trail.

Natural England’s Response to the Objection

The position of the trail and land take

226. NE notes that the submitted objection form refers to chapters 4 and 5 of the Report, and advises that the Objector’s property is situated adjacent to section WBH-4-S024. In terms of the Objector’s contention that the proposal would take 2 metres of land, NE maintains that the objection as raised does not clarify if the concern relates to: the section of the trail near to the Objector’s property; the roll back provisions as described within the Scheme; or is reference to the Objector’s common rights. Nonetheless, NE considered each of those matters and provided comments regarding all those options.
227. With regards to section WBH-4-S024 of the trail, and located adjacent to the Objector’s property, NE notes that, within a covering letter that accompanied the objection, the Objector identifies themselves as a resident with a property and land which the path runs alongside. NE advises that they obtained data from HM Land Registry which showed that the Objector does not own land that is part of the proposed route of the England Coast Path.
228. NE further confirms that, whilst the default width of the England Coast Path is 2 metres either side of an approved line, NE has the ability to propose that the landward edge of the trail coincides with a physical feature on the ground. In this instance, section WBH-4-S024 is seaward of the Objector’s land and on the raised wooden boardwalk of the NCPNT. NE advises that it is proposed that the landward boundary of the trail coincides with the landward edge of the boardwalk, with the

conclusion that the boardwalk, and hence trail, would not be 4 metres wide at this location. NE therefore maintains that, as the Objector does not have a relevant interest in the land covered by the boardwalk, no part of the Objector's land would have coastal access rights over it. Consequently, there can be no implication that 2 metres of the Objector's private land would be taken up by the proposal.

229. In terms of whether the objection concerns the power to roll back the position of the England Coast Path in the event that the route is affected by coastal processes, NE confirms that any new route would have to have regard to the categories of land which are excepted from coastal access rights. Such categories of excepted land, includes buildings or the curtilage of such land, and land used as a park or garden. Consequently, there is no suggestion that the route would roll back into the Objector's land located adjacent to the trail.

Access Restriction on Land and Common Rights

230. In respect of whether the proposals would affect the Objector's ability to continue to exercise his rights of common, NE advised that any proposed exclusion of coastal access rights over areas of saltmarsh, would have no effect on the continuing ability of commoners to exercise their rights over the land. The rights proposed under coastal access, and common rights, are entirely separate from each other. NE clarifies that position within the Report, and which provides that coastal access rights, and *"any national or local restrictions on them, would not affect any existing access arrangements that may currently exist at the local level – for example by formal agreement with, informal permission from or traditional toleration by the owner of the land, or through any pre-existing legal right that remains in force"*.

Consultation Process

231. NE confirms that following receipt of the objection, correspondence was issued which provided confirmation of the matters raised by the Objector. Specifically, NE confirmed that drop-in sessions were run at a number of libraries within the area during 2014, with hard copies of the proposals being provided at those libraries and at the County Council offices. NE further confirmed that a number of experts were consulted when developing the proposals, and that details of those organisations and bodies which were consulted, have been provided within the Report.
232. NE advised that when developing the proposals, it became clear that it was likely that the proposals for the England Coast Path would largely follow the existing NCPNT in this area. NE confirmed the ownership details for affected landowners from HM Land Registry, and wrote to those owners, including the Objector, to provide an explanation of the process, with an invitation to the drop-in sessions held at a number of local libraries. Once the proposals were published, those landowners were notified and that the proposals could be viewed again at local libraries. Website details were provided, with individuals being given the opportunity to be provided with paper copies of reports on request.
233. NE further confirms that Borough and County Councillors were notified. All parish councils were notified, and NE notes that the proposals were mentioned in Brancaster Parish Council Minutes for April, May and June 2018.

Inclusion, or failure to include, proposals for an alternative route, or the position of such a route or any part of it

234. NE has noted that the submitted objection form provides no details regarding this ground of objection. NE confirms that they are not proposing an alternative route in this area and notes that the Objector has not suggested a modification with regards any alternative route.

Natural England's Comments on the Representations

235. In respect of the concerns regarding the width and condition of the wooden boardwalk, NE advised that, at the time of their response, the boardwalk was closed in this area for health and safety reasons. NE further advised that it was understood that the boardwalk would be repaired during 2023 by the County Council and that consideration would be given to options for improved accessibility.

Further Information provided by Natural England

236. At the date of my visit, sections of the wooden boardwalk were closed off and, for route section WBH-4-S024, it appeared that improvement works had not yet commenced. Following my visit, I requested further information from NE in respect of the proposed improvement works and information regarding flooding of the existing NCPNT in this area. Subsequently, NE provided background and flooding information for the NCPNT in this area. The submitted details confirm that the path in this area has formed part of the NCPNT since 1986, and that originally the path was unsurfaced. However, due to the path becoming muddy and difficult to use, a wooden boardwalk was constructed. To date there have been two boardwalks constructed in this area, with the second being built atop of the first in 2011.
237. The details further confirm that the condition of the boardwalk has deteriorated and, since September 2022, the route has been closed for health and safety reasons. NE advises that Norfolk County Council have submitted an application to replace the boardwalk with Glass Reinforced Plastic, with the aim to create a 1.5 metre wide, long lasting accessible route, to include shallow gradients, handrails and passing places. NE provided a copy of the Design and Access Statement that accompanied that application. The evidence before me indicates that the application for the improvement works was approved in September 2023.
238. In terms of flooding, the current boardwalk is raised above ground level. NE advised that Rights of Way and National Trail Officers at Norfolk County Council have confirmed that flooding has not been raised as an issue since 2011, and that, in developing the proposals, further consultation with the Environment Agency was conducted. The area of boardwalk that is to be replaced and improved is situated within Flood Zone 3. However, in consultation with the Environment Agency, it was determined that the improvement works were not a form of development where a Flood Risk Activity Permit was required, with reference to the provisions of Schedule 25, Part 1, of The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016.
239. NE further confirmed that, whilst it was noted that Norfolk County Council had not been informed of any flooding events and that the boardwalk is located outside of the area defined as the Mean High Water mark, it was acknowledged that Brancaster is known to flood during exceptional storm events. NE submits that the height of the

boardwalk would mitigate against flooding events, being on average approximately 0.3896 metres above ground level. The improved boardwalk would follow the gentle contours of the land and, in a specific area where a natural stream passes under the alignment of the path, a raised bridge would be constructed in order to keep the boardwalk dry.

240. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats.
241. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.
242. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.
243. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled “*National Landscapes*”. There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapters 4 and 5 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk Coast National Landscape (NCNL), and I have used both terms where relevant in this report.
244. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so far as it relates to this report and the recommendation made, the amendment now requires relevant authorities “*in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB*”.
245. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL’s purposes were unchanged and reflect “*the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty*” as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

The position of the trail and land take

246. Paragraph 2.3.2 of the Scheme confirms that, by default, the land within 2 metres of the route on either side becomes subject to coastal access rights. However, the Scheme further confirms that NE may propose that the landward edge of the trail coincides with a particular physical feature on the ground. As noted above, in this instance, section WBH-4-S024 would be positioned on the raised wooden boardwalk of the existing NCPNT, which is located outside of, and seaward of, the Objector's land. Table 4.2.1 of the Report proposes that the "*Landward boundary of margin*" is to be the "*Landward edge of the boardwalk*".
247. The Objector has not provided evidence of their ownership in terms of the land covered by the wooden boardwalk of the existing NCPNT. Furthermore, given that the Objector's land located adjacent to the existing boardwalk appears to be curtilage or garden space associated with the dwelling, under Schedule 1 of The Countryside and Rights of Way Act 2000, as amended by the provisions of The Access to the Countryside (Coastal Margin)(England) Order 2010, the Objector's property would fall into a category of land that would be excepted from coastal access rights. Consequently, there is no suggestion that land would be taken as a result of the roll-back provisions contained within section 55B of the 1949 Act. Accordingly, and in light of the above, I am therefore satisfied that there is no question that the Objector's land has, or would be, appropriated or seized as a consequence of the proposals.
248. In terms of submersion of the boardwalk by the tide, the proposed works to replace the existing boardwalk has considered the position with regards to flooding, with the evidence before me confirming that such a replacement boardwalk would be raised sufficiently above ground level, would be outside of the Mean High Water mark and would provide solutions for where the trail crosses over features such as natural streams. Consequently, I am satisfied that sufficient steps have been taken to ensure that the replacement boardwalk would not be submerged by the tide in this area.
249. Furthermore, the approved improvement works will result in an increase in the width of the path, includes provision of suitable passing places along the length of the boardwalk and would be constructed using durable and long-lasting materials. The approved works would therefore satisfy the concerns as raised in the representations with regards to the narrowness and condition of the existing boardwalk.

Access Restriction on Land and Common Rights Holders

250. The wording contained within the Report provides clarity with regards to proposed exclusions of coastal access rights having no effect on pre-existing local rights, such as the exercise of rights of common. It is apparent that coastal access rights are distinct and separate from established rights of common. Accordingly, and in light of the information and evidence before me, I am satisfied that the proposals would not affect the Objector's, or any other relevant person's, ability to exercise their rights of common within the area.

Consultation Process

251. In terms of the initial preparations for implementation of the proposals, the Scheme provides that NE take reasonable steps to identify affected landowners and engage

with local and national organisations. In developing the proposals, the Scheme further notes that NE contacts landowners, providing an explanation of the initial proposal, inviting landowners to site visits and discuss the proposed approach. Additionally, the Scheme provides that NE should contact local and national organisations, including specialist organisations such as local wildlife trusts and other conservation bodies.

252. In light of the responses provided to this element of the objection, it appears that reasonable and proactive action was taken by NE with regards to consultation with affected landowners, as well as with relevant local and national organisations. The Report provides details of the relevant bodies and organisations that were consulted, and it is noted that representations, as described above, were received from such organisations. At the parish level, it also appears that consultation and discussion was conducted. As such, I am satisfied that NE has prepared and developed the proposals in accordance with Chapter 3 of the Scheme, which concerns the implementation process.

Inclusion, or failure to include, proposals for an alternative route, or the position of such a route or any part of it

253. As noted above, whilst the objection form indicates that this was a ground for objection, no details or suggestions for any alternative routes have been provided by the Objector. Nonetheless, it is noted that tables 4.2.2 and 5.2.2 of the Report did consider a number of other options for the alignment of the Trail between Burnham Overy Staithe and Flaxley. In those regards, I concur with the reasons given by NE for not proposing those options for the route, and I am satisfied that alternative alignments for the Trail have been appropriately and thoroughly explored.

Other Matters

254. The proposed route includes parts of the coast which have been designated for nature conservation. As noted above, NE has provided a draft revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. The draft revised HRA carried out by NE indicates 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.
255. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.
256. In this instance, the proposals as shown on map 4e of the Report would make use of existing public rights of way, highway or other existing walked routes, with a proposed upgrade to the surface for part of the trail. It is proposed to replace a metal barrier with a kissing gate at Brancaster. No additional infrastructure in the form of gates, signage or fencing is proposed in respect of the trail as shown on map 4e of the Report. As such, the proposals would support and increase the understanding, valuation and care of the designated area, conserving and enhancing the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

257. For the reasons given above, I am satisfied that sufficient steps have been taken to ensure that the replacement boardwalk would not be submerged by the tide in this area. Additionally, the approved improvement works would include widening the boardwalk and provision of passing places, thereby improving accessibility. As such, I am satisfied that the concerns raised in the objection and within the representations, have been addressed in respect of the trail.
258. The proposals would not result in the removal of pre-existing access arrangements or legal rights and therefore would not place any additional restriction in terms of access to Brancaster Marshes or Scolt Head. Furthermore, I find that there is no implication of the Objector's land being taken in respect of the proposals and, given that the Objector's land adjacent to the trail appears to comprise curtilage land used as a garden, such land would fall within the definition of excepted categories of land within the Scheme.
259. I, therefore, conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objection. However, as above I have only been provided with a draft Habitats Regulations Assessment relating to the coastal access proposals between Weybourne and Hunstanton. Consequently, and as described further in Appendix A of this report, in considering whether or not to approve the proposals, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals on the integrity of the above identified protected habitats. In that regard, it will be necessary for NE to provide, to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required certifications.
260. I will therefore recommend that a determination is made that the proposals should be approved subject to the satisfactory confirmation of matters contained within Appendix A of this report.

Recommendation

261. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. However, I only recommend that a determination to that effect is made once the Secretary of State is satisfied, following an Appropriate Assessment, that the proposals would not have an adverse effect on the integrity of the protected habitats identified in paragraph 12 of this report.

[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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.

4. However, it should be noted that the December 2022 revised and updated Habitats Regulations Assessment has not been certified by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.

5. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

6. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

7. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

8. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

9. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

10. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton are fully compatible with the relevant European sites' 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.

11. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to approve the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

12. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.



The Planning Inspectorate

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

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

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

Date 24 July 2024

Marine and Coastal Access Act 2009

Objections by: [redacted], [redacted] on behalf of Titchwell & Choseley Parochial Church
Council, and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

**Objection Ref: MCA/Weybourne to Hunstanton/O/75/WBH1144
Brancaster to Flaxley**

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 17 May 2018 to chapter 5 of the Report has been made by [redacted]. The land in the Report to which the objection relates is route sections WBH-5-S014RD to WBH-5-S018RD.
- The objection is made under paragraphs 3(3)(a) and 3(3)(e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

**Objection Ref: MCA/Weybourne to Hunstanton/O/49/WBH0121
Brancaster to Flaxley**

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 16 May 2018 to chapter 5 of the Report has been made by [redacted] on behalf of Titchwell and Choseley Parochial Church Council. The land in the Report to which the objection relates is route section WBH-5-S019.
- The objection is made under paragraphs 3(3)(a) and 3(3)(c) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

**Objection Ref: MCA/Weybourne to Hunstanton/O/47/WBH0117
Brancaster to Flaxley**

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 14 May 2018 to chapter 5 of the Report has been made by [redacted]. The land in the Report to which the objection relates is route section WBH-5-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 do not fail to strike a fair balance.

Procedural Matters

262. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton.

263. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018. Of the seventy-five objections received in respect of the Report, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently

Site visit made on 18 October 2023

File Ref: MCA/WBH/O/35/WBH0602

<https://www.gov.uk/planning-inspectorate>

withdrawn. Various representations were also received, and I address these below where they refer to the specific sections of the trail before me.

264. It is noted that the objection from [redacted] was dated 17 May 2018. However, it was previously determined by an Appointed Person that the objection was admissible under the provisions of the 1949 Act. Furthermore, and in accordance with the 1949 Act, NE has provided comments on the objection. Accordingly, I have made this report and recommendation on that basis.
265. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.
266. I made a site visit on 19th October 2023 when I was accompanied at various times by [redacted], [redacted], and representatives from NE and from Norfolk County Council.

Main Issues

267. 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.
268. The first objective is that there is a route for the whole of the English coast which:
- e. consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - f. (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

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

269. 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.
270. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- g. the safety and convenience of those using the trail,
 - h. the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - i. the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
271. 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.
272. 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

273. The part of the trail that is the subject of chapter 5 of the Report, runs from Brancaster to Flaxley, as shown on maps 5a to 5e. It generally follows existing walked routes, including the existing Norfolk Coast Path National Trail (the NCPNT), for most of its length. However, whilst this section of the proposed route follows the coastline quite closely for a majority of its length, there are extensive areas of saltmarsh seaward of the trail which mean that the sea is often only seen in the distance.
274. This part of the coast includes a number of sites that have been designated for nature conservation including: the Wash and North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Area of Conservation; the North Norfolk Coast Special Protection Area; the North Norfolk Coast Ramsar site, and the North Norfolk Coast Site of Special Scientific Interest.

The Objections

[redacted] – Objection Reference: 75/WBH1144

275. The objection primarily raises concerns regarding the safety of users between the WBH-5-S014RD to WBH-5-S018RD proposed sections of the trail, and specifically with regards to the proposed road crossings back and forth over the A149 highway. The Objector raises further concerns in respect of the alignment and width of the trail at proposed section WBH-5-S016, and with regards to potential future change of use or development of that land within their ownership.
276. In light of those above described grounds of objection, the Objector considers that the proposed sections of the trail between WBH-5-S014RD to WBH-5-S018RD should be sited on the opposite, seaward side, of the road. The Objector has suggested a modification to the proposal in that regard.

[redacted] on behalf of Titchwell and Choseley Parochial Church Council – Objection Reference: 49/WBH0121

277. The objection provides details of the history of the field located adjacent to and north of the A149 highway, through which the proposed section WBH-5-S019 would be aligned. The Objector notes that no compensation is payable for loss of land for the trail, and maintains that a 4 metre wide path through the field would take a considerable amount of land out of arable production, thereby reducing the amount of rental income that the field provides and which contributes towards the maintenance of St Mary's Church in Titchwell.
278. The Objector disputes the description given within the Report of the current surface over which this proposed section of the trail would be located as being grass, advising that the field was temporarily sown with grass in order to produce a hay crop, further to the field being used to grow potatoes in the previous year. The Objector confirms that the field is ploughed each year.
279. There are further concerns regarding significant difficulties under the Red Tractor Crop assurance scheme that would be caused by dog fouling, and that there would

be risks to the public when machinery was operating in that field. In that respect the Objector maintains that Health and Safety legislation imposes limitations as to the numbers of persons in a field when large pieces of equipment are being used.

280. Further to the above, it is also maintained that the proposed section WBH-5-S020BY which crosses over an access road serving the Titchwell Nature Reserve would present a number of safety difficulties. The Objector advises that the junction with the A149 is extremely busy and that it would not be possible to separate walkers from the traffic that enters onto the access road from the A149 highway. As such, the Objector notes that a further strip of land on the western boundary of the field would be used to provide a crossing point over the access road. Nonetheless, the Objector contends that such arrangements would be extraordinarily dangerous.
281. The submitted objection also proposes potential modifications be made to the alignment of the proposed sections of the trail at this location. The Objector notes the other options for alignment of the trail contained within table 5.2.2 of the Report, but maintains that by realigning the proposed route to the landward, southern side of the A149, the Parochial Church Council's objection would be alleviated with regards to safety concerns for walkers crossing over the busy junction and access road into the Nature Reserve.
282. Alternatively, further consideration should be given to linking the proposed route from Thornham to the car park at the Nature Reserve. In that regard, it is maintained that views of the coast would remain the same, being limited by tree growth, with the Objector contending that the car park at the Nature Reserve already includes a public right of way and is not a Site of Special Scientific Interest.
283. The Objector contends that the best option for the proposed route is to make use of the existing NCPNT. That route runs along a well used path where terrain is variable and where there is an absence of motor vehicles, on the hills to the south of Titchwell which has views over the entire stretch of coast.

[redacted] – Objection Reference: 47/WBH0117

284. The objection concerns the field, adjacent to and north of the A149 highway, through which the proposed section WBH-5-S019 would be aligned. The objection maintains that the relevant field is small in terms of area and that a 4 metre wide path through that field would represent a disproportionate amount of land. The objection further raises concerns regarding the description given as “grass” to the current surface over which this proposed section of the trail would be located, maintaining that the field is recorded by the Rural Payments Agency Scheme as being in arable use, and sown with grass ley to produce a hay crop.
285. Furthermore, the objection also raises concerns that dog fouling would cause significant difficulties under the Red Tractor Crop assurance scheme, and that walking within the field when machinery is operating would be potentially dangerous. In that respect, the Objector maintains that it would not be possible to police walkers and that the numbers of persons within a field where machinery is operating, is controlled by Health and Safety.
286. With regards to the proposed route section WBH-5-S020BY and where the trail would cross over the access road serving Titchwell Nature Reserve, the objection maintains that such an arrangement would be dangerous on grounds that walkers

would come into conflict with vehicles entering into the Nature Reserve from the junction with the A149 highway.

287. The Objector suggests that a modification be made to the proposed sections of the trail that are located between Brancaster and Thornham, with the effect that the trail be aligned along the existing route of the NCPNT. It is contended that much of the proposed section of the trail in this location has poor or interrupted views of the sea, whereas the NCPNT runs across higher ground and enjoys magnificent views of the coast, harbours and the Nature Reserve. It is further maintained that, whereas the proposed trail would require crossing over the A149 and walking along stretches of pavements adjacent to that busy road, the users of the NCPNT are untroubled by motor vehicles.

Representations

288. Norfolk County Council, the Norfolk Local Access Forum, the Open Spaces Society and the Ramblers, all raise concerns regarding the safety of using pavements and a narrow earth track which are positioned adjacent to the busy A149 highway.
289. Norfolk County Council, the Norfolk Local Access Forum and the Ramblers further maintain that the proposed sections of the trail as shown on map 5b of Chapter 5 of the Report, would be better located closer to the coast. Additionally, and alternatively, the Ramblers suggest that proposed route section WBH-5-S015 be realigned so as to be located behind the dwellings that front on the southern side of the A149. Both the Ramblers and the Local Access Forum also refer to where the proposed sections of the trail cross over the A149 highway in various locations, and maintain that such arrangements are undesirable.
290. The County Council acknowledges that by realigning these sections away from and to the north of the A149 highway, the trail would pass closer to Titchwell Nature Reserve than the proposals. Nonetheless, the County Council considers that a well-managed route could keep users away from sensitive sites within the Nature Reserve.
291. Both the County Council and the Local Access Forum further maintain that the proposed route sections contained within map 5b of Chapter 5 of the Report would not represent an improvement when compared to the existing alignment of the NCPNT, and specifically with regards to the lack of sea views from the proposed sections of the trail. Additionally, the County Council advises that it would welcome further proposals which included a parking restriction on the A149 highway adjacent to section WBH-5-S015, in order to prevent parking on the existing pavement, thereby providing improved access. It is also noted that new infrastructure would be required on proposed section WBH-5-S019, in order to facilitate access to and from the adjoining proposed section WBH-5-S018. The Ramblers further consider that, in the event that NE's proposed route is adopted, changes to the governing speed limits of vehicles should be made together with increased enforcement measures.

Natural England's Response to the Objection of [redacted]

Safety Considerations/Road Crossing Points

292. In terms of safety of users, NE maintains that the key principles of alignment contained within the Scheme have been followed, and that specialist advice was

sought from Norfolk County Council regarding the proposed crossing points over the A149 highway. NE advises that the advice confirmed that there were no issues with the proposed crossing points. Visibility along the A149 highway, in both directions from crossing points, is considered to be good by reason of the straight nature of that road in this location. One crossing is within a 40mph restriction, with the second crossing point being 85 metres into a stretch of the road where the speed limit is 60mph. Given the distance between where the 60mph speed restriction starts and the road crossing, NE maintains that vehicle speeds are unlikely to be close to 60mph at or near the relevant proposed crossing point over the A149.

The position of the trail and land take

293. NE further confirms that the 2009 Act allows for the trail to be narrower than the default trail width of 4 metres as set by legislation. In this instance, NE proposes that the width of the trail over the Objector's land at proposed route section WBH-5-S016, be 1.2 meters in width with a grass surface. NE notes that the presence of coastal access rights does not prevent any land from being lawfully developed or redeveloped and that land used as park or garden is excepted from any coastal access rights. NE also notes that, since the date at which the Report was published, new fencing has been erected between the Objectors land and the proposed route section WBH-5-S016.

Suggested modification

294. With regards to the Objector's suggested alternative alignment of the proposed routes sections WBH-5-S014RD to WBH-5-S018RD to locate the trail on the opposite, seaward, side of the A149 highway, NE advises that that potential alternative had been considered, but that the narrow width of the verge on the seaward side of the highway was significantly constrained by a hedge, resulting in insufficient width to create a trail at that location. Furthermore, NE advises that it also considered aligning the trail into the field adjacent to and north of the A149. However, that option was also discounted as the alignment of the trail would be through a small field where horses are kept and as such there were concerns regarding interaction between dogs and horses in a relatively confined space.

Natural England's Response to the Objections of [redacted] and [redacted]

295. NE has provided a combined response to these objections given that they raise similar or identical matters and concerns regarding the proposals. NE considers that the issues raised broadly fall within separate themes and has provided separate comments on each theme as below.

The position of the trail and land take

296. NE agrees that the field, over which section WBH-5-S019 of the trail is proposed, is relatively small. Whilst noting the Objectors' contentions that a trail of 4 metres width would take a disproportionate amount of land out of that relatively small field, NE advises that the 2009 Act allows for the trail to be narrower than the default width of 4 metres as set out in section 4.3 of the Scheme. NE confirms that, in this instance, a trail of 1.2 metres in width would be satisfactory when measured against the convenience criteria contained within the Scheme.

297. NE has calculated that section WBH-5-S019 of the trail is 320 metres long, and at a width of 1.2 metres, would occupy approximately 390 square metres of land within that field. NE maintains that the impact on income generated by the field would be minimal and that there is no evidence to suggest that the proposal would not be compatible with the agri-environment options farmers receive payment for from the Rural Payments Agency.

Surface description

298. NE acknowledges that, as at the date of their survey, the field through which proposed section WBH-5-S019 passes was sown with a grass ley as part of an arable rotation. However, NE advises that the description given in the proposals do not have any specific relevance except as an indicator of the surface as at the date of the survey.

299. NE further advises that the Scheme provides that where land is in a long-term arable rotation, any land that has been ploughed or drilled in the previous 12 months is excepted from coastal access rights, but that NE has the power to recommend that the trail should cross over such land on an access strip. Consequently, NE agrees that a field sown as grass ley as part of an arable rotation would not gain wider coastal access rights seaward of the trail.

300. However, NE confirms that a field sown as grass ley as part of a long rotation to produce a hay or silage crop, and which has not been disturbed within the previous 12 months, would not be treated as excepted land. Nonetheless, NE fundamentally does not believe that properly managed public access is incompatible with hay crops. In that respect, NE refers to section 8.7.10 of the Scheme which provides that, *“A mown path along the edge of grass grown for hay or silage may be used where the aim is to encourage people to stay on the line of the trail as they usually avoid areas of heavier vegetation in favour of well managed paths. However, low key access across these areas does not significantly affect yield, given modern harvesting techniques. Similar solutions may be used in relation to grass leys that are sown with less frequency than arable and food crops, to ensure that there is a clear path for people to follow along the field edge”*.

Contamination of crops

301. NE confirms that walkers are required to keep dogs under control and that a balanced approach is taken between the least restrictive position regarding access rights and whether dogs need to be kept on a lead. NE further advises that they have not been able to find anything about access causing quality difficulties under the Red Tractor Scheme. NE proposes to sign the trail at the entrances to the field directing walkers to follow along the landward edge of any crop and, if necessary, would be content to put in place additional signage encouraging dog owners to keep their dog out of the crop and clean up any mess after it.

302. NE notes that there are powers available to make a direction to require people using the trail to keep dogs on leads where necessary to prevent contamination of crops. However, NE considers that there is no evidence to suggest that such a restriction is necessary. Nonetheless, in the event that evidence is provided which confirms that such a restriction is necessary to prevent contamination of crops, NE confirms that the landowner could apply to them for a restriction requiring that dogs be kept on leads.

Presence of farm machinery

303. NE acknowledges many land management operations as governed by Health and Safety legislation, places a duty on land managers to avoid putting the public at risk through work activities. However, land management activities are likely to be infrequent and would not need to cease whenever people are using the trail.
304. The Scheme sets out that people are unlikely to intentionally disrupt work and will avoid areas where works are taking place if they can clearly identify the affected area and there is a route around it. In this instance the trail would be aligned around the edge of the field and would be clearly waymarked. The entire field would be excepted from coastal access rights if it is in arable use and therefore would not interfere with land management operations within it. Operations close to the trail might be undertaken at times when visitor levels are expected to be low and, when not possible, NE feels that farm workers would be able to stop temporarily if it is necessary to allow people to pass.

Safety Considerations/Road Crossing Points

305. NE notes that the objections raise concerns regarding the junction of the trail with the access road into the Titchwell Nature Reserve. NE advises that the point where the trail intersects with the access road was chosen carefully in liaison with the RSPB site manager at the Nature Reserve and the County Council to ensure it is set well back from the A149 highway. The crossing point over the access road is not located at the junction and so there is improved visibility for cars who will either be at low speed having just turned into the access road from the A149 highway or are preparing to stop at the junction when coming out of the Nature Reserve. Walkers would therefore be able to negotiate the crossing safely.

Suggested modification

306. Section 4.5.1 of the Scheme confirms that the proposed route should normally be located close to the sea otherwise it would fail in its primary purpose to enable people to enjoy the English coast. This is in line with the principle set out in section 297(2) of the 2009 Act in that it is desirable for the route to adhere to the periphery of the coast. NE advises that it had already considered aligning the route with the existing NCPNT between Brancaster and Thornham and whether such a route would meet the public interest criteria as described in chapter 4 of the Scheme.
307. NE maintains that the suggested modification route aligned with the NCPNT was considerably less convenient for walkers when compared to the proposed route. NE advises that the proposed route would be alongside the A149 highway for 600m through Titchwell, mainly on pavement. However, the suggested modification route involved a walk of up to 1.9km further inland and which included a significant amount of road walking between Choseley Road and Thornham. Whilst it was acknowledged that the suggested modification route would provide walkers with good sea views in places, about a third of its length was behind hedges which obscured the view of the coast. Conversely, the proposed route is closer to the sea and nearer sea level and so does not have the wide views of the suggested inland modification route.

308. In considering these factors, NE concluded that the proposed route struck the best balance in terms of the criteria set out in chapter 4 of the Scheme, and have summarised why the suggested modification route was discounted in table 5.2.2 of the Report. NE therefore disagrees with the suggested modification, and notes that the NCPNT would remain available for those who wished to take a circular recreational walk inland away from the proposed route of the England Coast Path.

Natural England's Comments on the Representations

309. In respect of the concerns raised regarding safety of users of the proposed trail, NE advises that for proposed route section WBH-5-S013 the alignment of the trail would be along an existing pedestrian footway through Titchwell. It is further confirmed that, in addition to warning signage being located at the proposed road crossings, NE would be prepared to support the provision of additional signs to raise awareness of pedestrians to road users. NE also advises that additional signage could be installed on proposed section WBH-5-S015 "requesting that people do not leave cars on the pavement". Nonetheless, NE advises that the consultation with the Highways Department did not raise any concerns regarding current vehicle speed restrictions on this stretch of the A149.

310. In terms of the alignment of proposed section WBH-5-S017, NE advises that the trail would not be aligned along the existing narrow dirt track adjacent to the A149, but rather would make use of a grass field edge located on the landward side of the existing narrow track. NE confirms that it obtained information from the County Council that the existing narrow dirt track was not suitable for inclusion as part of the proposed route.

311. NE further acknowledges that some minor soil levelling would be required at the eastern end of proposed section WBH-5-S019, in order to facilitate access to and from the adjoining proposed section WBH-5-S018. NE did consider aligning proposed route section WBH-5-S015 to the south of dwellings that front onto the A149 highway. However, that option was discounted as there was an existing section of pavement adjacent to the road.

312. Furthermore, NE has provided details of the options considered for potential alternative alignments of the trail over this section of the coast, within table 5.2.2 of the Report. With regards to the suggestion that the trail be aligned to the north of the A149 and through Titchwell Marsh Nature Reserve, table 5.2.2 identifies that such an option was discounted as part of the area is designated as a Site of Special Scientific Interest, a Special Protection Area and a Special Area of Conservation for nature conservation and which was, accordingly, subject of an Access and Sensitive Features Appraisal (the ASFA).

313. In that respect, the ASFA concludes that, whilst the Nature Reserve is generally open to the public, in order to avoid disturbance to bird interests, including Marsh Harrier which is a sensitive feature of the North Norfolk Coast Special Protection Area and the North Norfolk Coast Site of Special Scientific Interest, there are existing on-site management measures that require visitors with dogs to keep to only a certain route to the west of the Reserve, when accessing the beach.

314. The proposed alignment of the trail would be likely to result in increased numbers of visitors between Brancaster and Thornham, with the ASFA concluding that there would be a likely significant impact on the features for which the land was designated

and on species present there. As such, NE discounted that option and further proposed that Titchwell Marsh Nature Reserve be subject to a direction to exclude walkers with dogs all year round and which would complement existing on-site visitor management measures.

315. The suggested alternative to align the trail on the northern side of the A149 for the proposed sections WBH-5-S014RD to WBH-5-S018RD was discounted by NE on grounds that the grass verge there was extremely narrow. Furthermore, as noted within table 5.2.2 of the Report, consideration was also given to aligning the trail into the field adjacent to and north of the A149. However, that option was discounted as the alignment of the trail would be through a small field where horses are kept and as such there were concerns regarding interaction between dogs and horses in a relatively confined space. NE advises that section 8.5.13 of the Scheme clarifies that they will avoid such situations when considering the alignment of the trail.
316. In terms of the suggested alternative route which would align the trail along the existing NCPNT section between Brancaster and Thornham, NE advises again that such potential arrangements were considered as part of the Report, and that it was discounted as an option as it would not accord with the criteria contained within the Scheme. In that regard, NE maintains that the NCPNT between Brancaster and Thornham deviates a long way inland away from the coast, and would involve stretches of road walking. As such, the NCPNT would be less direct and less convenient for walkers. Furthermore, NE contends that whilst the inland NCPNT route does provide occasional long distance views of the sea, much of that section of the NCPNT is aligned behind hedgerow where such views of the sea are not possible.

Further Information provided by the Objectors and NE

317. Further to my site visit, I requested that NE provide copies of the advice received from the Highways Engineer at Norfolk County Council regarding the proposed crossing points over the A149 highway in respect of proposed sections WBH-5-S014RD to WBH-5-S018RD. I also requested sight of the study conducted on behalf of the County Council which confirmed that the existing narrow dirt track located south of and adjacent to the A149 highway (south of proposed sections WBH-5-S019 to WBH-5-S021, was not suitable for inclusion as part of the proposed route.
318. Subsequently, NE provided me with a copy of a study prepared by the County Council which considered the suitability of the existing narrow dirt track located south of and adjacent to the A149 highway for pedestrian use. That study concluded that the width of the existing narrow dirt track was inadequate to cater for the anticipated levels of pedestrian use, and that whilst the available verge on the southern side of the A149 highway was of a sufficient width to provide improved pedestrian facilities, there are obstructions that would have to be reengineered to provide a safe continuous path. That feasibility study further provides that, as of 2017, the estimated costs for making that existing narrow dirt track suitable for use, would amount to approximately £292,500.00. NE also provided to me a copy of an email, dated April 2017, from the Highways Engineer at Norfolk County Council, which indicates that they had no issues on the proposed use of road crossings for Titchwell to Thornham.

319. In addition to the above, I also noticed on my visit that there was a substantial change in land levels where route section WBH-5-S018RD joins section WBH-5-S019. As such, I requested information from NE in respect of how the route would be established between these route sections, including details of any proposed works. NE subsequently confirmed that discussions had been held with the County Council, and that it is proposed to create a 1.5 metre gap in timber fencing where route section WBH-5-S018RD joins section WBH-5-S019, and construct a ramp, of gradient 1:12 or less, down into the field where route section WBH-5-S019 is located. The details provided show that the ramp would have an aggregate surface.
320. NE has further confirmed that, following my site visit, discussions were held with the landowner of the field through which proposed section WBH-5-S019 is located, and which concerned contamination of crops and future plans to introduce horse grazing into that field. NE advises that, in order to address the landowner's concerns and to ensure that the public is separated from any horses, NE is willing to install a stock proof fence along the seaward edge of the proposed path through the field.
321. In that respect, NE advises that in order to maintain the surface of that proposed path through the relevant field, the path would need to be 2 metres in width, rather than the 1.2 metres width as previously mentioned by NE in their response to the objections as described above. Given that the provision of fencing would therefore result in an increase in the width of the proposed path, I also sought comments from NE as to their views on the consequent effects in terms of loss of crop and loss of income if the proposed path was to be 2 metres in width rather than 1.2 metres wide. NE subsequently commented that the loss of Rural Payment Agency payments would amount to £33.00 per annum for a 2 metre wide path through this field.
322. In light of the response from NE, I sought additional comments from the relevant landowner and tenant farmer as to the consequent effects in terms of loss of crop and loss of income if the proposed path was to be 2 metres in width rather than 1.2 metres wide. No further comments regarding the impact on income generated by the field was received from the relevant landowner or tenant farmer.
323. Following my visit, further information was sent to me by [redacted], and which again raised the concern of farm machinery operating close to the proposed trail, in addition to raising concerns regarding ground conditions on an adjoining section of the proposed trail at WBH-5-S021. I provided NE with the opportunity to comment on those concerns. NE subsequently advised that the comments regarding ground conditions related to neighbouring land which was not within the ownership of the Objector.
324. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.
325. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final

version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.

326. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled “*National Landscapes*”. There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapter 5 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk Coast National Landscape (NCNL), and I have used both terms where relevant in this report.
327. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so far as it relates to this report and the recommendation made, the amendment now requires relevant authorities “*in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB*”.
328. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL’s purposes were unchanged and reflect “*the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty*” as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

The position of the trail and land take

329. In respect of the concerns as raised with regards to potential future change of use or development of land at proposed section WBH-5-S016, as confirmed by NE there is nothing within the proposals or the relevant legislation that prevents any land from being lawfully developed or redeveloped in the future. There is no evidence before me to suggest that any application for development or change of use has been made by the relevant landowner, and I am satisfied that the presence of coastal access rights would not prevent land from being lawfully developed in the future.
330. Turning now to the concerns regarding land take in respect of the field through which proposed section WBH-5-S019 would be aligned, as noted above NE maintains that, at a width of 2 metres, the loss of Rural Payment Agency payments would not be significant, amounting to £33.00 per annum. 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*”.

331. Further to my request for additional information, no evidence has been provided by the relevant landowner which suggests that an enclosed fenced path of 2 metres width through the field in question would result in a significant loss of income. I am therefore satisfied that the proposal would not result in a significant loss of income from the introduction of coastal access rights in respect of proposed section WBH-5-S019.
332. In light of the above reasons, 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 concerning land take and the position of the trail.

Safety Considerations/Road Crossing Points

333. In terms of the concerns that it would be unsafe for users to have to cross back and forth over the road through Titchwell at proposed route sections WBH-5-S014RD and WBH-5-S018RD, I have noted the confirmation from the Highways Engineer at Norfolk County Council that they consider there are no issues with the proposed crossing points. On my visit, I saw that the road through Titchwell is straight, providing excellent visibility in both directions. The proposed crossing at WBH-5-S014RD is located within a 40mph zone. Whilst the speed limit at the proposed crossing at WBH-5-S018RD is 60mph, the proposed crossing would be located close to where the 40mph zone starts and where vehicles are likely to either be starting to accelerate or decelerate. Consequently, vehicle speeds near to that crossing are unlikely to be at 60mph.
334. A degree of personal risk assessment has to be undertaken whenever pedestrians have to traverse across a carriageway. By reason of the likely speeds of vehicles at the proposed crossing points and given that visibility in both directions is excellent, I do not consider that the proposed crossing points would be unsafe. I therefore have no concerns in this regard.
335. Further to the above, I also do not share the separate concerns raised that the junction of the trail with the Nature Reserve access road at WBH-5-S020BY, would be dangerous. The point at which the proposed trail would cross over the access road into the Nature Reserve is substantially set back from the junction with the A149 highway. I saw on my visit that the crossing point is on a straight section of the access road. Vehicles exiting the Nature Reserve would be at slow speed when passing the proposed crossing point given that they would be preparing to stop at the junction, and vehicles entering the site will be at low speed after having turned off the main road. In those circumstances, I have no concerns that the proposed crossing point over the access road would be dangerous for use.

Surface description

336. The surface description given by NE in the Report reflects that which existed at the date of the survey. It was also noted that, at the time of my visit, the field through which proposed route section WBH-5-S019 had a grass surface. Nonetheless, it is acknowledged that the field had been sown with grass as part of an arable rotation.
337. It appears that the Objector's concern here is that if the grass field was not considered part of an arable rotation, then the field would not be considered to be within a category of land that would be excepted from coastal access rights. However, it is apparent that the surface description given in the Report is not

determinative of how the land is used or whether such land falls within categories of land that would be excepted from coastal access rights under Schedule 1 of the Countryside and Rights of Way Act 2000 (as amended).

338. Chapter 2 of the Scheme confirms that “*land on which soil is being, or has at any time within the previous 12 months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops*” is a category of excepted land but for which NE has the power to recommend that the trail should cross such land on an access strip, with the access strip not itself being excluded from coastal access rights. One of the Objectors has confirmed that the field is ploughed annually, and under such circumstances, the field would fall within a category of excepted land for the purposes of coastal access rights seaward of the trail. I, therefore, do not share the concern that the surface description given in the Report would mean that the field in question would not be excepted land for the purposes of coastal access rights within the margin.

Contamination of crops

339. I have not been provided with any evidence to suggest that the presence of the trail within the relevant field would cause quality difficulties under the Red Tractor Crop assurance scheme, nor that such access would prevent the landowner or tenant farmer from being a member of that assurance scheme. Nonetheless, section 8.7 of the Scheme acknowledges that hay and silage crops are vulnerable to contamination by dog faeces and that, consequently, further intervention may be necessary.
340. In this instance, the trail would be signposted around the edge of the field and informal management measures in the form of signs encouraging dog owners to clean up after their pets could be provided. Furthermore, as noted above NE has confirmed that they are willing to erect a new fence which would separate users and their dogs on the trail, from the field in question.
341. In light of these matters, I do not find it is likely that significant contamination of crops within the field adjoining the proposed trail would occur, and I have no substantive evidence that the presence of the proposed access trail would prevent the landowner or tenant farmer from being a member of any crop assurance scheme. Should it be demonstrated that the presence of the trail has led to contamination of crops by dog faeces, then further measures in the form of restrictions can be applied. I am therefore satisfied that should there be significant contamination of crops resulting from use of the trail, additional measures would be available to prevent further harm from arising.

Presence of farm machinery

342. Section 8.13 of the Scheme acknowledges that there are potential issues in terms of dangers to the public and in respect of work disruption, surrounding use of agricultural machinery on the trail or within any associated spreading room within the margin. The Scheme notes that many work operations are governed by health and safety at work legislation and that the need for intervention to prevent danger to the public will depend on the nature of the risks and the patterns and levels of public use. Furthermore, the Scheme notes that visitors are unlikely to intentionally disrupt work and will avoid areas where work is taking place if there is a route around it. The need for any intervention to prevent disruption will depend upon the availability of such a route and the frequency with which work is likely to be interrupted.

343. In terms of the concern that there would be health and safety risks for walkers within the field where machinery may be operating, as noted above, if the field is in arable rotation then such land would be excepted from coastal access rights. Therefore, in such circumstances there would be no possibility of walkers interrupting any land management operations within the field. In respect of potential dangers to walkers on the trail, there is no evidence before me that suggests that machinery would be regularly or frequently in operation close to the trail. Furthermore, there is nothing within the Scheme that would prevent the person with the relevant interest in the land applying to NE for a direction to exclude access if it were shown that machinery is frequently in operation close to the trail and poses a significant risk to users. As such, I do not find that walkers using the field in the presence of farm machinery would create an unfair health and safety burden on the landowner or tenant farmer.

Suggested modifications

344. The objections considered as part of this report propose three separate modifications to the alignment of the trail in this area. I shall consider each in turn below.

345. In the first instance, an Objector suggests an alternative alignment of the proposed routes sections WBH-5-S014RD to WBH-5-S018RD, by locating those sections of the trail on the opposite, seaward, side of the A149 highway. However, as I observed on my site visit, the verge on the seaward side of that highway was extremely narrow, with that space being further constrained by the presence of mature hedgerow. In my view, given that the verge would not provide a sufficient width over which users of the trail could safely pass, it would not be appropriate to include that land as part of the proposals.

346. It is also noted that NE discounted as part of its proposals, the possibility of aligning the relevant sections of the route through a field on the seaward side of the above-mentioned verge and mature hedgerow. In that regard, I concur with the conclusions given by NE in table 5.2.2 of the Report, which notes that such an alignment of the trail would not be suitable given that it would pass through a field which had been separated out into small paddocks for horses. If the trail was aligned through that field there would be the potential for conflict between users and horses within confined spaces, given that it is unlikely that horses and users, who may be accompanied by dogs, would be able to avoid each other.

347. Further to the above, and as also referred to within representations, there is a suggested alternative route for the trail to be aligned with the existing section of the NCPNT located between Brancaster and Thornham. That alternative route would be located on higher ground inland of proposed sections WBH-5-S002 to WBH-5-S023. At my visit, I took the opportunity to walk that existing section of the NCPNT between Brancaster and Thornham and noted that, whilst in places views towards the sea were obscured by hedgerow, it provided long distance wide views of the coast over most of its length. This was in contrast to the proposed route sections of the trail that pass through Titchwell adjacent to the A149 highway, where there were no such wide views of the coast.

348. Nonetheless, the suggested alternative route would be located at a significant distance inland of the coast, and would require that users walk along lengthy sections

- of road that were steeply inclined and narrow in places and which did not provide pedestrian footways. Conversely, the proposed, predominately level, alignment of the trail through Titchwell would be shorter, more direct and would be positioned closer to the coast.
349. In discharging the coastal access duty, Section 297(2) of the 2009 Act provides, amongst other matters, that regard must be had to the “*safety and convenience of those using the English coastal route*”, and to “*the desirability of that route adhering to the periphery of the coast and providing views of the sea*”. Both the proposal and the suggested alternative route would accord with those provisions to varying degrees.
350. Nonetheless, whilst noting that the proposal would satisfy the requirement concerning the desirability of the route adhering to the periphery of the coast but would not provide views of the sea, I must also have specific regard to the safety and convenience of users. Given that users of the suggested alternative route would be required to travel along sections of narrow lane which do not have the benefit of footways, on balance I conclude that the proposed route would better accord with the considerations as set out in section 297(2) of the 2009 Act, and would strike a better balance in terms of the key principles of alignment and management as set out in chapter 4 of the Scheme.
351. NE also discounted the suggested alternative route which would result in the alignment of the trail between Titchwell and Thornham passing through the car park at the Nature Reserve, on grounds that part of the area is designated as a Site of Special Scientific Interest, a Special Protection Area and a Special Area of Conservation.
352. I have been provided with a copy of the ASFA in which it is concluded that the presence of the trail would be likely to result in increased numbers of visitors between Brancaster and Thornham and, consequently, that there would be a likely significant impact on the features for which the land was designated and on species present there. Whilst the Nature Reserve is generally open to the public, in order to avoid disturbance to bird interests, including Marsh Harrier which is a sensitive feature of the North Norfolk Coast Special Protection Area and the North Norfolk Coast Site of Special Scientific Interest, there are existing on-site management measures that require visitors with dogs to keep to only a certain route to the west of the Reserve.
353. Given the potential for significant impact on the features for which the land was designated at Titchwell Nature Reserve and on species present there, the ASFA found that the existing on-site management measures excluding dogs from the Reserve should be formalised through a nature conservation direction to exclude access for dogs to the Nature Reserve. As such, in the event that the suggested alternative route through the Nature Reserve was applied, then users of the trail who were accompanied by dogs would be excluded from that land and would not be able to make use of a continuous trail on this stretch of coast. I therefore concur with NE that such an alternative alignment of the trail would not be appropriate in the circumstances.

Other Matters

354. In addition to matters discussed above regarding the safety of using the proposed crossings over the A149, a number of representations raise concerns regarding the safety of using existing pavements within Titchwell, as well as concerns regarding

- proposed section WBH-5-S017 and its use of a narrow earth track which are positioned adjacent to a section of the A149 highway which has a 60mph speed limit. However, it is apparent that the alignment of proposed section WBH-5-S017 would use a grass field edge rather than part of the existing narrow earth track which is positioned adjacent to the highway, with the minimum width between the seaward edge of the trail and the west bound carriageway being 0.5 metres.
355. Further to the above, I consider that the use of pavements between proposed sections WBH-5-S014RD and WBH-5-S015FW would be suitable and appropriate in terms of safety of pedestrians. The pavements within Titchwell are located within a 40mph zone and are well defined being raised up from the roadside edge. Whilst it is acknowledged that in a limited number of places the pavement is narrow, there would be enough space for two users to pass each other safely within the area where vehicles are subject to the 40mph limit. Given that the existing pavements would be suitable and safe for use within this area, it would not be necessary to consider an alternative for aligning proposed route section WBH-5-S015 to the south of dwellings that front onto the A149 highway.
356. Notwithstanding the above, due to the narrow nature of the pavement at certain locations, the provision of additional signage requesting that people do not leave cars on the pavement, in addition to installation of signs raising awareness of pedestrians to road users, would be necessary and proportionate to help ensure the safety of walkers using the pavements within Titchwell. I will, therefore, recommend that that additional signage is provided in the event the Secretary of State is minded to approve the proposals.
357. I acknowledge the additional information provided by the Objector and which raised concerns regarding ground conditions on an adjoining section of the proposed trail at WBH-5-S021. However, from the information that is before me, it does not appear that the Objector has a relevant interest in that land and, as such, the concern raised is not a matter that can be considered as part of this report.
358. The proposed route includes parts of the coast which have been designated for nature conservation. As noted above, NE has provided a draft revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. The draft revised HRA carried out by NE indicates 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.
359. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.
360. In this instance, part of the proposed trail, as shown on map 5b of the Report, would make use of existing public rights of way and highway. However, parts of the proposed trail as shown on map 5b would also be through existing agricultural fields. Furthermore, additional signage and a new field gate are proposed in respect of the trail as shown on map 5b of the Report. As described above, NE proposes to provide new fencing and a ramp in respect of the section of the trail at WBH-5-S019. Small

sections of hedgerow would also be removed to provide a crossing point over the access road which serves the Titchwell Nature Reserve.

361. The agricultural fields through which parts of the proposed trail pass, would retain their natural surface. Whilst the proposed provision of the new field gate, additional signage, new fencing and ramp are noted, such infrastructure is commonplace throughout the NCNL and does not draw the eye away from the qualities of the surrounding landscape. I am satisfied that its provision would not be harmful in terms of conserving the landscape and scenic beauty of this designated area. However, the removal of small sections of hedgerow would neither conserve nor enhance those special qualities of the NCNL.

101. Nonetheless, as a whole, the proposals would support and increase the understanding, valuation and care of the designated area, thereby helping to conserve and enhance the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

102 For the reasons given above, I am satisfied that the use of existing pavements within Titchwell, as well as use of the proposed crossing points over the A149 highway and over the access road into the Nature Reserve, would not be dangerous for use subject to the provision of additional signage which raises awareness of pedestrians to road users and which requests that vehicles are not parked on the pavements within Titchwell. I also do not find that walkers using the field, through which proposed section WBH-5-S019 would be aligned, in the presence of farm machinery, would create an unfair health and safety burden on the landowner or tenant farmer.

103 Furthermore, subject to the provision of fencing which would separate users of the trail from the field through which proposed section WBH-5-S019 would be aligned, and subject to the installation of additional signage which encourages dog owners to keep their pets on the trail and clean up after them, I am satisfied that it is unlikely that there would be contamination of crops and conclude that the proposals would not result in a significant loss of income which is generated by that field.

104. I, therefore, conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. However, as above I have only been provided with a draft Habitats Regulations Assessment relating to the coastal access proposals between Weybourne and Hunstanton. Consequently, and as described further in Appendix A of this report, in considering whether or not to approve the proposals, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals on the integrity of the above identified protected habitats.

105. In that regard, it will be necessary for NE to provide, to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required certifications. I will therefore recommend that a determination is made that the proposals should be approved subject to the satisfactory confirmation of matters contained within Appendix A of this report.

Recommendation

106. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. However, I only recommend that a determination to that effect is made once the Secretary of State is satisfied, following an Appropriate Assessment, that the proposals would not have an adverse effect on the integrity of the protected habitats identified in paragraph 13 of this report.

[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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.
4. However, it should be noted that the revised and updated Habitats Regulations Assessment has not been certified by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.
5. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

6. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

7. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

8. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

9. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

10. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton are fully compatible with the relevant European sites' 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.

11. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to approve the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

12. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.

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 24 July 2024

Marine and Coastal Access Act 2009

Objection by: [redacted] on behalf of Hunstanton Golf Club Ltd

Regarding Coastal Access Proposals by Natural England

Relating to Weybourne to Hunstanton

Objection Ref: MCA/Weybourne to Hunstanton/O/35/WBH0602 Flaxley to Hunstanton

- On 21 March 2018 Natural England submitted a Coastal Access Report (the 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.
- An objection dated 11 May 2018 to chapter 6 of the Report has been made by [redacted] on behalf of Hunstanton Golf Course Ltd. The land in the Report to which the objection relates is route section WBH-6-S002 FP.
- The objection is made under paragraphs 3(3)(a) and 3(3)(c) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

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

Procedural Matters

362. On 21 March 2018, Natural England (NE) submitted the Report to the Secretary of State for the Environment, Food and Rural Affairs, setting out proposals for improved access to the coast between Weybourne and Hunstanton.
363. The period for making formal representations and objections to the Report closed at midnight on 16 May 2018 and seventy-five objections were received within the specified time. Of those seventy-five objections, sixteen were determined to be admissible. I have been appointed to report to the Secretary of State on those objections that have not been subsequently withdrawn. Various representations were also received, and I address these below where they refer to the specific section of the trail before me.
364. NE has provided a draft revised Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on protected habitats.
365. I made a site visit on 18th October 2023 when I was accompanied at various times by [redacted] and [redacted], on behalf of Hunstanton Golf Club. Representatives from NE and from Norfolk County Council also accompanied me on that site visit.

Main Issues

366. 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.
367. The first objective is that there is a route for the whole of the English coast which:
- g. consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - h. (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

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

368. 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.
369. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- j. the safety and convenience of those using the trail,
 - k. the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - l. the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
370. 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.
371. 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

372. The trail that is the subject of chapter 6 of the Report, runs from Flaxley to Hunstanton as shown on maps 6a to 6c. In terms of alignment, the trail follows the existing Norfolk Coast Path National Trail (the NCPNT), along this length of coastline. However, there are places where the walked line differs from the approved alignment of the NCPNT route in order to take account of coastal erosion and other processes.
373. This part of the coast includes a number of sites that have been designated for nature conservation or heritage preservation including: The Wash and North Norfolk Coast Special Area of Conservation; The North Norfolk Coast Special Protection Area; The Wash Special Protection Area; The North Norfolk Coast Ramsar site; The Wash Ramsar site; The North Norfolk Coast Site of Special Scientific Interest; The Wash Site of Special Scientific Interest; and, The Hunstanton Cliffs Site of Special Scientific Interest.

The Objection

374. The objection raises concerns regarding the width of the coastal margin landward of section WBH-6-S002 FP, as shown on the Report Map 6a. The Objector maintains that the landward coastal margin should be narrower, and that consultations were previously held with representatives of NE with regards the erection of a new fence to reduce the width of the proposed landward coastal margin, with NE confirming that they had no objections to such an action being taken.
375. The Objector has confirmed that the new fence would be constructed at their own cost, and would be erected for public safety and wildlife protection reasons. The Objector notes that the relevant land had been cleared of buckthorn and that natural dune vegetation, including orchids, has since been re-established. Furthermore, the Objector maintains that the area of coastal margin landward of the trail, as shown on

Map 6a is far wider than could foreseeably be required to take account of coastal processes.

376. In light of the above, the Objector maintains that the proposals should be modified such that the position of the proposed new fence marks the landward boundary of the coastal margin in this area.

Representations

377. Representations from Norfolk County Council, The Open Spaces Society and The Ramblers Association, all raise concerns regarding the trail alignment through dunes on a narrow path which, in places, is overgrown with vegetation. In that regard, the representations further note that improvements would be needed in order for the path to be of an acceptable standard for use.
378. Norfolk County Council confirms that they would seek additional funding for such improvements and in respect of providing additional signage. Norfolk County Council further notes that, whilst the trail seeks to follow the alignment of the existing NCPNT in this area, since 2005 there have been some changes to the alignment of the NCPNT, with the result that the trail would need to be realigned onto the route currently taken by the NCPNT.
379. In addition to the above matters, The Ramblers Association questions the description of the surface of section WBH-6-S002 given within the Report as “*Grass*”, and maintains that the surface comprises sand, and should be described as such within the Report.

Natural England’s Response to the Objection

380. NE notes that the submitted objection was made under paragraphs 3(3)(a) and 3(3)(c) of Schedule 1A to the 1949 Act, and maintains that factors such as the position of the route, or proposals for an alternative route, have not been referred to within the objection. As such, NE considers that, in light of the content of the Objector’s submissions, the objection has been made under paragraphs 3(3)(d) of Schedule 1A to the 1949 Act, which concerns “*the inclusion of, or failure to include, proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal*”.
381. NE confirms that whilst golf courses are within a category of land which is excepted from coastal access rights, in this instance the affected area of land does not form part of the playing area of the golf course. Furthermore, as outlined within the Scheme, the area of dune landward of route section WBH-6-S002 FP is of a land type that automatically falls within the coastal margin. In that respect, it is maintained that, further to the discretionary power under section 55D(2) of the 1949 Act, NE mapped the extent of the landward boundary of the coastal margin to the fence line that was in situ at the time of their survey. NE reasoned that that fence was a recognisable physical feature which made the scope of users’ access rights clearer on the ground, and accordingly referred to that fence line within the proposals.
382. Nonetheless, NE notes that the fence line has been realigned since the date of their initial survey and, given the grounds of objection, NE would be content to amend the landward boundary of the coastal margin adjacent to route section WBH-6-S002 FP.

383. In that regard, the landward boundary of the coastal margin would be described with reference to the repositioned fence line, with NE providing a potential modification, to include a proposed modification map, in that respect and for my consideration. NE further notes that whilst the modification would relate to the repositioned fence line, there would be no need to modify the description of the “*Landward boundary of margin (See maps)*”, given as “*Fence*” within the Report.

Natural England’s Comments on the Representations

384. NE confirms that the trail would follow the line of the existing NCPNT, with the proposal including recommendations in respect of additional signage and for clearance of overgrown scrub vegetation. In terms of the surface description given in the Report, NE advises that such references are given for the overall surface for any one section of the trail. The trail in this area of dunes would remain on the walked line of the existing NCPNT and no works are proposed to the existing surface.

385. NE further advises that, in the event that the proposals are approved, where there have been changes to the alignment of the NCPNT since 2005, NE will use the proposed National Variation Report process in order to modify the approved route to coincide with the proposed route of the England Coast Path trail.

Further Information provided by NE

386. As noted above, NE provided a revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats.

387. However, that revised HRA did not provide the necessary signed certifications by the person at NE who developed the access proposal on behalf of NE, or by the person at NE who was responsible for considering any environmental impacts associated with the proposal. Consequently, I requested that a copy of the final HRA which included those necessary certifications, be provided for consideration in respect of this report.

388. NE subsequently submitted correspondence which stated that the final version of the HRA had been completed and, in that regard, provided a further copy of that final version of the HRA. However, whilst noting that the correspondence from NE confirmed that there was independent assessment by the person at NE who was responsible for considering any environmental impacts associated with the proposal, no signed certifications were provided. Consequently, the revised HRA remains in draft form for the purposes of this report.

389. Further to the above, on 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty were retitled “*National Landscapes*”. There has been no change to the legal designation of these areas. The part of the trail that is the subject of chapter 6 of the Report falls within the Norfolk Coast Area of Outstanding Natural Beauty (AONB) which has become the Norfolk Coast National Landscape (NCNL), and I have used both terms where relevant in this report.

390. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the CROW Act. In so

far as it relates to this report and the recommendation made, the amendment now requires relevant authorities “*in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB*”.

391. In light of these requirements, I requested NE provide comments regarding the proposals and the potential effect of the amended statutory duty to seek to further the purpose of the AONB. In response, NE advised that they did not propose to make any changes to the proposals as a result of LURA. NE advised and noted that the NCNL’s purposes were unchanged and reflect “*the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty*” as well as that of conserving and enhancing the natural beauty of the area.

Discussion and Conclusions

Width of coastal margin landward of the trail

392. I acknowledge that the area of dune situated landward of the proposed route section WBH-6-S002 FP would ordinarily automatically fall within the definition of coastal margin. However, in this instance whilst recognising that the relevant area of land does not form part of the playing area of the golf course, the safety of those who enter the proposed coastal margin landward of the trail may be jeopardised by the flight of errant golf balls. As such, and by reason of measures taken by the golf club in respect of wildlife protection, I am satisfied that it would be appropriate and necessary to mark the landward boundary of margin with reference to the repositioned fence line which, the evidence before me confirms, was not objected to by NE following their initial survey.
393. NE has provided a proposed modification map, titled “*Map WBH MR4a Hunstanton Golf Links*”, in respect of this section of the trail, and which shows the area of coastal margin landward of the trail aligned with the above-described repositioned fence line. This modified map is included at Appendix A of this report. However, given that the description of landward boundary would not change from “*Fence*”, no modifications are necessary in respect of that description contained within the Report.
394. The modification to the extent of the coastal margin landward of the trail at route section WBH-6-S002 FP, has not been advertised. Nonetheless, the modification would be minor in nature, would resolve the objections as raised, and would further provide greater clarity for users of the trail in terms of where there is safe access to the coastal margin. I consider that this minor modification would satisfy the coastal access requirements and that no party would be prejudiced if this modification was considered as part of this report.

Other Matters

395. In terms of the concerns raised in the representations, it is noted that NE has provided an estimate of the annual costs associated with maintaining the trail between Weybourne and Hunstanton, as well as an estimate of capital costs for additional signage. In that regard, I am satisfied that the proposed alignment of the trail would be maintained to the same quality standards as other National Trails in England, and that required additional signage would be provided.

396. The proposed route includes parts of the coast which have been designated for nature conservation. As noted above, NE has provided a draft revised HRA in respect of whether its coastal access proposals, relating to Weybourne to Hunstanton, might have an adverse effect on identified protected habitats. The draft revised HRA carried out by NE indicates 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 B to this report provides further information on these matters.
397. In terms of the duty on relevant authorities in respect of their interactions with the statutory purposes of AONBs described above, it is incumbent upon me to evidence consideration of possible ways to further the purpose of conserving and enhancing the natural beauty of the AONB and NCNL.
398. In this instance, the proposals as shown on map 6a of the Report would make use of existing public rights of way or highway. No additional infrastructure in the form of gates, signage or fencing is proposed in respect of the trail as shown on map 6a of the Report. As such, the proposals would support and increase the understanding, valuation and care of the designated area, conserving and enhancing the landscape and scenic beauty of the NCNL. I am, therefore, satisfied that the proposals would accord with the aims of section 85 of the CROW Act as amended by LURA.

Overall Conclusions

399. A modification to mark the landward boundary of margin at route section WBH-6-S002 FP with reference to the repositioned fence line, is necessary and appropriate in the interests of the safety of users of the trail. The relevant Modification Map (*Map WBH MR4a Hunstanton Golf Links*) is included at Appendix A to this report.
400. For the reasons given above, having regard to these and all other matters raised, I conclude that the proposals, subject to this minor modification, do not fail to strike a fair balance as a result of the matters raised in relation to the objections.
401. However, in considering whether or not to approve the proposals subject to that minor modification, it is recommended that the Secretary of State conducts an Appropriate Assessment on the implications of the proposals in respect of the integrity of the above identified protected habitats. In that regard, it will be necessary for NE to provide to the Secretary of State, a completed Habitats Regulations Assessment which includes the relevant and required signed certifications.

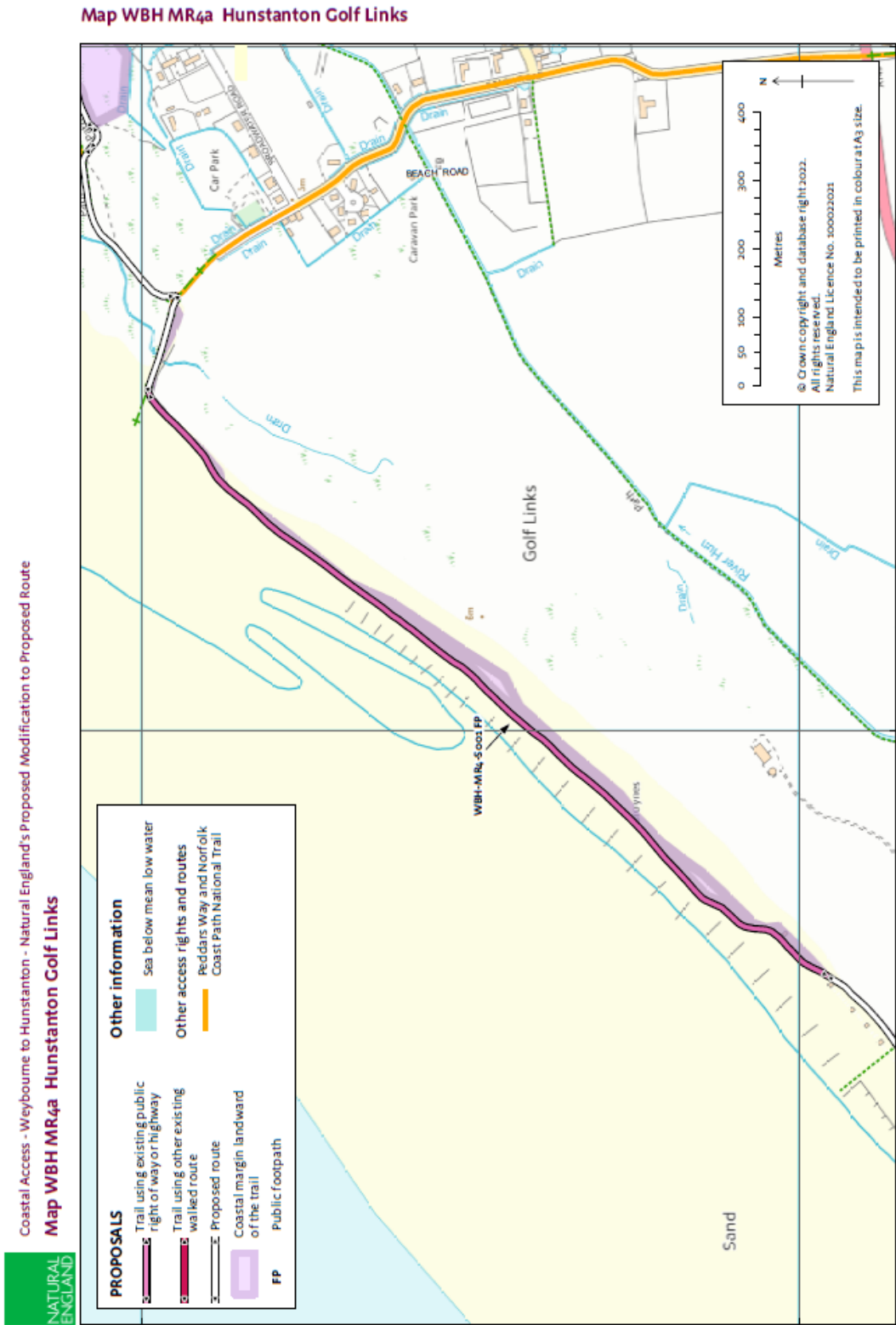
Recommendation

402. I recommend that, following confirmation of the matters contained within Appendix B of this report, if the Secretary of State is minded to approve the proposals, the proposals should be approved with the modifications of the kind described in the above Overall Conclusions.

[redacted]

APPOINTED PERSON

APPENDIX A



APPENDIX B: 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. An Access and Sensitive Features Appraisal (ASFA), dated January 2018, was completed and which included NE's original Habitats Regulations Assessment. Following completion of the ASFA, NE considered further information contained within submitted objections and representations to the proposals, and proposed changes be made to the original proposals. The proposed changes generally relate to application and removal of wider public access to the seaward spreading room and a change in the original route proposal. Subsequently, a revised and updated December 2022 Habitats Regulations Assessment (reviewed final version March 2024) has been provided. The revised and updated assessment stipulates that it has taken into account the changes now proposed.
4. However, it should be noted that the revised and updated Habitats Regulations Assessment does not contain signed certifications by either the person developing the access proposal on behalf of NE, or by the person at NE who is responsible for considering any environmental impacts associated with the access proposal. As such, I cannot be sure that there has been an appropriate separation of duties within NE in those regards. Consequently, the revised and updated Habitats Regulations Assessment has not been completed and must, therefore, be considered to comprise a draft Habitats Regulations Assessment (referred to hereafter as 'the Draft HRA'). Nonetheless, to assist the Secretary of State in performing their duties as the Competent Authority, I have considered the contents of the Draft HRA in making this recommendation.
5. The Draft HRA considered the potential impacts of the coastal access proposals on the following European sites: The Wash Special Protection Area, The Greater Wash Special Protection Area, The North Norfolk Coast Special Area of Conservation, The North Norfolk Coast Special Protection Area, The Wash Ramsar site, and The North Norfolk Coast Ramsar site. The Draft 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 sites, therefore a Habitats Regulations Assessment is required.

6. The Draft HRA screening exercise found that the proposals could have significant effects on some, or all, of the Qualifying Features of the European Sites 'alone' in the absence of mitigation measures. On this basis, the Draft HRA considered the potential for the proposals to give rise to Adverse Effects on Integrity (AEol) of the designated sites.

7. The scope of the assessment is set out in Section D1 of the Draft HRA and identifies the sites and qualifying features for which likely significant effects (LSE) could occur, and the impact-effect pathways considered. Table 8 of the Draft HRA sets out the assessment of AEol for the identified LSE. Section B2 of the Draft HRA identifies the conservation objectives for the sites considered.

8. In section D4 of the Draft HRA, NE considered the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone, in order to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, the Draft HRA concludes that the potential for adverse effects from the plan or project has been wholly avoided by the incorporated or additional mitigation measures outlined in section D3. The Draft HRA provides the conclusion that it can therefore be excluded that the project can have an adverse effect on site integrity in combination with other proposed plans or projects.

9. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table 2). 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. NE have not identified any residual risk of insignificant effects within the Draft HRA.

10. Part E of the Draft HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Weybourne and Hunstanton are fully compatible with the relevant European sites' 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.

11. However, as noted above, it must be borne in mind that only a Draft HRA has been provided by NE. Given that the assessment has not been certified by the relevant persons at NE as described above, I cannot rely on the conclusions reached in the Draft HRA that the proposals would not adversely affect the integrity of the relevant European sites. Consequently, if minded to approve the proposals, it should be noted that further assessment by the Secretary of State as the Competent Authority will be needed.

The ASFA

12. The ASFA, January 2018, should be read alongside any submitted, completed, and certified Habitats Regulations Assessment. The ASFA covers matters relating to a Site of Special Scientific Interest (SSSI), which is not subject to consideration in the Draft HRA. Relevant to this report is the North Norfolk Coast SSSI. NE were satisfied that the proposals to improve access to the Norfolk coast between Weybourne and Hunstanton were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of their functions. In respect of the relevant site or features, the ASFA confirms that the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.