



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

by [redacted] Solicitor, MIPROW

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

Date:

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Harwich to Shotley Gate

Site visits made on 21 June 2021 and 16 August 2021

File Ref: MCA/HSG/01

Objection Reference: MCA/HSG/01**Ray Lane, Ramsey to Stone Point, Wrabness**

- On 22 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 17 March 2020 to Chapter 2 of the Report, Ray Lane, Ramsey to Stone Point, Wrabness has been made by [redacted] of Foulton Hall Farms. The land in the Report to which the objection relates is route section refs. HSG-2-S001 to HSG-2-S004.
- The objection is made under paragraphs 3(3)(a) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that if minded to approve the proposals, the Secretary of State does so with modifications.

Procedural Matters

1. On 22 January 2020 Natural England (NE) submitted a compendium of reports to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved public access to the coast of Essex and Suffolk between Harwich and Shotley Gate. Each report is expressed to make free-standing statutory proposals for the respective parts of the coast, but with a single Overview document.
2. The period for making formal representations and objections to the reports closed on 18 March 2020 and 7 objections were received within the specified timescale. Six of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference MCA/HSG/01 to NE Report HSG 2 (HSG2). Objection references MCA/HSG/02,03,05,06 and 07 are the subject of separate reports.
3. Various representations were also received, and I address these below where they refer to the specific sections of trail before me.
4. The objecting landowner failed to attend the site visit arranged for 21 June 2021 although representatives of NE and Essex County Council were present. As landowner consent had not been given to enter private land, I was unable to walk the section of proposed trail to which the objection relates or the whole of the objector's suggested realignment. I was limited to views from the existing public path. For that reason, I re-arranged another site visit for 16 August 2021. On that occasion I was accompanied by [redacted] (on behalf of the objector), [redacted], and a representative of NE.
5. During the site visit, it emerged that the objector's proposed modification only followed that part of Ray Lane which is an existing public right of way. The modified route was not intended to include a section of Ray Lane where there are no existing public rights as shown on NE's published map. Written confirmation of the intended route was

Site visit made on 21 June 2021

File Ref: MCA/HSG/1-7

subsequently provided by the objector and NE was given opportunity to comment. The revised modification advocated by the objector is shown on the map at Annex 1.

6. On 25 July 2023 notice was published (the Schedule 6 Notice) stating that I was minded to determine that the proposals in the report fail, in the respects specified in the objection, to strike a fair balance as a result of the matter or matters specified in the objection. Further representations were invited. No responses were received.

Main Issues

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

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

9. The second objective is that, in association with the trail, a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as 'the coastal margin'.
10. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
11. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
12. Where, as in this case, it is proposed that the trail extends along a river estuary rather than the sea, section 301 of the Act applies. It states that NE may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing.
13. NE's Scheme, approved by the Secretary of State on 9 July 2013 ('the Approved Scheme'), sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.

14. My role is to determine whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State on the relevant Report accordingly.

The Trail

15. NE proposes to align the trail within the Harwich to Shotley Gate stretch by extending the trail from Harwich, at the mouth of the Stour estuary, along the Essex bank to Manningtree and Lawford, where the A137 crosses the estuary. From there, it returns to the mouth of the estuary via the Suffolk bank to end at Shotley Gate. Each report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Stour as far as Manningtree and Lawford.
16. The Stour estuary is relatively wide and shallow. Along with the adjacent Orwell estuary, it flows into the North Sea via Harwich harbour, flanked by Harwich International Port on one side and the Port of Felixstowe on the other. Despite some urban areas, the majority of the landscape is rural in character with mostly arable fields, scattered hamlets and villages. The soft geology erodes easily causing long lengths of shoreline to shift landward regularly.
17. Within the estuary, expansive mudflats are revealed at low tide attracting waders and wildfowl. Indeed, the estuary is valued by birdwatchers attracted by high populations of over-wintering and passage waterbirds. On the Essex bank there are three neighbouring nature reserves open to the public at Copperas Wood, Stour Wood and Wrabness.
18. The part of the trail subject to Chapter 2 of the Report would run from Ray Lane, Ramsey at a point adjacent to the sewage treatment works, to the north end of Stone Lane in Wrabness. The western half would follow the shoreline closely along an existing long distance public footpath (the Essex Way). The eastern half would be a short distance inland partly along an existing walked route, which is not an existing public right of way, and partly along a new field-edge route from S001 to S005. It is the new section between S001-S004 that is the subject of the objection by [redacted].
19. Numerous designated sites affect this stretch of coast. They include the Stour and Orwell Estuaries Special Protection Area and Ramsar site, the Stour Estuary Site of Special Scientific Interest (SSSI) for its geological and wildlife interest, the Stour and Copperas Woods SSSI (wildlife) along with local wildlife sites.
20. Access to the saltmarsh and majority of mudflat would be excluded by direction under section 25A of the Countryside and Rights of Way Act 2000 as amended ('CROWA') all year round seaward of route sections S001-S022 because NE considers it unsuitable for public access. This would not affect the route itself and would have no legal effect on land where coastal access rights do not apply.
21. Roll-back is not proposed in relation to sections S001-S009. Normal rollback is proposed for the remainder of the route to S022.

The Objection

22. [redacted]'s objection concerns the position of part of the proposed route between S001-S004, which he says would take out 1,160m of land currently in arable

production and which forms a very important part of the relatively small farming business.

23. At the time of discussions with NE, [redacted] had been persuaded that the proposed route was the best option. However, [redacted] now considers that another route D-R-Q-P would be a better option for the general public, the landowner and farmer. This route would take out only 645m of farmland. There is already a public footpath along part of the modified route where it runs along a farm track. This option is 10m away from the field edge thereby distancing the public from potentially hazardous working farm machinery.
24. [redacted] considers that the modification would be more practical and minimise damage to crops. It strikes a fairer balance, is safer for the public, and with considerably less impact on farming operations.
25. Part of NE's proposed route (C-B-P) would run parallel with the Manningtree to Harwich railway line. In places there is only 8m between the proposed route and the railway line separated by only a post and wire fence. The fence would not prevent dogs and the public entering the railway with significant risk to public safety.
26. Due to the topography along the proposed modified route (from Q-P) elevated estuary views are offered. It could also be established at significantly less cost than the proposal and therefore be a more effective use of tax-payer's money.

Representations

27. The Ramblers (Essex Area) state that their representation relates to all sections of the Report although the comments do not appear to concern the objected section between S001-S004. They are very pleased to see that the new path would avoid walkers having to use the B1352 road as it is dangerous for pedestrians. Realignment of the trail and additional signage through Copperas Wood (which lies beyond S004) would be of benefit to all and help protect the wood.
28. The Disabled Ramblers comment that significant numbers of people now use all-terrain mobility vehicles to travel on access routes in the open countryside, including challenging and rugged terrain. Users have the same access rights as walkers. In places, natural terrain will prevent access, but man-made structures can be changed. NE is requested to address man-made structures that present a barrier to those who use mobility vehicles. NE should also ensure that existing and proposed structures are suitable for large mobility vehicles and also comply with British Standards. There should be compliance with the Equality Act 2010 and CROWA 2000 and advice followed in the document titled 'Disabled Ramblers Notes on Infrastructure'.
29. Other representations do not relate to the objected stretch of trail and so I do not address them specifically in this report.

Natural England's original comments on the objection

30. NE acknowledges the adverse impacts of establishing a new path where none exists and which entails slight widening of the existing field margin where cultivation currently extends tight to the field boundary. The figures quoted by [redacted] are not disputed. The alternative route he proposes would reduce the length of new arable field-edge path to approximately 55% of NE's proposal.

31. However, in making proposals NE says it considered [redacted]'s preferences along with a range of other factors. NE accepts that [redacted] is best placed to assess the relative merits of the proposed route and alternative now suggested in terms of potential impacts on his business. Nevertheless, NE remains of the view that the proposed alignment strikes an appropriate balance.
32. If it had clearly been evident that the proposed route would have a substantially greater impact on the farm business than the proposed modification, then NE would have expected [redacted] to have raised it at the time of the 'walk the course' meeting or before the proposals were published.
33. The key principle set out in section 4.2 of Approved Scheme is that visitors should take primary responsibility for their own safety and of any children or other people in their care and should be able to decide for themselves the level of personal risk they wish to take. This text refers to visiting the coast, but NE maintains that the same principles can apply equally to trail alignments close to railway lines or potential interactions with farming activities/machinery. Visitors can be expected to take responsibility for managing any risks associated with hazards they could reasonably be expected to anticipate.
34. The railway line is a branch line linking Harwich with Manningtree on the Liverpool Street to Norwich high speed line. Trains travel relatively slowly but they clearly present a significant safety risk. The track and overhead lines are clearly visible and separated by 'a more or less' continuous line of scrub.
35. Network Rail are strongly risk adverse. They advised that the trail generally should be routed well away from the rail network and completely out of sight of potential crossing points. Network Rail did not respond to raise object to the proposals.
36. Nothing about this length of rail line makes it particularly high risk and the risks are clearly evident. Better fencing would improve safety further and Network Rail may evaluate this option. NE does not consider that the risks would justify mitigation measures or a different alignment.
37. Risks to the public from farming operations are clearly evident to path users and machine operators and readily avoided/mitigated. Where hazardous substances are used there is a duty of care on the operator/contractor/farmer to manage the risks appropriately. As there are other public paths on the farm, [redacted] will be used to managing operations to accommodate walkers.
38. It is implicit in the legislation and guidance that parts of the trail will be in arable environments. There is little to choose between the proposed route and suggested modification. The proposed route involves much greater field edge walking whereas the modification includes at least 650m of farm track where walkers would be likely to come into close contact with farm machinery at times.
39. For a route to be convenient it should be pleasant to walk along (section 4.3 of the Approved Scheme). Either route is pleasant but the proposed trail is at a higher level with more extensive views.
40. In terms of proximity to the sea, section 4.5 of the Approved Scheme provides that the route should normally be close to the sea otherwise it would fail in its primary purpose. The proposed trail is 250m-300m closer to the shoreline than the alternative. The trail

should normally offer views of the sea (section 4.6). Views of the sea are not extensive from the proposed trail but there are glimpses with a more coastal feel than the modified route.

41. Where there is a clear walked line along the coast, NE will normally propose to adopt it as per section 4.7 of the Approved Scheme. Nearly 40% of the modification would be along the clear line of an existing public right of way, which follows a farm track, but this would bring the disadvantages of being at a lower level, further inland and used by agricultural vehicles.
42. Any land seaward of the route qualifies automatically as coastal margin (section 4.8 of the Approved Scheme). For each route, the arable land is excepted from spreading room. If the land use were to change in future to a non-excepted use then land within the coastal margin would become accessible under the 2009 Act. It is unclear if [redacted] took this into account when making his objection.
43. At the 'walk the course' meeting, [redacted]'s primary consideration was to have substantial distance between the trail and the route he had made available to horse riders close to the southern edge of the relevant fields.
44. While the advantages of the proposal would not be overwhelming in the context of most national trails, they are significant in the context of a national trail focused on the 'coastal experience'. This is particularly relevant in the context of the great majority of the trail to the immediate east (covered by HSG 1), which is at a low level, remote from the estuary and in an urban setting.

Natural England's response to the objector's revised modification

45. In terms of the corrected alignment for the modified route utilising only Ray Lane where it is an existing public path, NE commented that the vast majority of the modified route is the same as the one originally proposed by [redacted]. Its previous comments therefore remain valid. However, NE did make a couple of new observations whilst on site with the Appointed Person on 16 August 2021.
46. Firstly, NE noticed two very wet areas on the proposed route that would not provide a suitable or pleasant surface for walkers. NE agrees with the point [redacted] made that people would wander up to 6m or more into his cropped areas to avoid these patches. This would create an additional small loss in revenue to his farming business. The proposed modified route would avoid this by following a firm track along Ray Lane before joining, and then following, a field margin on higher, better drained ground on the landward side of the same field.
47. Secondly, NE observed that whilst the proposed route is closer to the estuary and offers glimpses of it, the proposed modified route is on rising ground at its western end and would give a panoramic view across the estuary to Harwich and Felixstowe.
48. The key difference with the revision is that it is largely on [redacted]'s own land except for a short section along Ray Lane, which NE understands from the objector is jointly owned by him and the landowner to the south. This short section is an existing public right of way and already well used by the public. NE does not anticipate that aligning the Coast Path here will significantly change the pattern and levels of use of the public right of way.

49. With the revision, there would be a slight increase in the amount of modified route aligned on field margins but this would not have a significant impact on walkers. It would also require a sleeper bridge to enable walkers to cross a ditch, increasing the cost of implementing this section by about £300. As the revised entry point into the field is at a junction where the public right of way turns south, it would be a natural place for walkers to look at signage directions. The installation of a multi-directional finger post should suffice to keep walkers on the correct route.
50. In conclusion, NE finds there is little to choose between the proposed and modified routes from a walkers' perspective. The modified route would have less impact on the objector's farm business. There is potential for it to impact upon another landowner because it follows a track which the objector states he jointly owns with his neighbour to the south. However, it is not believed this impact will be significant because there is an existing well-used public right of way here already. Good signage at the point where the modified route turns north towards the estuary could ensure walkers stay on the legal route. NE would be content for its proposed route to be modified as proposed by the objector if the Secretary of State would prefer this.

Natural England's response to the representations

51. NE recognises its duties under the Equality Act 2010 and CROWA. The Approved Scheme outlines the principles followed to make the trail as easy to use for disabled people and those with reduced mobility. NE has endeavoured to meet those needs throughout the planning and design processes and would continue to do so through the implementation stage working alongside Essex and Suffolk County Councils. The importance of satisfying the relevant British Standards is recognised as well as the desirability of complying with relevant advice. Many parts of the Harwich to Shotley Gate stretch lend themselves to use by larger/all-terrain mobility vehicles, including the alignment covered by HSG2.

Discussion

52. The proposed trail would pass for some distance along the field edge beside the sewage treatment works. Whilst the sewage works cannot be seen through the foliage of the dense boundary trees, its presence is evident from the smell. This is unlikely to be pleasurable for walkers at times when the smell is at its most potent.
53. Smell would be less of an issue along the proposed modified route put forward by the objector. Depending upon wind direction, the sewage works may well still be smelt on approach along Ray Lane, but not in such close proximity as the proposal.
54. Specific regard must be had to the safety and convenience of those using the route (section 297(2) of the 2009 Act).
55. A long stretch of the proposed trail would run alongside the railway line, separated by trees and vegetation of varying density and width together with post and wire fencing. The fencing is not robust and is broken in places which would allow easy access to the railway line. A particular vulnerability would be access from dogs being walked off-lead with potentially catastrophic consequences. This may not be a high-speed line but I witnessed how passing trains still travel quite fast. Aside from the regular passenger service I also noted a freight train.

56. It is made plain that the erection of appropriate fencing would be a matter for those with responsibility for the railway. Even though objection was not raised by Network Rail, it does not automatically mean that the choice of route is appropriate. It is the responsibility of individuals to exercise appropriate care for their own and others safety. This is reflected in NE's approach to risk management on the trail being 'light touch', aiming to minimise any safety measures that would be restrictive on public access or enjoyment or that would conflict with land management or environmental objectives (section 4.2.3 of the Approved Scheme).
57. Nevertheless, without additional or replacement fencing there is an obvious risk to public safety particularly from children or dogs straying onto or near to the railway. Walkers may be expected to take necessary precautions, but those who are unfamiliar with the route may not be aware of the risks posed until reaching a point not far from the track due to tree cover screening the boundary. This is not a case where the presence of the railway is readily apparent in the approach to provide plenty of warning. It can be assumed that people will not trespass on the railway much in the same way that it can be assumed that people will not get too close to a cliff edge. That is different from loose dogs, say, straying close to the line. In effect, the safety and thus convenience of the route depends upon the actions of a third party to secure the boundary, which cannot be guaranteed. In comparison, none of these issues arise with the objector's proposed modification.
58. In accordance with section 297(2) of the 2009 Act, regard must be had to the desirability of the route adhering to the periphery of the coast and the providing views of the sea. Where the proposed trail runs parallel with the railway line there are occasional glimpses of the estuary through the trees. More views are likely to be available when the trees are not in leaf but those estuary views would still be distant. At all times of year, where there are gaps in the trees, the coast-side view would be dominated by the rail track and overhead lines lying between the path and shore.
59. The objector's suggested field edge path from P-Q does not afford any coastal views. However, it does provide expansive views of the surrounding countryside which stretch as far as the cranes of the Ports of Felixstowe, Harwich and Parkstone quay, visible on the horizon. Given the elevated level, there are also views at the highest point of Ramsey Church and village. Such views cannot be experienced from the proposed trail given the topography and adjacent treed boundaries. Many walkers may prefer the wide open views offered by the modified route compared with the more limited views beside a sewage works and railway line along the proposed trail.
60. In essence, neither route adheres to the periphery of the coast. Whilst there are nearer views of the coast from the proposed route than the alternative, those intermittent glimpses are not close nor is the walk coastal in character.
61. Where the suggested modified route follows Ray Lane, there would be some risk of walkers encountering farm vehicles and machinery. This appears unlikely to be a frequent occurrence given the relatively low levels of farm traffic along this private track. Sight lines are mostly good and engines audible in the tranquil surroundings allowing plenty of opportunity for walkers to step aside. Operators of farm vehicles/machinery are also likely to be alert to the possible presence of walkers along this stretch of lane as it is an existing public path. Indeed, the risks are no different from those already existing. Moreover, risk from farm traffic cannot have been perceived to be an issue by NE when it proposed that the trail should continue east

along Ray Lane past the front of the sewage works. Thus, the modification would be a continuation of the trail along Ray Lane without changing direction.

62. The modified route suggested by [redacted] avoids the section of Ray Lane that passes immediately in front of the farmyard and buildings where most vehicular activity might be expected. Instead, walkers would follow the grassed field edge track (currently used by horse riders as a permissive path) running parallel with but separated from Ray Lane by a ditch and overgrowth. In order to connect with Ray Lane, a gap would need to be created and infrastructure installed but this does not appear to be anything major.
63. The modified route would involve use of part of Ray Lane which I understand to be in shared ownership between [redacted] and the neighbouring farmer. However, the whole of the affected section is already in public use as a footpath. Coastal access rights would exist 2m either side of the centre line identified for the trail. As Ray Lane is narrower than 4m, notionally the trail would encompass a strip of land on either side, unless the width of trail was restricted. In reality, walkers would in all likelihood follow the hard surfaced track forming Ray Lane with negligible impact on other land.
64. A considerable length of cropped field edge would be affected by the proposals. Not only would there be impact from loss of land available for cultivation to accommodate the 4m wide Coast Path from the newly created stretch of path from S001 to S004, but there could also be implications for farming practices, such as crop spraying, when walkers were in the vicinity. The proposed modified route would affect much less agricultural land with a significant proportion of it following an existing public path.
65. Through this process, the landowner has been alerted to NE's view on the possible implications from spreading room if the land use changes so that it is no longer 'excepted' land. NE does not mention the possibility, in that eventuality, of the land being excluded from the coastal margin by direction. The objector's position remains unaltered regardless.

Conclusions

66. The scenery in this area is not characteristically coastal. The alignment proposed fails to provide clear coastal views. Where such views exist, they are not close. When the trees are in leaf, the views would be very limited. The close proximity of the trail to the railway line and sewage works might well diminish the pleasure for walkers as might the poor surface conditions where water accumulates. In addition, there would be significant adverse effect to the objector from the loss of cultivated land. As originally proposed, the trail would give rise to potential public safety concerns along with significant land management impacts.
67. A modified route using a longer stretch of Ray Lane where public rights already exist would avoid the public safety issues associated with the proximity of the proposed path to the railway line. It would also mitigate the effect on land cultivation and management. By utilising an existing walked line (in part), the modified route would accord with section 4.7.1 of the Approved Scheme. Whilst there may be increased establishment costs from signage and infrastructure, that may be offset by reduced maintenance costs in using an established track. Against that, the proposed modification does not provide sea or estuary views and it is further inland than the proposed alignment.

68. All things considered, the proposed modification would, on balance, deliver a better route for the public in terms of safety, convenience, ease of walking and views. The adversity to the farmer would also be largely addressed by adopting his suggested modification as the Coast Path.

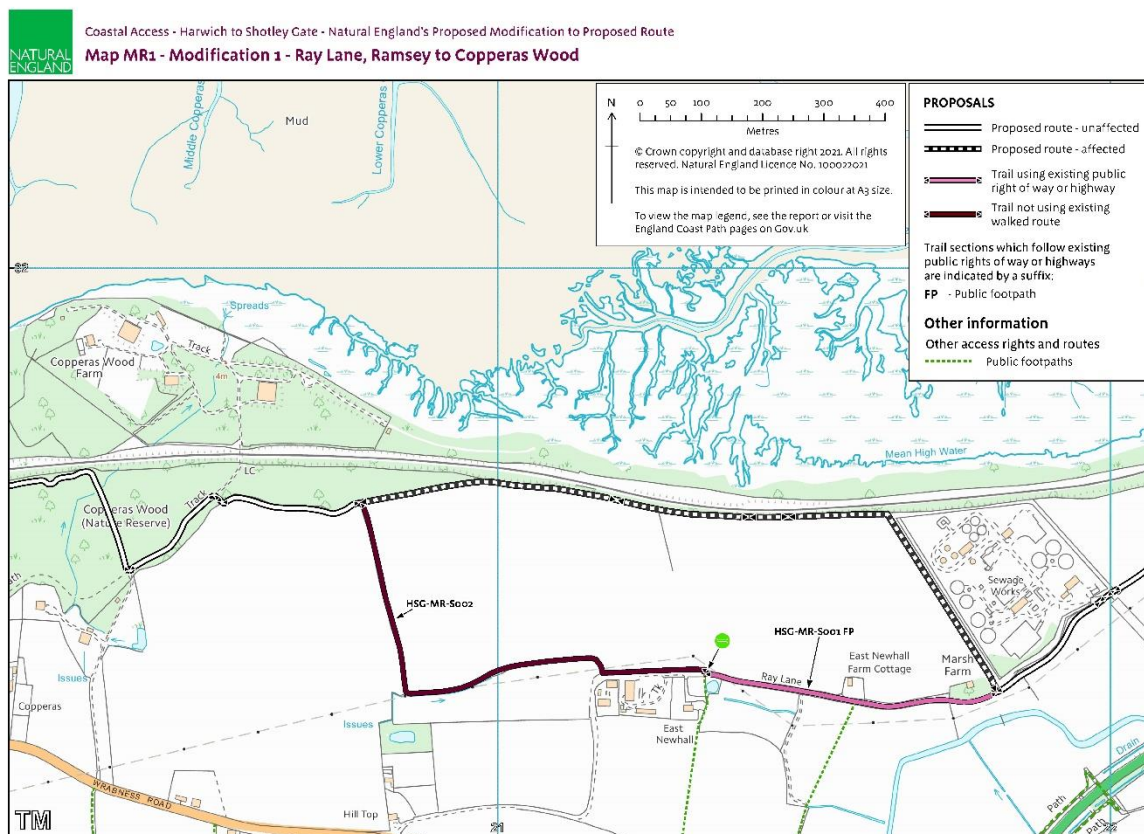
Recommendation

69. Having regard to these and to all other matters raised, I conclude that the proposals set out in the report 2 fail to strike a fair balance as a result of the matters raised in relation to the objection. However, I consider that a modification which aligned the trail along the revised alignment proposed by the objector would meet the coastal access requirements, subject to the creation of a gap to link Ray Lane with the adjacent field to the north and the provision of suitable infrastructure and waymarking. Consequential amendments would be required to the Proposals Table in section 2.3.1 of Report HSG 2, as set out in Annex 2.
70. I therefore recommend that, if minded to approve the proposals, the Secretary of State should do so with modifications of the kind described in the recommendation above, being modifications which I consider would mitigate the effects of the failure to strike a fair balance.

[redacted]

APPOINTED PERSON

ANNEX 1



ANNEX 2

1	2	3	4	5a	5b	5c	6
Map(s)	Routes Section number(s)	Current status of route section(s)	Roll back proposed?	Landward margin contains coastal land type	Proposal to specify landward boundary of margin (see maps)	Reason for landward boundary proposal	Explanatory notes
2a	HSG-2-S001	Public Footpath	No	No			
2a	HSG-2-S002	Not an existing walked route	No	No			
2a	HSG-2-S003*	Not an existing walked route	No	No			
2a	HSG-2-S004*	Not an existing walked route	No	No			

ANNEX 3: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT

Habitats Regulations 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').
2. The Competent Authority is required to make an Appropriate Assessment ('AA') of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England ('NE'). If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
3. A 'shadow' HRA was undertaken by NE for the whole of the Harwich to Shotley Gate stretch of the proposed England Coast Path. It provides the information to inform the Competent Authority's AA in accordance with the assessment and review provisions of the Habitats Regulations and has been considered in making this recommendation. The shadow HRA (referred to hereafter as 'the HRA') was signed off on 8 November 2019 and is recorded separately in NE's suite of reports. The HRA considered the potential impacts of the coastal access proposals on the Stour and Estuaries Special Protection Area ('SPA') and the Stour and Orwell Estuaries Ramsar site ('the Ramsar site'), being European sites of international importance for wildlife. The HRA is considered to have identified the relevant sites affected by the proposals.
4. The HRA screening exercise found that the proposals could have significant effects on some or all of the Qualifying Features of the European Sites 'alone' or in-combination in the absence of mitigation measures.
5. Initial screening set out that as the plan or project is not either directly connected with, or necessary to, the management of all of the European sites' qualifying features, and/or contains non-conservation elements, further HRA was required. The overall Screening Decision found that as the plan or project is likely to have significant effects (or may have significant effects) on some or all of the qualifying features of the European Sites alone, further AA of the project alone was required. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.
6. The scope of the assessment is set out in Table 6 of the HRA (page 26) and identifies the environmental pressure and qualifying features for which significant effects, 'alone' or 'in combination', would be likely or could not be ruled out.

7. Table 7 of the HRA (page 33) summarises key locations of saltmarsh within the European sites including saltmarsh within HSG2 and near to the disputed section between S001 to S004.
8. The assessment of potentially adverse effects alone takes account of additional mitigation measures incorporated into the design of the access proposal as set out in Table 8 (pages 57 to 60). The assessment is not limited to HSG2 but covers the whole Harwich to Shotley Gate stretch. It ascertains that the risks to achieving the identified conservation objectives are effectively addressed by the proposals and there would be no adverse effect on site integrity, taking into account incorporated mitigation measures. These measures fall into three categories of route alignment, coastal margin and signage. Nonetheless, there is some residual risk of insignificant impacts identified from:
 - Disturbance to foraging or resting non-breeding waterbirds (waders and waterfowl) both within the SPA/Ramsar site and on functionally-linked land outside;
 - Changes in recreational activities which may lead to reduced fitness and reduction in population and/or contraction in the distribution of qualifying features within or near to the site.
9. In section D4 of the HRA, NE assessed whether any appreciable effects that are not themselves considered to be adverse alone could give rise to an adverse effect on integrity in combination with other plans or projects. NE considers that the risks bullet pointed above are residual and appreciable effects likely to arise from this project which have the potential to act in combination with those from other proposed plans or projects. Therefore, at Table 9 (pages 61 to 69), consideration was given to whether any combinable risks have been identified for other live plans or projects. These are identified as the local plans of the Suffolk planning authorities closest to the Stour estuary, the emerging local plans of the three North Essex Authorities together with other proposals for the England Coast Path, Network Rail's programme of rail crossing closures and associated creation of new lengths of public footpath, potential major development and extension of the Suffolk Coast and Heaths AONB.
10. The importance of the Stour & Orwell Estuaries Management Strategy 2016-2020 is also highlighted and the document appended. It contains several objective and associated actions directly relevant to the Harwich to Shotley Gate stretch. The strategy has not been subject to HRA and so it does not identify significant or non-significant risks for formal 'in-combination' assessment.
11. From its review, NE did not identify any insignificant and combinable effects that are likely to arise from other plans or projects and found that no further in-combination assessment was required.
12. NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI of the relevant designated sites either alone or in combination with other plans and projects.
13. Part E of the HRA confirms that NE is satisfied that its proposals improve access to the English coast between Harwich and Shotley Gate are fully compatible with the relevant European site conservation objectives.

14. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Approved Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not have an AEoI of the relevant European sites.
15. If minded to modify the proposals, further assessment under the Habitats Regulations may be needed before approval is given. In this instance, a modification of the route is recommended and it is noted that this would take the disputed section between HSG-2-S001 to HSG-2-S004 further inland away from the saltmarsh.

Nature Conservation Assessment

16. Although not forming part of the HRA, NE has also undertaken a Nature Conservation Assessment which should be read in conjunction with the HRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest, Marine Conservation Zones and undesignated sites and features of local importance, which are not already addressed in the HRA including several local wildlife sites.
17. NE was satisfied that the proposals to improve access to the English coast between Harwich and Shotley Gate were fully compatible with its duty to further the conservation and enhancement of the notified features of the Stour Estuary SSSI and Stour and Copperas Woods SSSI, consistent with the proper exercise of its functions.
18. In respect of the relevant sites or features and the local wildlife sites along this stretch of coast, NE is satisfied that in developing new access proposals an 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] Solicitor

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

Date:

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Harwich to Shotley Gate

Objection Reference: MCA/HSG/02

Stone Point, Wrabness to Hopping Bridge, Mistley

- On 22 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 16 March 2020 to Chapter 3 of the Report HSG 3: Stone Point, Wrabness to Hopping Bridge, Mistley, has been made by [redacted] of BL and JE Mitchell and Sons. The land in the Report to which the objection relates is route section ref. HSG-3-OA-002.
- The objection is made under paragraph 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, as modified, do not fail to strike a fair balance.

Procedural Matters

19. On 22 January 2020 Natural England (NE) submitted a compendium of reports to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved public access to the Essex and Suffolk coast between Harwich and Shotley Gate. Each report is expressed to make free-standing statutory proposals for the respective parts of the coast, but with a single Overview document.
20. The period for making formal representations and objections to the reports closed on 18 March 2020 and 7 objections were received within the specified timescale. Six of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to objection reference MCA/HSG/02 to NE Report HSG 3 ('HSG3'). One other objection to HSG3 (MCA/HSG/03) is the subject of a separate report. There are also separate reports for objection references MCA/HSG/01,05,06 and 07 concerning other stretches of coast.
21. Various representations were also received and I address these below where they refer to the specific section of trail before me.
22. I conducted a site inspection on 21 June 2021 when I was accompanied by [redacted], the objector, and representatives of NE and Essex County Council.
23. All sections of the route referred to in this Report have the prefix HSG-3 and for ease of reference I shall use the S0 number only.
24. It emerged during the site visit that the optional alternative route modification sought by [redacted] was intended to follow a different alignment to that plotted on the plan prepared by NE. Instead of joining Shore Lane next to the railway bridge, [redacted] had envisaged the optional alternative route ('OAR') running parallel with Shore Lane along the field edge and joining the lane further inland.

Site visit made on 21 June 2021

File Ref: MCA/HSG/1-7

[redacted] confirmed that the entire proposed modification would affect land within his ownership only.

25. In light of this anomaly, I wrote to [redacted] after the site visit seeking written confirmation of his suggested alignment for the OAR with reference to a marked-up map. I also invited NE's comments on the revision. After [redacted] confirmed the plotted route, NE produced a revised map for the proposed OAR modification which is appended to this report.

Main Issues

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

27. The first objective is to secure a route for the whole of the English coast which:

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

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.

28. 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'.

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

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

30. 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.

31. In cases such as this where it is proposed that the trail extends along a river estuary rather than the sea, section 301 of the Act applies. It states that NE may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing.

32. NE's Approved Scheme 2013¹ ('the Approved Scheme') sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
33. My role is to determine whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State on the relevant Report accordingly.

The Coastal Route

34. NE proposes to align the trail within the Harwich to Shotley Gate stretch by extending the trail from Harwich, at the mouth of the Stour estuary, along the Essex bank to Manningtree and Lawford, where the A137 crosses the estuary. From there, it returns to the mouth of the estuary via the Suffolk bank to end at Shotley Gate. Each report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Stour as far as Manningtree and Lawford.
35. The Stour estuary is relatively wide and shallow. Along with the adjacent Orwell estuary, it flows into the North Sea via Harwich harbour, flanked by Harwich International Port on one side and the Port of Felixstowe on the other. Despite some urban areas, the majority of the landscape is rural in character with mostly arable fields, scattered hamlets, and villages. The soft geology erodes easily causing long lengths of shoreline to shift landward regularly.
36. Within the estuary expansive mudflats are revealed at low tide attracting waders and wildfowl. Indeed, the estuary is valued by birdwatchers attracted by high populations of over-wintering and passage waterbirds. On the Essex bank there are three neighbouring nature reserves open to the public at Copperas Wood, Stour Wood and Wrabness.
37. The part of the trail subject to Chapter 3 of the Report covers the stretch of coast between Stone Point, Wrabness and Hopping Bridge, Mistley. The proposed alignment is mostly located inland which takes into account the Manningtree to Harwich railway line being close to the shoreline. The trail would follow the shoreline for about a quarter of the route. It would generally follow public rights of way but also include a new length of field-edge route and a length of OAR. It is the position of this OAR which has given rise to the objection.
38. The Report identifies that the trail is partly aligned on a relatively well-consolidated beach to the east of Shore Lane, Bradfield which is an existing public footpath. It is described currently as 'a favoured and attractive route' but prone to inundation by higher tides. For that reason, an OAR is proposed for S019 for approximately 400m just inside the adjacent field edge. Paragraph 3.2.23 of the Report explains that public access to the ordinary route may be interrupted when exceptionally high tides inundate the beach.
39. Roll-back is proposed in relation to S019 and the landward boundary of the coastal margin along this stretch is to coincide with the landward edge of the beach. The OAR to S019 is not an existing walked route. Normal roll-back would

¹ Approved by the Secretary of State on 9 July 2013

also apply to the OAR² with the seaward boundary being the 'seaward edge of trail (2m)' and the landward boundary being 'landward edge of trail (2m)'.

40. The Report explains that NE considered aligning the OAR along the existing inland public right of way thereby avoiding the need to create a new route. This option was dismissed because it would be inconvenient for users. When approaching from the east, at the point at which users would become aware of the need to use an alternative route (due to the beach route being inundated) they would need to back-track 250m to pick up the public path taking them inland. This route would entail walking 1100m to re-join the trail, rather than 500m using the proposed route. It was also considered that using the existing public path as the OAR would take users to the landward side of the railway embankment which would block views of the estuary.

The Objection

[redacted] (BL and JE Mitchell and Sons) – MCA/HSG/02

41. The objection concerns only the position of the OAR route along the field edge forming part of Ragmarsh Farm annotated HSG-3-OA002 on Map HSG 3b - Wrabness Nature Reserve to Shore Lane. The OAR would run parallel with a section of proposed trail beside S019 and part of S020.
42. The land affected is Grade 1 and 2 capable of growing high class onions, potatoes, carrots, and milling wheat. The guidance says not to use prime agricultural land where there is an alternative route. There is an alternative using existing public rights of way from 220m east of point OA-001 on map 3b. [redacted] thought NE had conceded to this suggestion.
43. The gateway where the route is proposed to exit is presently blocked by agricultural machinery put in place to prevent fly tipping, which is on the increase and had occurred only the previous week. The other gateway is in view of houses. Blocking the route also prevents hare coursers from entering.
44. Supermarket inspectors will reject a whole field for contamination if glass bottles are found in any fields where crops grow and may not use any field with footpaths. Public footpaths have already been moved to field edges through lengthy negotiations and in so doing giving up several hundred metres of land and making sure no spraying and fertilising is done in close proximity to keep the general public safe.
45. There are massive implications on the way the land is farmed and extra stresses on policing the proposed alternative route ourselves if it is used (by the public) at any time and not just during high tides.

Natural England's Response

46. Circumstances have changed with land management practices along this stretch since NE published its proposals. At the time of drafting, the OAR was very largely aligned on uncultivated land. A legitimate point is raised over the use of the alternative route at times other than during high tides. Taking both factors into account it is agreed that it would be more appropriate to identify the existing

² See Table 3.3.2 of the Report

- inland public right of way as the OAR, to be signed at both ends. The modification proposed by the objector is agreed.
47. This response from NE was made on the basis of the modified OAR terminating next to the railway bridge south of point S021. Following the site visit, NE provided further comments on the corrected alignment for the OAR modification with a different termination point.
 48. The comments describe the powers of NE to propose an optional alternative to the 'ordinary' route pursuant to section 55C(4) of the 1949 Act.
 49. Route section S019 is aligned along the beach and would be unavailable to the public a number of times a year due to tidal action. In line with guidance at 4.10.18 of the Approved Scheme, NE proposed the OAR to enable walkers to continue their onward journey. NE apologises for incorrectly mapping [redacted]'s proposal that an existing footpath be used instead.
 50. NE assessed the two OAR options during the site visit on 20 June 2021. NE agrees that the OAR originally proposed should be modified because of the change in land management practices with new areas cultivated, some areas grassed to establish a camp site and vehicular access blocked by locked gates.
 51. The modification as originally shown would have created an additional access point into the landowner's field from Shore Lane to which he objected. Whilst shorter than [redacted]'s preferred option, it would require the installation of a steep set of steps and a sleeper bridge to meet Shore Lane. This would be inconvenient to walkers and could present a barrier to those with reduced mobility.
 52. On the other hand, [redacted]'s preferred option involves a slightly longer walk for trail users on a field margin but it meets Shore Lane at level, which would be more convenient for walkers. It would also avoid additional infrastructure costs.
 53. NE was concerned that [redacted]'s preferred OAR was longer and that walkers approaching S019 from Shore Lane, and finding it inundated, would need to go further to retrace their steps to access the OAR. This might create risk that some would trespass on [redacted]'s crops and/or campsite to avoid the detour. Clear signage would be needed to direct walkers appropriately.
 54. NE has had regard to section 4.3.1 of the Approved Scheme which provides that for a route to be convenient it should be reasonably direct and pleasant to walk along with reasonable adjustments for disabled people and others with reduced mobility. In line with this guidance, NE agrees with the objector's proposed OAR modification albeit slightly less direct than the option it previously agreed.

Representations

55. The Ramblers, Essex Area, are pleased the trail would avoid the junction of the existing public right of way and B1352 road, which is on a blind bend. They would have liked to have seen the alignment closer to the coast in places. The inland sections described by The Ramblers are not those forming the basis of this objection.
56. Representations from The Royal Society for the Protection of Birds ('RSPB') concern the section of trail between S016-S019, part of which extends beside the OAR where objection has been raised. These representations reflect its objections

made to the separate Report for HSG 6. The RSPB considers that the European Special Protection Area ('SPA') and international Ramsar site designations that recognise the estuary's wildlife of national and international significance, are not being taken seriously enough. The local evidence for disturbance to wild waterbirds caused by dogs is strong and a troubling precedent is being set regarding the relative importance of nature conservation interests.

57. The RSPB want section 26(3)(a) restrictions on any sections of the path where dogs off leads could realistically access the mudflats and saltmarshes, as well as appropriate signage to reinforce that people or dogs straying from the path is illegal. The lack of section 26(3)(a) exclusion is inconsistent with other stretches of England Coast Path. For example, the Aldeburgh to Hopton-on-Sea stretch has proposed four separate sections with such exclusions, two of which enforce dogs on leads during periods of high sensitivity. The RSPB suggests a direction on nature conservation grounds for HSG3 between S016-S019 for people with dogs to be excluded from the coastal margin to protect sensitive wildlife (non-breeding waterbirds).
58. Concerns are also expressed by the RSPB to the effectiveness of mitigation measures, particularly in relation to spreading room eventually excluded under sections 25 and 26 CROWA, and the adequacy of signage. It is essential that excluded areas are clearly marked on the ground and that signage is carefully located. Monitoring of the effectiveness of the measures is recommended and further mitigation, if required.
59. None of the other representations relate specifically to the sections of trail along the objected part of S019.

Natural England's comments on the representations

60. NE acknowledges the special value of the Stour estuary to waterbirds which is largely due to its extensive habitats and relatively low levels of disturbance. NE also recognises the importance of research undertaken by RSPB on the Stour and Orwell estuaries to quantify the impacts of disturbance.
61. If the proposals are approved by the Secretary of State then NE would make directions to implement access restrictions and exclusions. A direction to exclude access would cancel out coastal access rights and a number of grounds are available. If NE decides that an area of mudflat or saltmarsh is substantially unsuitable for use by the general public then it would exclude access all year round. That is the most restrictive option. It does not mean that the importance of the habitat for wildlife is being overlooked.
62. The Harwich to Shotley Gate Coastal Access Reports, Habitats Regulations Assessment ('HRA') and Nature Conservation Assessment all make it clear that in the unlikely event of needing to remove s25A exclusions for any areas of mudflat or saltmarsh, NE would first consider whether this action would bring about the need to exclude or restrict coastal access rights.
63. Where there is a need to draw the public's attention to such measures/sensitivities NE will often convey messages to the public alongside those highlighting dangers to the public. In large areas those messages may be at strategic points e.g. key parking or pedestrian access points. Where the objective

is to persuade visitors to behave in a particular way this can be done most effectively through carefully targeted information.

64. The HRA confirms that it would be appropriate for this saltmarsh to have access excluded under section 25A but recognise that it is slightly less hazardous to access than most others on the estuary. There is limited evidence that a small amount of access already takes place and so it is intended to underline the absence of coastal access rights and the risks to wildlife by installing a pair of discrete signs to the east and west.
65. NE does not propose to install signage elsewhere as sought by the RSPB because there is no proposal that the saltmarsh and mudflats seaward of these route sections should be subject to section 26(3)(a) exclusions. Signage would introduce unacceptable levels of visual clutter and raise concerns about ongoing maintenance. The shoreline between S016-S019 is served by an existing public right of way which is proposed as the trail and so signage contrary to public rights of way legislation cannot be introduced e.g. 'dogs on leads'. Except where identified, there is not perceived to be a need for more signs as the mudflats are extensive and unwelcoming to access. The trail is only expected to bring about a small increase in recreational activity in the area.
66. Prior to opening the trail, checks would be made to ensure the implementation of required establishment works including any special mitigation measures.
67. Monitoring of the protected site would continue. If public access was identified as a cause of a site falling short of its conservation objectives then the coastal access provisions may need to be modified.
68. NE does not propose any bespoke monitoring as the trail would largely be on an existing public path and access rights to the seawall are unaffected by the proposals. Most of the saltmarsh and mudflat habitats are extremely difficult to gain access to from the adjacent trail route.

Discussion

69. An OAR denotes an alternative route which the public has the option to use at times when the normal route (even though not formally closed) is unsuitable for use because of flooding, tidal action, coastal erosion, or other geomorphological processes.
70. The trail along S019 follows the foreshore. The OAR as proposed in the Report runs virtually parallel with the trail but at a higher level along the edge of the adjacent arable field so that similar coastal views would be achieved.
71. The modification, as revised, would be further inland than the OAR proposed by NE. It would follow existing public paths commencing along the field edge which runs parallel with Shore Lane before changing direction to continue beside the railway embankment on one side with arable fields to the other. Another change of direction would go beneath the railway bridge to proceed in a straight line to connect with the trail on the beach.
72. There would be risk that walkers faced with being unable to access the trail at the western end of S019, due to tidal conditions, would seek another way around without returning as far along Shore Lane as needed to take the OAR promoted by the objector. Upon reaching the beach and discovering a high tide, users would

need to backtrack along Shore Lane for some distance in order to reach the field entry point of the modified (and corrected) OAR. Although less convenient than the OAR originally proposed, the risk of trespass from walkers seeking a shortcut could be mitigated by the provision of clear signage.

73. If the modified OAR were to terminate along Shore Lane beside the railway bridge, as originally shown by NE before the correction, then infrastructure would need to be installed to overcome a ditch and steep bank. A sleeper bridge, or suchlike, across the ditch and steps up the bank would be less accessible to all members of the public than the objector's suggested termination point further along Shore Lane. This would utilise an existing field entry point where there is no ditch and land levels are much flatter avoiding accessibility issues. As there is now consensus between NE and the objector that the OAR modification shown on NE's published map had the wrong termination point, which neither support, this option does not warrant further consideration.
74. As an inland route, the corrected modified OAR would have more limited estuary views. Indeed, much of the alignment is behind the railway embankment which blocks seaward views. In that regard, the modification would not reflect one of the key objectives but this would not be the main trail. Moreover, the walk through the fields and expansive views of open countryside would offer a pleasant walk albeit lacking a coastal feel.
75. By following existing paths there would be no further impact upon arable production from the modified OAR in contrast with the OAR in NE's proposals.
76. In terms of the RSPB representation, this would not be a case of introducing the public to a previously un-walked path. The main trail along this stretch would follow an existing public path (as far as it is possible to gauge on the ground). As such, the risk from dogs entering the mudflats and saltmarsh is unlikely to be any greater than exists already. The reason given in the Report at paragraph 3.2.8 for the trail adhering to existing highways and public rights of way is for the specific purpose of avoiding increased disturbance of non-breeding waterbirds feeding and roosting on intertidal mud and saltmarsh. This is in recognition of the SPA, which is the highest level of habitat/species potentially affected.
77. As set out in Figure 1 of the Approved Scheme, the public already has rights to use such highways and these take precedence over the coastal access rights. There would be no requirement for users of the public path to keep dogs on leads and such a requirement could not be imposed along this section of path.
78. The installation of a pair of signs is proposed along S001-S048 explaining the importance of not allowing dogs on the foreshore to the west of Wrabness Point beach near Sluice Rill/Wrabness Nature Reserve. Such signage is not proposed along S019 and on the information before me there is no reasoned justification to consider it necessary when S019 is just one part of a longer stretch of path.
79. It is made clear at paragraph 3.2.16 of the Report that access to the saltmarsh and majority of mudflat would be excluded all year round seaward of route sections S001-S048. Even though this would be on the basis that those areas are unsuitable for public access under section 25A of the Countryside and Rights of Way Act 2000 ('CROWA'), those same measures would also serve to protect nature conservation. If a direction were to be lifted then the Report confirms that the need for further measures would be considered which is likely to include the

restriction or exclusion of access under section 26(3)(a) of CROWA to protect sensitive wildlife. In effect, the most comprehensive ground available would be used to exclude access and there would be no need to identify other grounds.

Conclusion

80. The modified OAR (as corrected) would be longer and thus less convenient to the public than that proposed by NE, with fewer and more distant estuary views. However, given the potential effect on farming operations, as conceded by NE, which would occur from use of the originally proposed OAR, it would not strike a fair balance when the modified OAR would be a suitable, available alternative utilising existing public paths which offer pleasant countryside views.

Recommendation

81. A modification of HSG-3-OA002 to align the optional alternative route along the existing public path, as shown on the map at Appendix 1, would meet the coastal access requirements. A consequential amendment would be required to the proposed Table of 'Alternative routes and optional alternative route details' in section 3.3.2 of Report HSG 3, as set out in Appendix 2.
82. NE has agreed to the modifications. No new potential objectors have been identified in consequence of the revised optional alternative modification as proposed by the owner/occupier.
83. With those modifications, I conclude that the proposals would not fail to strike a fair balance. I therefore recommend Report HSG 3 to the Secretary of State, subject to the modifications, and that a determination is made to this effect.

[redacted]

APPOINTED PERSON

Appendix 1 [insert map]

Appendix 2

1	2	3	4	5a	5b	6
Map(s)	Routes Section number(s)	Current status of route section(s)	Roll back proposed?	Proposals to specify seaward boundary of alternative route strip	Proposal to specify landward boundary of alternative route strip	Explanatory notes
3b	HSG-3- OA002*	Public Footpath	Yes- normal	Seaward edge of trail (2m)	Landward edge of trail (2m)	

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

by [redacted] Solicitor

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

Date:

Marine and Coastal Access Act 2009

Objections by T W Logistics Limited

Regarding Coastal Access Proposals by Natural England

Relating to Harwich to Shotley Gate

Objection Reference: MCA/HSG/03

Stone Point, Wrabness to Hopping Bridge, Mistley

- On 22 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 18 March 2020 to Chapter 3 of the Report HSG 3: Stone Point, Wrabness to Hopping Bridge, Mistley has been made by [redacted] and [redacted] of T W Logistics Limited. The land in the Report to which the objection relates is route section ref. Port of Mistley.
- The objection is made under paragraphs 3(3)(a),(d) and (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.

Procedural Matters

84. On 22 January 2020 Natural England (NE) submitted a compendium of reports to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved public access to the Essex and Suffolk coast between Harwich and Shotley Gate. Each report is expressed to make free-standing statutory proposals for the respective parts of the coast, but with a single Overview document.
85. The period for making formal representations and objections to the reports closed on 18 March 2020 and 7 objections were received within the specified timescale. Six of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. There were 2 objections to NE Report HSG 3 ('HSG3'). This report relates to objection ref: MCA/HSG/03. The other objection to HSG3 (ref: MCA/HSG/02) will be the subject of a separate report. There are also separate reports for objection refs: MCA/HSG/01,05,06 and 07 concerning other stretches of coast.
86. Various representations were also received and I address these below where they refer to the specific section of trail before me.
87. All sections of the route referred to in this Report have the prefix HSG-3 and for ease of reference I shall use the S0 number only.
88. I conducted a site inspection on 21 June 2021 when I was accompanied by representatives of the landowners, NE and Essex County Council. During my visit the representative for T W Logistics Ltd confirmed that the section of disputed trail through the Port of Mistley lies between S044-S047 as shown on map 3e.

Main Issues

Site visits made on 21 June 2021 & 20 July 2022

File Ref: MCA/HSG/05

89. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ('the Act') and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
90. The first objective is to secure a route for the whole of the English coast which:
- (e) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (f) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
- 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.
91. 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'.
92. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (g) the safety and convenience of those using the trail,
 - (h) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (i) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
93. 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.
94. In cases such as this where it is proposed that the trail extends along a river estuary rather than the sea, section 301 of the Act applies. It states that NE may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing.
95. NE's Approved Scheme 2013³ ('the Approved Scheme') sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
96. My role is to determine whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State on the relevant Report accordingly.

The Coastal Route

³ Approved by the Secretary of State on 9 July 2013

97. NE proposes to align the trail within the Harwich to Shotley Gate stretch by extending the trail from Harwich, at the mouth of the Stour estuary, along the Essex bank to Manningtree and Lawford, where the A137 crosses the estuary. From there, it returns to the mouth of the estuary via the Suffolk bank to end at Shotley Gate. Each Report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Stour as far as Manningtree and Lawford.
98. The Stour estuary is relatively wide and shallow. Along with the adjacent Orwell estuary, it flows into the North Sea via Harwich harbour, flanked by Harwich International Port on one side and the Port of Felixstowe on the other. Despite some urban areas, the majority of the landscape is rural in character with mostly arable fields, scattered hamlets and villages. The soft geology erodes easily causing long lengths of shoreline to shift landward regularly.
99. Within the estuary expansive mudflats are revealed at low tide attracting waders and wildfowl. Indeed, the estuary is valued by birdwatchers attracted by high populations of over-wintering and passage waterbirds. On the Essex bank there are three neighbouring nature reserves open to the public at Copperas Wood, Stour Wood and Wrabness.
100. The part of the trail subject to Chapter 3 of the Report covers the stretch of coast between Stone Point, Wrabness and Hopping Bridge, Mistley. The proposed alignment is mostly located inland which takes account of the Manningtree to Harwich railway line being close to the shoreline. The trail would follow the shoreline for about a quarter of the route.
101. The Report describes how the trail would generally follow public rights of way but also include a new length of field-edge route and a length of optional alternative route. The position of this optional alternative route has given rise to another objection to HSG 3 which is the subject of a separate report. The trail would also include what is described as 'a roadside pavement at the north-western end of Mistley Quay, which has long been used as a public highway, although it has not yet been dedicated as such.' This refers to S046 which is part of the route subject to this report.
102. In terms of accessibility, the Report explains that the route adheres to a level/gently sloping roadside footway through Mistley, as far as Hopping Bridge, with the exception of Mistley Quay. There is a steep slope in the tarmacked highway surface where the trail departs from the B1352 and descends on to Mistley Quay at S044. The surface is gently sloping tarmac along the north-western part of the alignment.
103. The current status of the proposed trail between S044-S047 is either public highway or 'other existing walked route' (along S046) and no roll-back applies. NE proposes that the landward boundary of the coastal margin along S046 should be the pavement edge.
104. In relation to estuaries, the Approved Scheme states that careful consideration will always be given to the option of extending the trail as far as the first bridge or tunnel as that is in keeping with the duty to have regard to the desirability of ensuring, so far as reasonably practicable, that interruptions to the trail are kept to a minimum and the requirement to consider any other recreational benefits that would accrue. However, in all circumstances, consideration will be given to

whether the cost of this would be proportionate to the extra public enjoyment of the coast that would result.

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

Objection

[redacted] & [redacted] (T W Logistics Limited) – MCA/HSG/03

106. The objection concerns the proposed trail through the Port of Mistley. Whilst not specified in the application, it was clarified on site that the objection relates to the section of trail between S044 to S047 where it departs from the B1352.
107. The objector states that the proposal would create a new public right of way in parallel with and in very close proximity to Mistley High Street, being the principal street and means of pedestrian passage between Manningtree, Mistley and New Mistley. A deviation from it is not justified.
108. The proposed deviation would not accord with the objective and duty under coastal access legislation and associated coastal access guidance. It fails to follow policy for operating ports. It would not meet the purposes of the scheme, would be substandard and does not enable pedestrian passage due to vehicles parking on the proposed alignment.
109. The route would pass along the edge of the curtilage of port premises.
110. The Report does not illustrate the coastal margin or set out adequate information in relation to excepted land within the coastal margin.
111. A modification is suggested to use Mistley High Street instead.

Representations

112. The Ramblers, Essex Area, are pleased the trail would avoid the junction of the existing public right of way and B1352 road which is on a blind bend. They would have liked to have seen the alignment closer to the coast in places.
113. The inland sections of trail to which those comments relate are not those forming the basis of this objection. Similarly, none of the other representations relate specifically to the section of trail through the Port of Mistley.

Natural England's comments on the objections

114. There is no obligation on NE to propose existing routes for the coast path.
115. No examples or evidence are produced to show how the proposals fail to comply with the legislation.
116. NE considered the relative merits with a route along the High Street. The Quay provides the safer option despite the presence of vehicles, articulated lorries and forklifts and the absence of demarcation. There is considerably less traffic and slower driving along the Quay than the High Street where the pavement is very narrow. It would be possible to move the trail to the other side of the High Street

but this would mean two more road crossings introducing convenience and safety issues. The route is only a little longer than taking the High Street and considerably more pleasant with calmer traffic, more space for mobility scooters and pushchairs and expansive estuary views. It is closer to the estuary by distances varying between 20-40 metres. Views from the High Street are blocked by buildings

117. The proposed alignment is entirely on an existing public highway which is now registered as a Village Green. It has long been popular with people drawn by the wide range of waterbirds.
118. The coastal margin would be similar under each. Crucially, if the coast path used the High Street all the land proposed would be accessible land within the coastal margin.
119. The circumstances at Mistley Quay are unusual; there is a commercial weighbridge and warehouse at one end, an operational area for loading/ unloading ships and mixed use area in between. It has always been a mix of commercial and public activities. The quay itself is fenced off.
120. NE acknowledges that the trail will usually avoid passing through ports in active working use, but paragraph 8.25.11 of the Approved Scheme is more applicable in this instance. This provides that at smaller harbours the trail will typically be much closer to the sea
121. It is also acknowledged that vehicles (usually private cars) are sometimes parked on the route but visibility is good and there is always space for pedestrians to pass. By default, access rights would extend to any area seaward of the trail allowing plenty of scope for walkers to avoid parked cars.
122. As NE is not making proposals for the seaward coastal margin, it does not need to be shown on the proposals map
123. The trail is not on excepted land as it is on public highway.

Further information provided by NE

124. Following the site visit, Essex County Council provided a map (via NE) showing the extent of existing public highway in this locality to illustrate where the proposed trail would run in relation to such areas of land.

Discussion

125. The trail would turn off the B1352 road along the High Street at S044 to proceed down the wide slope towards Mistley Quay. Upon reaching the Quay, the trail would change direction to pass in front of dwellings facing the waterfront. Passage was obstructed by a small number of cars parked in front of the housing when I visited in dull weather during the early afternoon of a weekday. I anticipate there would be far more parked vehicles on other occasions when there are increased numbers of visitors and residents at home.
126. Even so, whilst this is a working port there did not appear to be a high volume of port traffic passing by the properties where parking takes place. There is plenty of space to walk around vehicles utilising existing public highway without fear of encountering moving traffic or to wait whilst it passes. I observed other cars and

HGV's parked beside the fenced working area of the port but these did not interfere with the trail alignment.

127. Once past the properties, there is a pavement for pedestrians to use opposite the large warehouse building where port activities take place. The trail would exit onto the B1352 beside Mistley Towers past which the path continues beside the road.
128. The length of quayside trail is identified as public highway on the map produced by Essex County Council, being the local highway authority. From some sections of the proposed trail along the Quay there are expansive views across the estuary towards Suffolk. There are also views in each direction of the quayside.
129. For the route to be convenient, it should be reasonably direct and pleasant to walk as provided by paragraph 4.3.1 of the Approved Scheme. The deviation off the High Street is not significant in terms of distance or inconvenience. Where there are views of the estuary the route is pleasant to walk although much less so where it passes by Port buildings.
130. Certain categories of land are excepted from coastal access rights under Schedule 1 to the Countryside and Rights of Way Act 2000 ('CROWA') as amended by the Access to the Countryside (Coastal Margin) (England) Order 2010 (S.I. 2010/558). Paragraph 8.25 of the Approved Scheme specifically addresses ports, industry and other maritime facilities. It is recognised that much land of these types will be excepted land. The list does not exclude ports, but land covered by buildings or works used for the purposes of a statutory undertaking or the curtilage of such land is excepted. However, the definition of 'building' does not include any slipway, hard or quay on the coastal margin. The Approved Scheme notes that land may be subject to the Port Security Regulations 2009 which have introduced measures to enhance port security in the face of threats of security incidents.
131. Also excepted, is land which is, or forms part of, a highway within the meaning of the Highways Act 1980⁴. As set out in the Approved Scheme⁵ coastal access rights do not apply to existing public highways including roads and public rights of way. The public already has rights to use such highways and these take precedence over coastal access rights. This does not prevent the route from following highway nor does it prevent people continuing to use highways that fall within the wider coastal margin.
132. It is unclear on what basis the objector considers the proposal fails to meet the coastal access requirements. Potential issues at ports identified in the Approved Scheme relate to public safety and site security implications. There is also a duty to have regard to the safety and convenience of those using the English coastal route. Notably, the Approved Scheme states at paragraph 8.25.9 that the trail will usually avoid passing through ports and other industrial areas in active working use. It will do so even where there is an existing public right of way, unless it offers an appropriate route that addresses any concerns about security, safety, and efficient operations.

⁴ "highway" means the whole or a part of a highway other than a ferry or waterway.

⁵ At Figure 1 on 'Excepted land'.

133. In this instance, there is no scope at Mistley Quay to align the trail seaward side of the operations. The trail would pass through a working port but there appears to be no greater hazard than already exists to members of the public able to walk along the Quay in exercise of existing rights. There is not a designated pavement for pedestrians along the whole route but there is one where the trail would pass by the Port buildings. The pavement extends beside the access road where there is less visibility due to a curve in the road. Where there is no pavement for pedestrians the space is sufficiently open to allow good visibility of traffic and manoeuvring vehicles. By the very nature of the Quay and its layout, passing traffic would be slow moving.
134. Paragraph 8.25.13 states that the trail will be clearly way-marked to encourage people to stay away from areas where there are safety and security measures. Safety signs and temporary barriers may also be used to warn of specific dangers and to deter visitors from entering an area of risk. People at work are usually expected to check for the presence of others, and to stop any activity or operation temporarily if they enter the area of risk. As it is, it is obvious where port activities are taking place and persons having proper regard for their own and others safety can be expected to steer clear of those areas.
135. A key principle of the Approved Scheme is that visitors should take primary responsibility for their own safety when visiting the coast and for the safety of any children or other people in their care and should be able to decide for themselves the level of personal risk they wish to take (paragraph 4.2.1). It goes on to say (at paragraph 4.2.4) that it will often be possible to minimise potentially significant risks without special mitigation measures, through sensitive positioning of the trail. For instance, the trail may not need to be aligned along a road used regularly by motor vehicles if there is another suitable route.
136. Another potentially suitable route is along the High Street.

Alternative Route

137. T W Logistics Limited maintain that the trail should continue along the High Street without deviating to take in part of Mistley Quay.
138. NE suggests that even if the trail followed the High Street then land along the Quay would still fall within the coastal margin and be accessible by the public because it would be seaward of the trail. That would only be the case if the quayside, taken as a whole, is 'coastal land' within the meaning of Article 3(2) of the 2010 Order⁶.
139. Nevertheless, it is clear that there are no views of the estuary from the proposed modified route along the High Street. In this way, the proposed modification fails to meet one of the key components of the coastal access duty concerning the desirability of the route adhering to the periphery of the coast and providing views of the sea. There is a justification for the deviation by taking a route closer to the coast and delivering coastal views which cannot be achieved by continuing along the High Street.

⁶ Defined within s.3A CROWA as having the same meaning as in s.3 being: (a) the foreshore and (b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore)

140. Moreover, from what I saw, the High Street is much busier with faster moving traffic than the proposed route along the Quay. Cars can park down one side of the High Street narrowing the available carriageway for vehicular traffic. The footway on each side of the High Street is narrow necessitating walkers on occasion to stop or step back when large vehicles pass. It potentially raises similar issues to the proposed use of the Quay in terms of encountering vehicles.
141. There is a slope down to the Quay which may not suit all users and would be avoided along the High Street. However, the slope would not deter many users who would prefer closer views of the coast.

Conclusions

142. Much of the alignment along HSG 3 is inland. However, the deviation of the coast path along Mistley Quay offers the opportunity of far reaching coastal views which can be enjoyed across the Stour estuary. In doing so, land identified as being in use as public highway would be utilised.
143. The scope of the coastal margin for the proposed and suggested modified routes has no material bearing on the suitability of either option. Port buildings and their curtilage would clearly be excepted land to which the public would have no coastal access rights.
144. The alignment of the Coast Path along the Quay would, in my view, pose no greater safety risk to the public than already exists from their use of the Quay.
145. In contrast, the modification would afford no coastal views and would direct walkers along a relatively busy main road. Walking along a High Street with buildings on each side of the road would be less pleasant than experiencing views of the estuary where wildlife may also be observed.
146. Aligning the trail along the proposed line via Mistley Quay would accord with sections 4.2 and 4.3.1 of the Approved Scheme which address safety and convenience. Whilst ports are normally avoided for the Coast Path, the Quay is not confined to Port activities but includes residential properties together with wider public rights, including the village green. When weighing up all the competing factors and interests, I consider that the proposed trail along Mistley Quay would represent the most suitable option.

Recommendation

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

[redacted]

APPOINTED PERSON

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

by [redacted] Solicitor

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

Date: 31 October 2022

Marine and Coastal Access Act 2009

Objections by [redacted] and the Trustees of the Stutton Hall Estate Settlement

Regarding Coastal Access Proposals by Natural England

Relating to Harwich to Shotley Gate

Objection Reference: MCA/HSG/05

Brantham Hall Farm to Lower Holbrook

- On 22 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 13 March 2020 to Chapter 5 of the Report HSG 5: Brantham Hall Farm to Lower Holbrook has been made by [redacted] & The Trustees of the Stutton Hall Estate Settlement. The land in the Report to which the objection relates is route section ref. HSG-5-S012.
- The objection is made under paragraphs 3(3)(a)&(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 revised report (see paragraph 49) strike a fair balance subject to further modifications, as agreed between Natural England and the objectors.

Procedural Matters

148. On 22 January 2020 Natural England ('NE') submitted a compendium of reports to the Secretary of State for Environment, Food and Rural Affairs ('the Secretary of State'), setting out proposals for improved public access to the Essex and Suffolk coast between Harwich and Shotley Gate. Each report is expressed to make free-standing statutory proposals for the respective parts of the coast, but with a single Overview document.
149. The period for making formal representations and objections to the reports closed on 18 March 2020. Seven objections were received within the specified timescale, six of which were determined to be admissible. I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference MCA/HSG/05 to NE Report HSG 5 ('HSG 5'). Objection references MCA/HSG/01,02,03,06 and 07 are the subject of separate reports.
150. Various representations were also received and I address these below where they refer to the specific sections of trail before me.
151. I conducted my first site inspection on 21 June 2021 when I was accompanied by representatives of the landowners, NE, and Suffolk County Council. Whilst objection is raised to maps HSG 5b and 5c, it is only map 5c that depicts the trail section HSG5-S012 which forms the basis of the objection. It was confirmed at the first site visit that the objection concerns map 5c only.
152. During the site visit in June 2021, it emerged that a section of the proposed trail along S012 no longer exists due to landslip where it was due to pass close to the cliff edge. As the trail could not be delivered as envisaged, NE re-visited its proposals for this stretch. In addition, it had become evident during the site visit that part of S012 also passed through a vegetated and treed area where the effect on wildlife and nature conservation needed to be explored in more detail. This report covers the Site visits made on 22 June 2021

original proposals and objections along with the revisions (from paragraph 49 onwards).

Main Issues

153. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ('the Act') and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
154. The first objective is to secure a route for the whole of the English coast which:
- (g) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (h) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
- 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.
155. 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'.
156. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (j) the safety and convenience of those using the trail,
 - (k) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (l) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
157. 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.
158. Where, as in this case, it is proposed that the trail extends along a river estuary rather than the sea, section 301 of the Act applies. It states that NE may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing.
159. NE's Approved Scheme 2013 (approved by the Secretary of State on 9 July 2013 - 'the Approved Scheme') sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
160. My role is to determine whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State on the relevant Report accordingly.

The Trail

161. NE proposes to align the trail within the Harwich to Shotley Gate stretch by extending the trail from Harwich, at the mouth of the Stour estuary, along the Essex bank to Manningtree and Lawford, where the A137 crosses the estuary. From there, it returns to the mouth of the estuary via the Suffolk bank to end at Shotley Gate. Each Report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Stour as far as Manningtree and Lawford.
162. The Stour estuary is relatively wide and shallow. Along with the adjacent Orwell estuary, it flows into the North Sea via Harwich harbour, flanked by Harwich International Port on one side and the Port of Felixstowe on the other. Despite some urban areas, the majority of the landscape is rural in character with mostly arable fields, scattered hamlets, and villages. The soft geology erodes easily causing long lengths of shoreline to shift landward regularly.
163. Within the estuary expansive mudflats are revealed at low tide attracting waders and wildfowl. Indeed, the estuary is valued by birdwatchers attracted by high populations of over-wintering and passage waterbirds. On the Essex bank there are three neighbouring nature reserves open to the public at Copperas Wood, Stour Wood and Wrabness.
164. The part of the trail subject to Report HSG 5 is the stretch of coast between Brantham Hall Farm and Lower Holbrook in Suffolk. This follows the Stour and Orwell Walk long distance footpath, except for where a 1km length of cliff-top route is proposed at Stutton Park lying between Chestnut Spinney and Stutton Ness. It is this new section of trail along S012 at Stutton Park that is the subject of the objection. The Stour and Orwell Walk is on the beach below after the original cliff-top public path was undermined by coastal erosion.
165. The Report acknowledges that some physical establishment of the trail could be necessary particularly along the 1km of newly established trail along the cliff-top at Stutton Park.
166. Access to the saltmarsh and majority of mudflat would be excluded all year round seaward of S001-S035 under section 25A of the Countryside and Rights of Way Act 2000 ('CROWA') on the basis that it is unsuitable for public access. Such direction would not affect the route itself. Rather, it is intended to avoid any new public rights being created over the area in question due to the hidden dangers of the saltmarsh and mudflat.
167. Whilst roll-back would not apply to all sections of the trail for HSG 5, normal roll-back is proposed for S001-S015, which captures the disputed section.
168. There are several protected designated sites affecting the length of coast along HSG 5 namely, the Stour and Orwell Estuaries Special Protection Area, Stour and Orwell Estuaries Ramsar site and the Stour Estuary Site of Special Scientific Interest (for its geological and wildlife interest).

Objection

[redacted] & the Trustees of the Stutton Hall Estate Settlement – MCA/HSG/05

169. Objection is made to proposed route section S012 as shown on map HSG 5c -

Chestnut Spinney to Crowe Hall. The section of trail along S012 is illustrated as an 'other existing route', which the objectors believe is incorrect. They say the existing walked route is the footpath at the bottom of the cliff.

170. The route shown as S012 would be in a Grade 1 arable field and result in loss of part of a productive field. The landowner has made a significant investment in a reservoir and irrigation system to irrigate and grow high value crops. There would be a loss of land and reduced area over which the owner/occupier is able to grow high value crops e.g., potatoes, onions, carrots, and green salads.

171. The objectors consider that the proposed trail would pose a risk of breaches to biosecurity of the crops grown on the land, which are going into the food chain, arising from loose dogs and dog fouling. Besides financial loss, there would also be a potential health risk.

172. The objectors suggest that S012 is withdrawn in favour of an alternative path at the bottom of the cliff, which is a perfectly useable route for the coastal path.

Natural England's comments on the objections

173. The section of proposed trail along S012 appeared lightly walked at the time it was mapped. Many more people walk along the beach at the base of the cliff, which is probably largely due to the absence of access rights on the cliff top. It is not possible to say how many people strictly follow the formal line of the public right of way along the beach, which is impossible to identify on the ground as so much coastal erosion has occurred. Even if S012 was not walked at all, NE would propose it for the trail.

174. Cliffs in the area are moderately high for the Stour estuary meaning that substantial earth slip occurs as the cliff toe is eroded by the tides. As a result, cultivation of the arable field is not possible close to the cliff edge and a substantial uncropped margin is usually present. This means that the trail would not necessarily be located on land that is currently cropped. It cannot be predicted how much cropped land would be lost to establish the trail because the width of the margin and precise location of the trail will vary as erosion continues. The presence of the trail may in some growing seasons result in the loss of a certain amount of productive land although the ongoing loss from coastal erosion is likely to be a far more significant factor. NE concedes that dogs off lead, particularly if allowed to defecate in cropped areas, can present a biosecurity concern.

175. However, NE is confident the proposals strike the right balance between the interests of the public and the landowners. While there is potential for a small loss of income, the legislation provides for the coast path to be located in arable environments. This is a very common scenario not just for the England Coast Path but for public access in general. Signage is usually sufficient to address biosecurity concerns.

176. The Approved Scheme advises (at paragraph 4.5.1) that the route should normally be close to the sea but it includes the proviso that this does not mean the trail must pass along the land closest to the sea. Often the best route will be on the cliff top rather than the beach (paragraph 4.5.2).

177. NE considers that the field alignment on the cliff top would be consistent with the approach taken elsewhere in Suffolk and neighbouring Norfolk.
178. Normally, beaches are only used for the trail where there is no better alternative. Beaches are often difficult to walk on and can be partially/wholly inundated by high tides. If the beach were to be unavailable to walkers a considerable inland detour would be needed. S012 would allow more people to enjoy the route than the existing public footpath on mobility grounds.
179. Stutton Ness is one of the most prominent landmarks along the Stour estuary. The clifftop route offers extensive views and easy walking surface suitable for those with slightly constrained mobility and larger mobility scooters. If the national trail were aligned along the beach a significant proportion would be unable to use it and none would be able to enjoy the expansive views from the clifftop.

Representations

180. The Ramblers (Suffolk Area) commend the proposed route.
181. The Disabled Ramblers comment that significant numbers of people now use all-terrain mobility vehicles to travel on access routes in the open countryside, including challenging and rugged terrain. Users have the same access rights as walkers. In places, natural terrain will prevent access, but man-made structures can be changed. NE is requested to address man-made structures that present a barrier to those who use mobility vehicles. NE should also ensure that existing and proposed structures are suitable for large mobility vehicles and also comply with British Standards. There should be compliance with the Equality Act 2010 and CROWA 2000 and advice followed in the document titled 'Disabled Ramblers Notes on Infrastructure'.
182. Suffolk Local Access Forum welcomes that, with the option of roll-back, the trail would follow the estuary bank more closely (including along HSG5) particularly where the public right of way has been lost to cliff erosion.
183. The RSPB has made representations in respect of all sections of trail for HSG5. These representations reflect its objections to the separate Report for HSG6.
184. The RSPB considers that the European Special Protection Area and international Ramsar site designations that recognise the estuary's wildlife of national and international significance, are not being taken seriously enough. The local evidence for disturbance to wild waterbirds caused by dogs is strong and twice that where dogs are off lead compared with on lead. A troubling precedent is being set regarding the relative importance of nature conservation interests.
185. The RSPB seeks section 26(3)(a) restrictions on any sections of the path where dogs off leads could realistically access the mudflats and saltmarshes, as well as appropriate signage to either reinforce that people or dogs straying from the path is illegal. It suggests that the lack of a section 26(3)(a) exclusion is inconsistent with other stretches of England Coast Path. For example, the Aldeburgh to Hopton-on-Sea stretch has proposed four separate sections with such exclusions, two of which enforce dogs on leads during periods of high sensitivity. The RSPB suggests a direction on nature conservation grounds for HSG5 between S003-S014 and S029-S030 for people with dogs to be excluded from the coastal margin to protect sensitive wildlife (non-breeding waterbirds).

186. Concerns are also expressed by the RSPB over the effectiveness of mitigation measures, particularly in relation to spreading room eventually excluded under sections 25 and 26 CROWA, and the adequacy of signage. The RSPB considers it essential that excluded areas are clearly marked on the ground and that signage is carefully located. Monitoring of the effectiveness of the measures is recommended with further mitigation, if required.
187. None of the other representations relate specifically to the section of trail along S012.

Natural England's comments on the representations

188. NE recognises its duties under the Equality Act 2010 and CROWA. The Approved Scheme outlines the principles followed to make the trail as easy to use for disabled people and those with reduced mobility. NE has endeavoured to meet those needs throughout the planning and design processes and would continue to do so through the implementation stage working alongside Essex and Suffolk County Councils. The importance of satisfying the relevant British Standards is recognised as well as the desirability of complying with relevant advice. Many parts of the Harwich to Shotley Gate stretch lend themselves to use by larger/all-terrain mobility vehicles, including the alignment covered by HSG5.
189. In response to the RSPB, NE acknowledges the special value of the Stour estuary to waterbirds, which is largely due to its extensive habitats and relatively low levels of disturbance. NE also recognises the importance of research undertaken by RSPB on the Stour and Orwell estuaries to quantify the impacts of disturbance.
190. If the proposals are approved by the Secretary of State, then NE would make directions to implement access restrictions and exclusions. A direction to exclude access would cancel out coastal access rights and a number of grounds are available. If NE decides that an area of mudflat or saltmarsh is substantially unsuitable for use by the general public then it would exclude access all year round. That is the most restrictive option. It does not mean that the importance of the habitat for wildlife is being overlooked.
191. The Harwich to Shotley Gate Coastal Access Reports, Habitats Regulations Assessment ('HRA') and Nature Conservation Assessment all make it clear that in the unlikely event of needing to remove section 25A exclusions for any areas of mudflat or saltmarsh, NE would first consider whether this action would bring about the need to exclude or restrict coastal access rights.
192. Where there is a need to draw the public's attention to such measures/ sensitivities NE will often convey messages to the public alongside those highlighting dangers. In large areas those messages may be at strategic points e.g., key parking or pedestrian access points. Where the objective is to persuade visitors to behave in a particular way NE considers this can be done most effectively through carefully targeted information.
193. NE does not intend to install signage as sought by the RSPB because there is no proposal that the saltmarsh and mudflats seaward of these route sections be subject to section 26(3)(a) exclusions. Signage would introduce unacceptable levels of visual clutter and raise concerns about ongoing maintenance. Much of the shoreline in question is served by an existing public right of way, which is proposed as the trail,

and so signage contrary to public rights of way legislation cannot be introduced e.g., 'dogs on leads'. There is not perceived to be a need for more signs as the mudflats are extensive, unwelcoming, and hazardous to access. The majority of saltmarsh including the most important roost sites are very difficult or impossible to access from the proposed trail.

194. Prior to opening the trail, checks will be made to ensure the implementation of required establishment works including any special mitigation measures.
195. Monitoring of the protected site will continue. If public access is identified as a cause of a site falling short of its conservation objectives, then the coastal access provisions may need to be modified. NE does not propose any bespoke monitoring as it is largely on an existing public path and access rights to the seawall are unaffected by the proposals. Most of the saltmarsh and mudflat habitats are extremely difficult to gain access to from the proposed trail route.

Revised options considered by Natural England

196. After it emerged during the site visit on 21 June 2021 that part of the proposed trail was undeliverable due to coastal erosion, NE re-visited its proposals for this stretch of coast through the Stutton Hall Estate along S012. Three alternative options were considered by NE as shown on the map at Annex B.

Option 1

197. Option 1 is a beach alignment, as sought by the objectors, which is in current public use. The path along the beach would connect with S013 via an access ramp at Stutton Ness. In order to enter the beach at the western end would involve use of steps recently set into the cliff.
198. The Approved Scheme advises that there should be reasonable adjustments for disabled people and others with reduced mobility (paragraph 4.3.1). Further, the trail will not normally be aligned on sandy beaches because they can be difficult to walk on for long distances and be covered in high tides (paragraph 7.11.3).
199. Paragraph 7.11.1 of the Approved Scheme sets out the circumstances where the trail will occasionally be aligned on a sandy beach where there are no other viable route options. In such circumstances NE will seek to provide a route along the beach that is reasonably firm under foot and available at most states of the tide. If such a route would not be available at all states of the tide, or would be prone to occasional flooding, then NE will consult HM Coastguard (or other relevant agencies). It may propose an optional alternative and will seek to ensure that appropriate warning notices are displayed.
200. Whilst there are two other viable route options which would be easier for people with reduced mobility, NE nevertheless consulted HM Coastguard and Harwich Haven Authorities regarding tide times, heights, and safety of the area. Whilst they were unaware of any rescues taking place, the beach would often be inundated preventing passage particularly during Spring and Neap tides. Wind direction and weather conditions can also affect the tide so that levels are unpredictable. No data is available on the length of time the beach would be rendered inaccessible by the tide.
201. NE discount Option 1 as it does not provide a safe and convenient route because the soft beach surface is unsuitable for people with reduced mobility, the route is

sometimes unavailable when inundated by the tide and unpredictable tide levels make it difficult to warn the public of the level of risk involved.

Option 2

202. Option 2 would follow the original alignment along the clifftop to the southernmost corner of the arable field but would then follow the field edge using an access strip to connect with S013 at its midpoint. It would allow walkers good views of the sea except for a section towards Stutton Ness where the hedge is taller.
203. Chapter 2 of the Approved Scheme explains that cultivated land is excepted but NE has power to recommend that the trail crosses such land on an access strip, in which case, the access strip is not excepted from coastal access rights. The access strip will normally be 4m wide. The Approved Scheme acknowledges that biosecurity of crops is a concern and promotes the use of signage to address this (section 8.7.1).
204. NE estimates that if approximately 850m long of arable land were converted to a 4m wide grass strip through the Government's Countryside Stewardship scheme, then the landowner would receive £142.46 per annum (based on a payment of £419 per hectare). The scheme gives an indication of lost income.
205. Paragraph 5.3.3 of the Approved Scheme aims to prevent coastal businesses suffering significant loss of income from the introduction of coastal access rights. If persuaded that significant loss of income is likely, NE will include specific proposals to prevent it. NE does not believe the loss of 4m strip of land at a value of £142.46 per annum to be a significant financial burden on the landowner. If this option was implemented, NE recommends the installation of signage explaining the need for dogs to be kept under close control and for owners to clean up after them.
206. The objectors' concerns about the public using scrub at Stutton Ness for recreational purposes and thereby creating disturbance and littering, is an existing issue and the area is accessible from all three options. Land seaward of the route would qualify automatically as coastal margin.
207. NE does not propose Option 2 as it considers that Option 3 offers a safe, pleasant, and more continuous route on the seaward edge of the coast, which does not divert inland like Option 2. Also, a field edge alignment is not favoured by the landowner.

Option 3

208. Option 3 would follow the original proposed alignment but divert inland around the erosion point 2-4m into the scrub. There is sufficient scrub to create a safe route behind the erosion point and there is clear evidence on the ground that this route is being used despite the erosion and scrub.
209. The Approved Scheme provides that the route proposed will usually follow existing walked lines on the ground (paragraph 2.3.1) and where there is a cliff, the trail should normally be aligned along it wherever practicable because it normally provides the best views of the sea (paragraph 7.1.13).
210. The Environment Agency was consulted and advises that the area is at risk of erosion but the rate of erosion is not significant because it is relatively sheltered. NE proposes that the modified section of trail would roll-back in the same manner outlined in the original proposals.

211. NE consulted its Access and Nature Conservation Senior Adviser on the objectors' concerns about disturbance to wildlife from creation of the path through scrub and a survey of birds taken by a local ornithologist between 2014 to 2021. On their advice Option 3 would have no significant impact upon the wildlife and habitat in the area. They also noted that the active management of a path would create enhanced bird habitat by creating denser faces to the scrub and branched wood with more areas for flowering and fruiting to feed birds. It would also offer further opportunities for wildlife by creating a more open corridor to bring in a variety of ground flora and structure.
212. NE calculates that the approximate financial loss of a maximum 4m wide strip approximately 600m long (based on a Countryside Stewardship payment of £419 per hectare) would be £100.56. NE recommends the installation of signage explaining the need for dogs to be kept under control and to clean up after them, to address the landowner's biosecurity concerns.
213. Having carefully weighed up all three modification options, NE considers Option 3 best achieves a fair balance. It would be direct, safe, and convenient. It would allow walkers the best sea views; the surface is suitable for varying mobilities and it would not have a significant impact on the landowners' business or on features of important nature conservation. Modifying the proposed alignment inland of the erosion point would maintain a cliff top path as per the original proposals and is in line with the advice on roll-back in the Approved Scheme. It would also create coastal margin solely from the trail across the foreshore, allowing walkers access to the beach but not conferring any access rights landward into the scrub behind the trail. The landowners could reinforce this with signage demarking the extent of access rights on the ground should they so wish.
214. If approved, the proposals table in section 5.3 of Coastal Access Report HSG 5: Brantham Hall Farm to Lower Holbrook, would not need to be amended.

Response to the revised options

The Objectors

215. The landowner remains extremely concerned about the biosecurity threats posed by NE's recommendations. These would have a far wider and more serious financial and business impact than the loss of the 4m access strip, and the landowner insists on being protected and indemnified against such risks. This area is dedicated to very high value irrigated crops, including vegetables. NE has stated that relevant signage (to keep dogs on leads and clean up after them) may be erected. However, NE must be aware that many dog walkers ignore such directions (however well the reasons are explained), and it is almost unheard of for dog owners to clean up after their dogs in open areas of countryside. Experience on this estate (which is reflected on neighbouring properties) is that many walkers do not respect signage, and indeed some signs designed to protect the environment have been wilfully torn down.
216. As a compromise the objectors would accept the recommendations if NE (or the relevant authorities) agreed to erect and maintain a fence along the landward side of the access strip to deter dogs from straying into cropped areas. In the absence of such protection the landowner objects to the proposals.

NE's final response to the objection

217. After the second site visit NE, provided a further letter dated 21 July 2022 to address the landowner's main concern of ensuring that walkers stick to the proposed trail on
- the margin of the arable land and did not spread into the crop themselves.
218. NE cannot agree to the erection of a fence line along the landward side of the arable access strip, as requested by the objectors. This is because NE believes that it is neither warranted nor advisable in this location.
219. The proposed route, as revised, is on top of a soft cliff which is actively eroding back. If approved, the trail would roll back as the cliff erodes without further reference to the Secretary of State. As the trail rolls back the fence would need to be moved backwards along with any other infrastructure, such as waymarking and signage. Fencing would create an unwarranted burden on the public purse both in terms of the cost of establishing the route and its ongoing maintenance. Instead, NE proposes that the proposed route is clearly waymarked and the hedging on the seaward side is trimmed back to create a corridor for the access strip that is clearly distinguishable from the crop. As a compromise, NE would also be happy to grass the access strip to make it easy for people to use.
220. It is proposed that management signs are installed asking dog owners to keep their dog out of the crop and to clean up after their dog. These signs could be installed at either end of the arable access strip, with wording to be agreed with the landowner at establishment stage. Additionally, NE would be happy to install a fingerpost at the steps adjacent to Chestnut Spinney to clearly show that the public right of way is aligned along the beach. This would facilitate walkers finding their way easily who wish to access the water's edge or follow the public right of way in preference to the coast path.
221. NE confirms that maintenance of the route would be undertaken by Suffolk County Council, as the local access authority. Maintenance would be in line with the quality standards outlined in NE's policy document titled 'The New Deal: Management of National Trails from April 2013'. The costs would be supported by an annual grant from NE in line with Government funding policy at the time.

Objector's final response

222. Having been sent a copy of NE's letter of 21 July 2022 and invited to comment, the objectors responded to confirm that a compromise has now been reached which they can move forward with. The objectors are happy to accept the path running on top of the cliff with the arrangement for signposting and preparation of the route i.e., the hedge being cut back and the grass path being planted.

Discussion

223. The trail cannot be delivered as originally proposed because a short stretch has succumbed to coastal erosion. A modification would be required. Of the three options considered by NE, it prefers Option 3. This would follow the originally proposed alignment except for a diversion inland into existing scrub away from the section of eroded cliff. It would otherwise take the same alignment as before along the edge of cultivated fields.

224. The section of trail along S012 would start (at the western end) at the cliff top where there are elevated views of the estuary. As it proceeds along the lengthy stretch of cropped field edge, the trail would be separated from the cliff edge by dense hedgerow. Even though the outer face of the hedgerow would be trimmed back to facilitate the path, the vegetation obscures much of the coast below from view although there are some long range views of the estuary across the fields. As the trail continues east beside the fields, the boundary opens up to expose closer and expansive estuary views. The views diminish once more as the trail follows a line through thicket close to the point where the cliff edge has fallen away. Beyond this point the vegetation is dense and would need to be cleared.
225. Up until the second site visit, the landowners had maintained their objection unless the trail was fenced on the landward side to prevent dogs entering the fields and causing crop contamination. As set out in paragraph 8.7.5 of the Approved Scheme crops are often obvious to the general public. People can be expected to avoid walking on them provided that the trail itself is adequately way-marked, and the route left unsown. It is reiterated at paragraph 8.7.9 that so long as the route is not sown, people will normally find it easy to follow the line along a crop edge. This does not address the objection regarding crop contamination but consensus has now been achieved between the objectors and NE on an acceptable approach.
226. The landowners now accept that fencing of the landward side of the field margin would be impracticable. Reliance would be placed upon dog walkers acting responsibly and adhering to newly erected signs to keep dogs on a short lead. Such notices would be a request only and incapable of being enforced. However, NE has agreed to clear a way and grass seed the field margin to further signify to walkers where they should walk. This should diminish the prospect of people with dogs straying closer or into the crop.
227. Another and perhaps more compelling factor is that it is likely that many dog walkers would be more attracted to the beach alternative where a public path already exists and dogs can be exercised freely. The risk from dogs entering crops could be reduced by clear waymarking for the beach. The entry point to the beach is located before reaching the fields and is not entirely obvious. Clear signage does not exist at present. The offer by NE to install finger posting should help alleviate the landowner's concerns as it would alert users to the option of the beach walk.
228. Option 3 is along the cliff top and is closer to the cliff edge for a longer stretch than Option 2. The Approved Scheme states that cliff tops or cliff slopes usually provide the most convenient route and some of the best views along such a section of coast (paragraph 7.1.1). It goes on to say that where there is a cliff, the trail should normally be aligned along it wherever practicable, because it normally provides the best views of the sea (paragraph 7.1.3). On cliff tops or cliff slopes which are subject to significant erosion or landslip, the trail will normally roll-back and that is how the proposals for this stretch are drafted.
229. There is a duty under section 297(2(a)) of the 2009 Act to have regard to the safety of people using the trail. Safety will be a key consideration at a cliff site such as this. The Approved Scheme recognises that access along cliffs carries inherent risks but highlights how these are well-understood by most people and enjoyed by some.

230. There is an existing trodden line on the ground for much of the section along S012 and so the Proposals Table at paragraph 5.3 is correct to identify it as an 'other existing walked route'.
231. Regarding the other options, Option 1 follows a beach alignment with close and impressive views across the estuary. In places along the beach there are fallen trees where the cliff has eroded. When the tide is out, they can be easily avoided. From the tide line demarcated by natural debris, the tide does not appear to come in so high to prevent access every day. Where there are fallen trees, it is unlikely they would deter access very often. People evidently do walk along the beach where there is an existing public right of way albeit that the alignment is unclear and could not be identified during my site visits.
232. Option 1 would avoid cultivated fields to the benefit of the landowner/occupier. However, the uneven shingle and sandy beach does not provide particularly easy walking conditions. The surface would make it less accessible for all users than Options 2 and 3 and the beach itself would be unavailable at times during high tide. Options 2 and 3 would provide a firm surface to the benefit of more users.
233. With Option 2, the deviation to avoid the eroded cliff would be much further inland than Option 3, cutting off coastal views from along part of S013. There are some pleasant long distance views at elevated level of the estuary but it would deliver fewer coastal views than the other two options. It would also be less desirable from a land management viewpoint as the trail would continue beside the cultivated fields for a longer stretch than Option 3. Option 2 is the least favourable option in discharging the coastal access duty in terms of the desirability of the trail adhering to the periphery of the coast and providing views of the sea. The objectors make plain that they do not support Option 2.

Biodiversity

234. In terms of the RSPB's concerns, there are protected sites along HSG 5 as identified above, including a Special Protection Area, being a protected European site. In considering whether there are likely significant effects on a European site from the proposals, the effects of proposed mitigation measures cannot be taken into account. The establishment of the trail could potentially give rise to disturbance of such habitats with significant effect. Accordingly, Annex A to this report contains information to inform the Secretary of State's Habitats Regulation Assessment. The procedures would also include the Ramsar site.

Conclusions

235. The original proposals are no longer deliverable due to the effect of coastal erosion. Modifications are therefore required. On balance, Option 3 best fulfils the objectives of the coastal access duty in the public interest having regard to the factors within section 297(2). The proposals must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. In order for the fair balance to be struck, the coast path should be grassed along the field edge of S012 and clear waymarking and signage directed at dog walkers would be required to mitigate the risk of crop contamination from straying dogs, in the interests of the owner and occupier.

236. Taking all matters into account I conclude that the revised proposals in Option 3 comply with the duty in Section 297 of the Act subject to a further modification to include the provision and maintenance of waymarking and advisory signs directed towards dog walkers as already outlined together with the clearance of a corridor for a grassed access strip beside the cultivated fields along S012. The precise details would require resolution, to be agreed between NE, the local access authority, and the landowner at establishment.

Recommendation

237. Having regard to these and all other matters raised, I conclude that the proposals in Option 3, as commended by NE and shown on the map at Annex B hereto, do not fail to strike a fair balance as a result of the matters raised in relation to the objections, subject to a further modification to include the provision and maintenance of waymarking, signage and grassed access strip as described in my conclusions.

238. I consider that those modifications would meet the coastal access requirements by facilitating delivery of the trail. Without those modifications, I consider that the proposals would fail to strike a fair balance.

239. I therefore recommend that, if minded to approve the proposals in Option 3, the Secretary of State does so with such modifications.

[redacted]

APPOINTED PERSON

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

Introduction

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').
2. The Habitats Regulations require that where a plan or project is likely to have a significant effect on a European site, such as the Stour and Orwell Estuaries Special Protection Area ('the SPA'), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a Competent Authority is required to make an Appropriate Assessment ('AA') of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.
3. The appropriate nature conservation body must also be consulted, in this case Natural England ('NE'). If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt, then 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 (IROPI); and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.

Project Location

4. The proposed section of path is Brantham Hall Farm to Lower Holbrook, number HSG-5-S012 as shown on Map HSG 5c – Chestnut Spinney to Crowe Hall. It forms part of the section of path between Harwich to Shotley Gate, which in turn forms part of the proposed England Coast Path. For ease of reference, the section in question is referred to as 'S012' hereafter.
5. S012 is in proximity to the SPA, the Stour and Orwell Estuaries Ramsar site ('the Ramsar site'), and the Stour Estuary Site of Special Scientific Interest (for its geological and wildlife interest).
6. The main wildlife interest of these sites, in the vicinity of S012, are non-breeding water birds, breeding waders and saltmarsh. In winter, the Stour estuary supports a wide range of waterbirds in internationally and nationally important numbers. The extensive areas of mud exposed between tides and numerous areas of saltmarsh provide a valuable resource for feeding or roosting birds. That value is enhanced by the proximity of grass and arable fields utilised by some waterbirds for resting and feeding. Although breeding habitats are less extensive, certain species of waders such as avocet, redshank and lapwing, benefit from the proximity of a mosaic of wet/damp habitats.

7. Saltmarsh is scattered on both banks of the Stour estuary which remain exposed or partially submerged at high tide. They are of considerable importance in their own right and as essential supporting habitat for waterbirds.

Habitats Regulations Assessment Implications of the Project

8. The use of S012, as part of the England Coast Path between Harwich and Shotley Gate, would increase human access to this area with potential for disturbance to foraging or resting non-breeding waterbirds, particularly by visitors with dogs, both within the SPA/Ramsar site and on functionally linked land outside. There is also risk of reduced fitness and reduction in population and/or contraction in the distribution of qualifying features within or near to the sites.
9. In the vicinity of S012 the qualifying features of the designated sites are breeding pied avocet, dark-bellied brent geese, northern pintail, grey plover, red knot, dunlin, black-tailed godwit, and common redshank. Apart from the pied avocet, these are all non-breeding. Other identified qualifying features are waterbird assemblage, invertebrate assemblage, and vascular plant assemblage.
10. NE has undertaken a 'shadow' HRA on the effects of the proposals on the SPA and Ramsar site for the whole Harwich to Shotley Gate stretch. The shadow HRA (referred to hereafter as 'the HRA') was signed off on 8 November 2019. It provides details to inform the Competent Authority's AA, in accordance with the assessment and review provisions of the Habitats Regulations. The HRA is recorded separately in the suite of NE reports and has been considered in making this recommendation. The HRA considered the potential impacts of the coastal access proposals on the designated sites identified above, including likely significant effects.
11. Initial screening set out that as the plan or project is not either directly connected with, or necessary to, the management of all of the European sites' qualifying features, and/or contains non-conservation elements, further HRA was required. The overall Screening Decision found that as the plan or project is likely to have significant effects (or may have significant effects) on some or all of the qualifying features of the European Sites alone, further appropriate assessment of the project alone was required. On this basis, the HRA considered the potential for the proposals to give rise to adverse effects on the integrity of the designated sites.
12. The scope of the assessment is set out in Table 6 of the HRA (page 26) and identifies the environmental pressure and qualifying features for which significant effects, 'alone' or 'in combination', would be likely or could not be ruled out.
13. Table 7 of the HRA (page 33) summarises the key locations of saltmarsh within the European sites. While they include several areas of saltmarsh within HSG 5, the section along S012 is not identified as a key location.
14. The assessment of potentially adverse effects alone takes account of additional mitigation measures incorporated into the design of the access proposal as set out in Table 8 (pages 57 to 60). The assessment is not limited to HSG 5 but covers the whole Harwich to Shotley Gate stretch. It ascertains that the risks to achieving the identified conservation objectives are effectively addressed by the proposals and there

would be no adverse effect on site integrity, taking into account incorporated mitigation measures. These measures fall into three categories of route alignment, coastal margin, and signage. Nonetheless, there is some residual risk of insignificant impacts identified from:

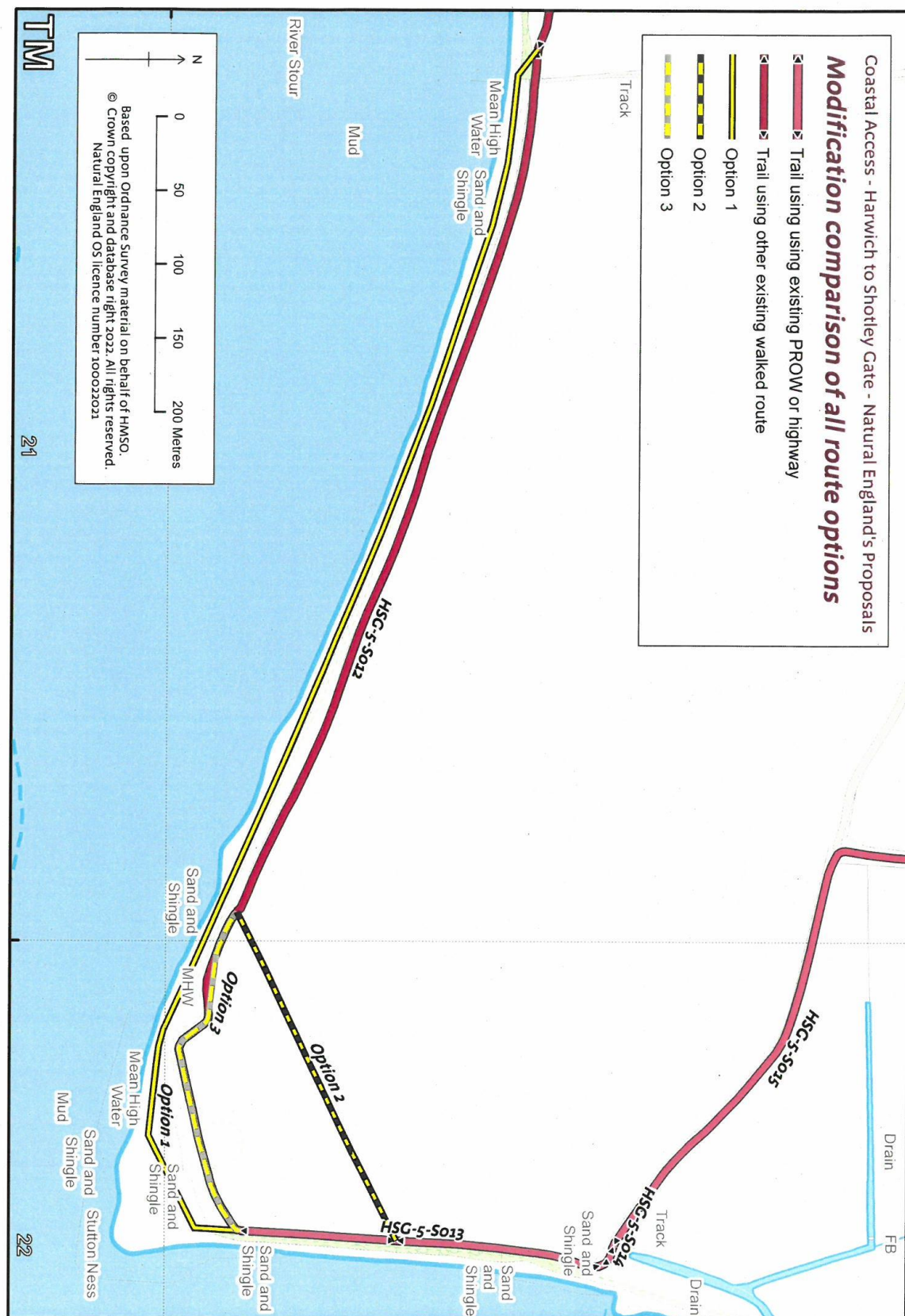
- Disturbance to foraging or resting non-breeding waterbirds (waders and waterfowl) both within the SPA/Ramsar site and on functionally-linked land outside.
 - Changes in recreational activities which may lead to reduced fitness and reduction in population and/or contraction in the distribution of qualifying features within or near to the site.
15. In section D4 of the HRA, NE assessed whether any appreciable effects that are not themselves considered to be adverse alone could give rise to an adverse effect on integrity in combination with other plans or projects. NE considers that the risks bullet pointed above are residual and appreciable effects likely to arise from this project which have the potential to act in combination with those from other proposed plans or projects. Therefore, at Table 9 (pages 61 to 69), consideration was given to whether any combinable risks have been identified for other live plans or projects. These are identified as the local plans of the Suffolk planning authorities closest to the Stour estuary, the emerging local plans of the three North Essex Authorities together with other proposals for the England Coast Path, Network Rail's programme of rail crossing closures and associated creation of new lengths of public footpath, potential major development and extension of the Suffolk Coast and Heaths AONB.
16. The importance of the Stour & Orwell Estuaries Management Strategy 2016-2020 is also highlighted and the document is appended. It contains several objective and associated actions directly relevant to the Harwich to Shotley Gate stretch. The strategy has not been subject to HRA and so it does not identify significant or non-significant risks for formal 'in-combination' assessment.
17. From its review, NE did not identify any insignificant and combinable effects that are likely to arise from other plans or projects and found that no further in-combination assessment is required.
18. NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.
19. In arriving at a view on the HRA conclusions, I have considered the representations from the RSPB who seek a direction on nature conservation grounds for HSG5 between S003-S014 and S029-S030 for people with dogs to be excluded from the coastal margin to protect non-breeding waterbirds. The RSPB also seeks the erection of signage to demarcate excluded areas. I note that paragraph 5.2.15 of NE's report makes clear that access to the saltmarsh and majority of mudflat would be excluded all year round seaward of S001-S035 under section 25A of the Countryside and Rights of Way Act 2000 as being unsuitable for public access. NE considers this to be the most restrictive option which does not diminish the importance of nature conservation. In the unlikely event of section 25A exclusions needing to be excluded for any areas of mudflat or saltmarsh, NE would first consider the need to exclude or restrict coastal access rights on other grounds, such as nature conservation under section 26(3)(a). There appears no need for signage given the nature of the terrain.

20. Part E of the HRA confirms that NE is satisfied that its proposals improve access to the English coast between Harwich and Shotley Gate, which includes section S012, are fully compatible with the relevant European site conservation objectives.
21. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Approved Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment under the Habitats Regulations may be needed before approval is given.

Nature Conservation Assessment

22. Although not forming part of the HRA, NE has also undertaken a Nature Conservation Assessment, which should be read in conjunction with the HRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest, Marine Conservation Zones and undesignated sites and features of local importance, which are not already addressed in the HRA. These include several local wildlife sites and the (breeding) marsh harrier, being a noteworthy species present all year round in the Stour and Orwell Estuaries SPA, not covered by the HRA.
23. NE was satisfied that the proposals to improve access to the English coast between Harwich and Shotley Gate, including section HSG-5-S012, were fully compatible with its duty to further the conservation and enhancement of the notified features of the Stour Estuary SSSI and Stour and Copperas Woods SSSI, consistent with the proper exercise of its functions.
24. In respect of breeding marsh harriers and the local wildlife sites along this stretch of coast, NE is satisfied that in developing new access proposals an appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes.

ANNEX B: MAP IDENTIFYING THE PROPOSED MODIFIED ROUTE OPTIONS



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

by [redacted] Solicitor

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

Date:

Marine and Coastal Access Act 2009

Objections by P G Colwill & Sons, and the RSPB

Regarding Coastal Access Proposals by Natural England

Relating to Harwich to Shotley Gate

Objection Reference: MCA/HSG/06

Lower Holbrook to Shotley Gate

- On 22 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 11 March 2020 to Chapter 6 of the Report HSG6: Lower Holbrook to Shotley Gate has been made by [redacted] for and on behalf of P G Colwill & Sons. The land in the Report to which the objection relates is route section ref. HSG-6-S029.
- The objection is made under paragraphs 3(3)(a) and (c) of Schedule 1A to the 1949 Act on the ground 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 Reference: MCA/HSG/07

Lower Holbrook to Shotley Gate

- On 22 January 2020 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 18 March 2020 to Chapter 6 of the Report HSG6: Lower Holbrook to Shotley Gate has been made by the Royal Society for the Protection of Birds ('RSPB'). The land in the Report to which the objection relates is route sections ref. HSG-6-S024 to HSG-6-S037.
- 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 the proposals set out in the report do not fail to strike a fair balance.

Procedural Matters

25. On 22 January 2020 Natural England (NE) submitted a compendium of reports to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved public access to the Essex and Suffolk coast between Harwich and Shotley Gate. Each report is expressed to make free-standing statutory proposals for the respective parts of the coast, but with a single Overview document.
26. The period for making formal representations and objections to the reports closed on 18 March 2020 and 7 objections were received within the specified timescale. Six of these were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection references MCA/HSG/06 and 07 to NE Report HSG 6 ('HSG6'). Separate reports are compiled for objection references MCA/HSG/01,02,03 and 05.
27. Various representations were also received and I address these below where they refer to the specific sections of trail before me. In one representation, errors in

the report for HSG6 were identified which NE agree require correction. In particular, there is an existing public right of way which passes through the gardens of Nos 2 and 5 Rose Farm Cottages but it does not pass through the garden of No 1 and so this reference should be deleted in paragraph 6.3.3. Paragraph 6.3.4 should refer to the gardens of 'No.3 Rose Farm Caravan Site...' rather than 'No 3 Rose Farm Cottages'.

28. I conducted site inspections on 22 June 2021 when I was accompanied by the landowners and their agent for objection MCA/HSG/06 along with representatives from NE and Suffolk County Council. No-one from the RSPB attended for MCA/HSG/07 but prior consent was given to the site visit proceeding in their absence.
29. All sections of the route referred to in this Report have the prefix HSG-6 and for ease of reference I shall use the S0 number only.

Main Issues

30. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ('the Act') and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
31. The first objective is to secure a route for the whole of the English coast which:
- (i) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (j) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
- 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.
32. 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 coastal route or otherwise. This is referred to as 'the coastal margin'.
33. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (m) the safety and convenience of those using the trail,
 - (n) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (o) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
34. 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.
35. Where, as in this case, it is proposed that the trail extends along a river estuary rather than the sea, section 301 of the Act applies. It states that NE may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of a river. The relevant upstream waters

are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing.

36. NE's Approved Scheme 2013⁷ ('the Approved Scheme') sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
37. My role is to determine consider whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State on the relevant Report accordingly.

The Coastal Route

38. NE proposes to align the trail within the Harwich to Shotley Gate stretch by extending the trail from Harwich, at the mouth of the Stour estuary, along the Essex bank to Manningtree and Lawford, where the A137 crosses the estuary. From there, it returns to the mouth of the estuary via the Suffolk bank to end at Shotley Gate. Each report states that NE proposes to exercise its functions as if the sea included the estuarial waters of the River Stour as far as Manningtree and Lawford.
39. The Stour estuary is relatively wide and shallow. Along with the adjacent Orwell estuary, it flows into the North Sea via Harwich harbour, flanked by Harwich International Port on one side and the Port of Felixstowe on the other. Despite some urban areas, the majority of the landscape is rural in character with mostly arable fields, scattered hamlets and villages. The soft geology erodes easily causing long lengths of shoreline to shift landward regularly.
40. Within the estuary, expansive mudflats are revealed at low tide attracting waders and wildfowl. Indeed, the estuary is valued by birdwatchers attracted by high populations of over-wintering and passage waterbirds. On the Essex bank there are three neighbouring nature reserves open to the public at Copperas Wood, Stour Wood and Wrabness.
41. The part of the trail subject to Chapter 6 covers the stretch from Lower Holbrook to Shotley Gate. The Report explains that the trail mostly adheres to existing public rights of way but also includes a substantial length of proposed new path between S014-S019⁸. It includes a much shorter length (approximately 100m) of new, field edge route at Rose Farm Cottages, Shotley, which is the subject of one objection. This is also one of a small number of inland diversions. Otherwise, the trail for the most part follows the estuary coastline very closely.
42. The disputed section at S037 extends along a well-trodden line through woodland which is accessible from the residential housing estate located nearby in Shotley. The trail proceeds along field edges before passing by a small number of dwellings. The trail diverts to the field edge once more around Rose Farm Cottages to continue between the estuary and fields for a considerable distance.

⁷ Approved by the Secretary of State on 9 July 2013

⁸ S018-S019 being an 'other existing walked route'

43. Roll-back is proposed in relation to all of the disputed sections S024-S037. Where the landward boundary of the coastal margin has been specified, NE proposes that it should coincide with the existing track for S030-S032; the garden hedge, fences, and gates for S033; and the hedgerow for S034.

Objections

[redacted] (P G Colwill & Sons) – MSC/HSG/06

44. The proposal seeks to create approximately 100m of new, field edge route currently used for arable crop production to the north of Rose Farm Cottages.
45. It runs parallel to and landward of an existing public right of way resulting in two rights being created. The existing public footpath is closer to the river with more river views. It has operated for many years without any problems
46. The coastal path should follow the existing public path rather than creating additional rights.

RSPB – MSC/HSG/07

47. Although the mudflats and saltmarshes in the Stour estuary have almost entirely been afforded access restrictions on safety grounds (under section 25A of the Countryside and Rights of Way Act 2000 (as amended)⁹ ('CROWA')), this does not take seriously enough the European Special Protection Area and Ramsar site designations that recognise the estuary's wildlife of national and international significance.
48. An exclusion has been applied to HSG-2-S001 to HSG-2-S010, which is welcomed, but it is not the only area in the estuary which is highly sensitive.
49. The RSPB is particularly concerned that the only restriction along the stretch between HSG-6-S014 to S019 is a seasonal 'dogs on leads' restriction based on land management grounds, in relation to gamekeeping. A troubling precedent is being set regarding the relative importance of nature conservation interests.
50. The local evidence for disturbance to wild waterbirds caused by dogs is strong. At high tide, walkers with dogs are the single greatest cause of disturbance to waterbirds on the Stour and Orwell Estuaries. The mean number of disturbance events caused by dogs off leads was twice that compared with dogs on leads.
51. The lack of other section 26(3)(a) CROWA exclusions for the purposes of conserving nature conservation is inconsistent with other stretches of the England Coast Path. For example, the Aldeburgh to Hopton-on-Sea stretch has proposed four separate sections with such exclusions, two of which enforce dogs on leads during periods of high sensitivity.
52. The RSPB want to see section 26(3)(a) restrictions on any section of path where dogs off leads could realistically access the mudflats and saltmarshes and disturb key bird roosts and feeding areas. In addition, appropriate signage should be provided to reinforce that either people or dogs straying from the path is illegal.

⁹ which allows NE to give direction to exclude or restrict access to any land which is coastal margin consisting of salt marsh or flat if it is satisfied that it is necessary because the land, or any part, is unsuitable for public access.

53. The areas of coastal margin considered by the RSPB to be appropriate for exclusion on nature conservation grounds are HSG-6-S024 to S037 for people with dogs.
54. The RSPB is also concerned about the effectiveness of mitigation measures particularly regarding the spreading room eventually excluded under section 25A and/or section 26 CROWA and where signage is used to encourage walkers to avoid sensitive areas for wildlife.
55. The RSPB consider it essential that excluded areas are clearly marked on the ground and signage is carefully located.
56. It is recommended that monitoring of the effectiveness of these measures is carried out. Further mitigation may be needed if mapping and signage are not sufficient to enforce these restrictions.

Representations

57. The Ramblers, Suffolk Area commend the proposed route.
58. The Disabled Ramblers comment that significant numbers of people now use all-terrain mobility vehicles to travel on access routes in the open countryside, including challenging and rugged terrain. Users have the same access rights as walkers. In places, natural terrain will prevent access, but man-made structures can be changed. NE is requested to address man-made structures that present a barrier to those who use mobility vehicles. NE should also ensure that existing and proposed structures are suitable for large mobility vehicles and also comply with British Standards. There should be compliance with the Equality Act 2010 and CROWA 2000 and advice followed in the document titled 'Disabled Ramblers Notes on Infrastructure'.
59. Suffolk Local Access Forum welcomes that, with the option of roll-back, the trail will follow the estuary bank more closely (including along HSG6) particularly where the public right of way has been lost to cliff erosion.
60. The proposed field edge alignment along S029 (landward of Rose Farm Cottages) is fully supported by P.C. Butler and Jenny and Martin Pavey. They submit that if the existing public right of way were used instead, it would seriously impinge on privacy because it is so close to the cottages. It would also be inconvenient to fence off. The proposed route is as direct.
61. The RSPB repeats its comments (made as objections), but to the remaining sections of HSG6.
62. The Greenwich Hospital Estate seek signage where the trail would pass close to the Royal Hospital School grounds in Stutton clearly setting out the areas included and excluded.

Natural England's comments on the objections

63. With regard to the objection by P G Colwill and Sons, NE acknowledges the potential adverse effects on yield and farm operations from the establishment of a new route. However, those effects would be very small being limited to 100m of new route on a heavily shaded field edge. The trail would be on the same side of field that already accommodates approximately 240m of existing route which may have been undermined by coastal erosion. It would be necessary to widen the

- field margin to accommodate the trail but only by a small amount if adjacent trees were kept trimmed.
64. The existing public footpath is extremely close to residences and through gardens. Walkers are able to see inside properties from close range. Whilst there is a duty to consider aligning the trail with an existing public right of way where the coastal access criteria would be met, there is also a duty to consider potential negative impacts of doing so. Even if presented with the option of proposing trail alignment, NE would not do so in this case as it would impinge unreasonably on the privacy of residents.
65. NE challenges the assertion that there have been no issues with the existing public footpath. Suffolk County Council has received reports of cyclists using it. There would be no right to cycle on the coast path either but it is difficult to police. Pragmatically, if cycling is likely to occur because of the proximity to Shotley Gate then there would be much less impact on the proposed alignment than the existing public path.
66. Coastal Access and public rights of way legislation are entirely separate. It is outside the remit of NE to stop up or re-route the existing path as suggested. That would be a matter for Suffolk County Council but aligning the trail along the same route would make closure or diversion of the public path more difficult to achieve.
67. The alignment along the existing public path would be closer to the estuary but only by 10-15m. There would be no benefit from the closer proximity because views of the estuary from the public path are blocked by buildings.
68. Many users would prefer a field edge path to walking through private domestic space.
69. Land used as garden or park are excepted from coastal access rights although the trail *may* make use of use of existing rights of way through them (paragraph 5.4.1 of the Approved Scheme). Inclusion of the word 'may' indicate that judgement is likely to be necessary. The landowner's comments were readily taken on board but in applying the judgement NE decided they carried insufficient weight compared with the counter arguments.
70. In terms of RSPB's objections and representations, NE acknowledges the special value of the Stour estuary to waterbirds which is largely due to its extensive habitats and relatively low levels of disturbance. NE also recognises the importance of research undertaken by RSPB on the Sour and Orwell estuaries to quantify the impacts of disturbance.
71. If the proposals are approved by the Secretary of State then NE would make directions to implement access restrictions and exclusions. A direction to exclude access would cancel out coastal access rights and a number of grounds are available. If NE decides that an area of mudflat or saltmarsh is substantially unsuitable for use by the general public then it would exclude access all year round. That is the most restrictive option. It does not mean that the importance of the habitat for wildlife is being overlooked.
72. The Harwich to Shotley Gate Coastal Access Reports, Habitats Regulations Assessment ('HRA') and Nature Conservation Assessment all make it clear that in the unlikely event of needing to remove s25A exclusions for any areas of mudflat

or saltmarsh, NE would first consider whether this action would bring about the need to exclude or restrict coastal access rights.

73. Where there is a need to draw the public's attention to such measures/sensitivities NE will often convey messages to the public alongside those highlighting dangers to the public. In large areas those messages may be at strategic points e.g. key parking or pedestrian access points. Where the objective is to persuade visitors to behave in a particular way this can be done most effectively through carefully targeted information.
74. The intention is to approach signage in two ways. Firstly, the proposals include an interpretation board at the main access point. It will explain the value of local wildlife and its sensitivities. There will be clear messages about limits on access arrangements to avoid negative impacts on wildlife and habitats.
75. Secondly, there is no need for signage along the line of the seawall footpath as it is mostly separated by substantial wet/muddy channels and it is quite obvious to users that it would be extremely difficult to cross the saltmarshes. The HRA did not identify a likely significant effect on designated features due to the trail being located on the seawall. However, NE concedes that access to the saltmarshes is more likely at the eastern end where they become narrower and there is no channel to separate them from the seawall. Also, at the western limit of the more accessible saltmarsh there is an existing public right of way where there is potential for dog walkers to use an inland route to create a circular walk.
76. Therefore, it is agreed that it would be prudent to discourage access by installing carefully worded signs at the western and eastern limits of the more accessible area. A map of possible sign locations is produced. Such signage would (i) convey the absence of coastal access rights to the margin (ii) explain the sensitivities and (iii) ask people to keep their dogs under close control.
77. Prior to opening the trail, checks will be made to ensure the implementation of required establishment works including any special mitigation measures.
78. Monitoring of the protected site will be undertaken. In the event of public access being identified as a cause of a site falling short of its conservation objectives then the coastal access provisions may need to be modified.
79. NE does not propose to put bespoke monitoring in place between S024-S037 as it is largely on an existing public path. Most of the saltmarsh and mudflat habitats are extremely difficult to gain access to from the adjacent trail route. Their hazardous nature is also readily apparent from the route which is on the sea wall and therefore at a higher level.

Natural England's comments on the representations

80. It would be unnecessary to erect signs as the Royal Hospital School grounds are entirely landward of the trail alignment and outside the coastal margin. There is no reason for members of the public to think there might be access rights to the school grounds. The trail would follow the line of a very well established and popular walked route which is mostly already a public right of way. Given the existing high level of use, the increased use from establishing the England Coast Path is expected to be small.

81. Apart from a section less than 150m along S026, the trail is separated from the school grounds by grazing meadows. Along S026 the trail and grounds are separated by a dense hedge. Another existing public right of way is located 250m landward of the trail along the boundary between the grazing meadows and school which provides a much more obvious access point for anyone intending to gain access to school grounds. It would be more appropriate for the School to manage the situation rather than NE or the County Council, as access authority, installing and maintaining signs to an area where no access is proposed and users are unlikely to perceive that access rights exist. Unnecessary signs should be avoided in the countryside for aesthetic reasons particularly as this location is within the Suffolk Coast and Heaths Area of Outstanding Natural Beauty.
82. NE recognises its duties under the Equality Act 2010 and CROWA. The Approved Scheme outlines the principles followed to make the trail as easy to use for disabled people and those with reduced mobility. NE has endeavoured to meet those needs throughout the planning and design processes and would continue to do so through the implementation stage working alongside Essex and Suffolk County Councils. The importance of satisfying the relevant British Standards is recognised as well as the desirability of complying with relevant advice. Many parts of the Harwich to Shotley Gate stretch lend themselves to use by larger/all-terrain mobility vehicles, including the alignment covered by HSG6.
83. NE's comments on the RSPB's representations are the same as those given to its objections.

Analysis

P G Colwill & Sons

84. The existing public footpath passes in front of a couple of detached houses which are set back in their plots. It proceeds close behind the house at 'Stourside' before weaving around other buildings to pass through the plots of a row of terraced housing at Rose Farm Cottages. The precise alignment of the path through these plots is not apparent on the ground. The land is not used as garden as such, but largely comprises a parking area between the rear of the properties and the boundary of the adjacent arable field belonging to [redacted].
85. As proposed, the trail would deviate from the public path to avoid Rose Farm Cottages. Instead the trail would run broadly parallel with the rear of the cottages along the adjacent field edge. The boundary is demarcated by fencing behind which mature trees and hedgerow currently obscure views towards the cottages.
86. The Report explains at Table 6.3.3 that NE chose a trail parallel to and landward of an existing public right of way which is located further away from the cottages to take account of privacy concerns. It is recognised in the Report that, but for the existence of the public footpath, the trail could not be positioned along that same alignment because the land falls within the curtilage of a building and would otherwise have been excepted from coastal access rights. Another reason provided for the proposed alignment of S029 is that the existing route lying between the cottages and their respective gardens makes it inconvenient for residents to fence it off should they so wish.
87. However, the fact remains that there is an existing public path through the curtilages which could not be fenced to prevent public access regardless of the

- trail. Creation of the trail does not remove any existing public rights of way that follow different alignments in the same vicinity. Therefore, establishment of the trail as proposed would result in two virtually parallel paths with the public having the option which one to follow at any given time.
88. The Approved Scheme states at paragraph 4.7.1 that where there is an existing national trail or another clear walked line along the coast, whatever its status, NE will normally adopt it as the line for the Coast Path. This is so long as it is safe and practicable for the public to use, it can be used at all times and the alignment makes sense in terms of other statutory criteria and principles set out in the Scheme.
89. This indicates that the existing public footpath through the grounds of the cottages should be used for the trail as it is closer to the coast than the new stretch of path proposed and it is available at all times. Under the heading of 'Privacy', the Approved Scheme also specifies at paragraph 5.4.1 that whilst the curtilage of a building and gardens are excepted from coastal access rights, existing rights of way through such areas remain in force and may be used. However, the Scheme does not say that they must be used and there are other provisions within the Scheme which are relevant.
90. Under Paragraph 5.4.3, consideration will be given to how the proposals may affect the privacy of people in the immediate vicinity of houses, hotels and other residences and aim to strike a fair balance between these concerns and the interests of the public in having rights of access as the Act requires.
91. The existing public footpath passes close-by the rear of the cottages. It is particularly close to the rear extension of one cottage where passers-by can see inside the room through the ground floor, full length, windows. There are other clear glazed ground floor windows in the row which are set further back from the path. Inevitably there will be an effect upon privacy for the occupiers of the cottages given the close proximity of the path to their homes and its passage through their residential land.
92. The situation is not comparable to 'Stourside' where the public path and proposed trail pass close by the buildings without users entering the garden or other private space associated with the dwelling. The same issues of privacy do not arise.
93. Neither route offers coastal views which are blocked by the cottages. The prospect of entering what appears to be private land may well deter some people from using the existing path as identified in the Table at 6.3.3. From that viewpoint, members of the public may feel more comfortable utilising the field edge path as proposed. Judging by the existing trodden line, walkers may already have begun to use the field edge to divert around the cottages, but this may be because the finger posts erroneously point in that direction.
94. Cyclists should not use either route. Unlawful use of the public footpath in the past is not reason to choose the field edge for the trail instead.
95. The existing path is shorter than the proposed section along S019 but not by very much. Convenience wise, users may prefer the clearer alignment of a field edge path without the uncertainty over the route alignment that arises from the existing path.

96. Weighed against the proposed route for S029 is the adverse effect on the agricultural land. The field is currently cropped. As set out in paragraph 8.7.5 of the Approved Scheme crops are often obvious to the general public. People can be expected to avoid walking on them provided that the trail itself is adequately way-marked, and the route left unsown. It is reiterated at paragraph 8.7.9 that so long as the route is not sown, people will normally find it easy to follow the line along a crop edge.
97. The Approved Scheme recognises that further intervention, such as signage, may be necessary in some circumstances. In particular, paragraph 8.2.11 states that where necessary, signs may be used to mark the line of the trail and/or promote specific relevant messages, such as encouraging dog owners to keep their dog out of the crop and clean up after it.
98. There is an existing walked line along the field edge which is free from crops. More would be lost to provide space for the trail even if widened by trimming the adjacent hedgerow and trees. However, a relatively short stretch of field would be affected.
99. Risks of further losses by people and dogs straying from the path could be mitigated by appropriate signage. The ends of S029 would be an appropriate location for targeted signage bearing in mind that there would be a need to distinguish between the two parallel paths.

Conclusion on P G Colwill & Sons objection

100. There is an existing public path already along the proposed modified route. By utilising that path, it would avoid the need to create a new path along the field edge with associated impact on farming activities. However, such impact is unlikely to be significant as there is already a field margin and only 100m or so length of field would be affected. The difference between the two paths in terms of walking time is negligible. There is no public benefit in utilising the existing path as the Coast Path when there are no coastal views. In terms of convenience, many users are likely to favour the proposed field edge path. It would be easier to follow along a defined boundary than the uncertainty and potential feelings of uneasiness in navigating through a residential setting.
101. The existing public path gives rise to significant privacy issues for the affected residential occupiers. Aligning the Coast Path along the existing path would only serve to compound those issues. The position could be eased through the trail taking a different alignment.
102. On balance and having weighed up the competing landowner interests and those of the public interest in securing the coastal access objectives, I consider that the proposals to use the field edge path along S029 strike a fair balance with appropriate signage aimed at preventing damage to crops.

RSPB

103. Notably, the proposed trail along the objected stretch predominantly follows the same alignment as an existing public footpath. It is already in use by members of the public including those with dogs.

104. The proposals maps do not annotate the coast path as an existing public footpath along S028 because of some coastal erosion. This has meant that the walked line has moved inland. In consequence, the trail along S028 would use the same route which is now used as if it were the public path.
105. There is hedgerow alongside much of the length separating the walked path from the beach and saltmarsh. The density of the hedgerow, as it currently exists, would likely preclude dogs entering these areas. Certainly, the steep cliff along part provides a further deterrent.
106. It is possible that there would be greater opportunity for dogs to access the coastal area at other times of year when the hedgerow is less dense or has been cut. Furthermore, the hedgerow may not always exist. There are also sections of reed beds near to the public footpath where birds could be heard.
107. As the topography levels out as the path proceeds west towards S024, there are water channels coast-side along much of the stretch. These would be an impediment to a person or dogs entering or getting far into the saltmarsh/mudflats but they would not necessarily preclude access altogether.
108. Further along the coast and in NE's Reports for HSG1 and HSG2, it is proposed that people with dogs be excluded from the margin at Copperas Wood, seaward of the route and north of the railway line. This is to reflect existing management of the site by the RSPB. The reasons given for the exclusions are to prevent disturbance by dogs of birds feeding or roosting on the intertidal area of saltmarsh and mudflat within the area covered by the reports. The majority of this habitat, and the only access route to it, fall within the area covered by HSG2.
109. In the case of HSG6, a direction would exclude persons at all times from the margin seaward of the trail on the basis that it is unsuitable for public access. It is the practice of NE to identify the strongest ground on which a direction could be made. For safety reasons the exclusion would stop anyone using the saltmarsh and not just those with dogs or at certain times of year. The Report identifies how the saltmarsh is fragmented, uneven and wet under foot and contains many creeks and channels some of which may not be readily apparent to walkers and may pose a significant risk. The intertidal mudflats are clearly extensive. The Report states that they are quickly covered by a rising tide and contain numerous areas of substantially deeper, softer mud, the locations of which are not visually apparent.
110. Making a direction for safety reasons does not diminish the importance of the natural habitats in any way. Should it so happen that the direction on safety grounds was removed, there remains the option for a fresh direction on nature conservation grounds.
111. The proposed seasonal dogs on lead restriction would apply to the new section of path between S014-S019 which is not already a public path. That differs from S024-S037 which follows an existing public footpath. As set out in Figure 1 of the Approved Scheme, where the public already has rights to use highways such as public rights of way (including footpaths) these take precedence over the coastal access rights. Users of the public path cannot be compelled to keep dogs on leads and such a requirement could not be imposed along this section of main trail.

112. Feeding and roosting birds could potentially be disturbed where dogs are able to stray from the path. There are locations making this feasible particularly where there are fewer water channels and the landscape is more open.
113. Two possible locations for educational signage have been identified. One location is between S027-S028 near to the field boundary. Once past this point heading west some potential exit points off the trail start to emerge. The other location identified for signage is at a viewing point created by an Environment Agency structure sited between S026-S027. This is also a juncture with a public footpath heading inland offering a potential circular walk which may appeal to dog walkers. Between these two signage points there are locations where the saltmarsh might be more accessible.
114. I concur that signage is appropriate given the environmental significance and importance of the area.
115. The proposals do not create any new section of path in the proximity of the Royal Hospital School that is not already available for public use. There is no greater risk than before of access being obtained to school premises from the proposals. Furthermore, the coast path would follow a clearly defined line. There is unlikely to be confusion over the alignment. The erection of signage to identify the extent of the trail is not warranted.
116. Comments regarding accessibility for all are noted. No issues of particular concern are raised or were identified from my site visit.

Conclusion on RSPB objection

117. The objections are capable of being addressed by appropriate signage installed to make it clear that there is no public access to the margin seaward of the trail, to explain why the area is special in environmental terms and that dogs must be kept under proper control.

Overall Conclusions

118. Taking all of these matters into account I conclude that the proposals comply with the duty in Section 297 of the Act with the provision of signage and subject to the corrections required to paragraphs 6.3.3 and 6.3.4 of the Report as described in paragraph 3 above.

Recommendation

119. 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 with the inclusion of signage and subject to the modifications set out in paragraph 3 above. I therefore recommend that the Secretary of State makes a determination to this effect.

[redacted]

APPOINTED PERSON



Determination of admissibility of objection

by [redacted] BA Hons MIPROW

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

Date: 15 June 2020

Objection Ref: MCA/HSG/04

Objection by [redacted] for Environment Agency

Coastal Access - Harwich to Shotley Gate

- On 22 January 2020, Natural England submitted a report to the Secretary of State setting out the proposals for improved access to the coast between Harwich and Shotley Gate under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
 - Natural England submitted its report in accordance with its duty under the Marine and Coastal Access Act 2009 (the 2009 Act) to improve access to the English Coast.
 - The objection, dated 13 March 2020, concerns Chapter 4 of Natural England's report, Hopping Bridge, Mistley to Brantham Hall Farm (HSG Map 4b), route section ref. parcel of land running over Cattawade North Sluice, Brantham from Factory Lane access (TM1025333043) to the layby on the A137 (TM1015433014).
-

Determination

1. The objection is not admissible.

Preliminary matters

2. I am required by paragraph 5 of schedule 1A of the 1949 Act to determine whether the objection is admissible and to give notice of that determination, together with the reasons for it.
3. For an objection to be valid it must be made by a person who has a relevant interest in land, be within the appropriate timeframe, be on the prescribed form, and satisfy the conditions set out in paragraph 3 subparagraphs (3) and (4) of schedule 1A of the 1949 Act¹.

Reasons

4. The Environment Agency states that they are the owner of the relevant land. They have made their objection on the prescribed form and within the required period i.e. before midnight of 18 March 2020.
5. The Environment Agency has not indicated on what grounds their objection is made (paragraph 3 subparagraph (3)(a-f) of schedule 1A of the 1949 Act).
6. The objection specifies the reasons why the Environment Agency is of the opinion that a fair balance is not struck, but they have not referred to any of the grounds (paragraph 3 subparagraph (3)(a-f) of schedule 1A of the 1949 Act).

7. For the above reasons I find that the objection by the Environment Agency is not admissible.

[redacted]

Inspector

¹ Paragraph 3 of schedule 1A of the 1949 Act reads:-

- (1) Any person who has a relevant interest in affected land may make an objection to Natural England about a coastal access report.
- (2) For the purposes of this Schedule an objection is not an admissible objection unless it—
 - (a) satisfies the conditions in sub-paragraphs (3) and (4), and
 - (b) is made in accordance with any requirements imposed by regulations under sub-paragraph (7)(b).
- (3) The first condition is that the objection is made on the ground that the proposals in the report, in such respects as are specified in the objection, fail to strike a fair balance as a result of one or more of the following—
 - (a) the position of any part of the proposed route;
 - (b) the inclusion of proposals under subsection (2) of section 55B or the nature of any proposal under that subsection;
 - (c) the inclusion of, or failure to include, an alternative route under section 55C(2) or the position of any such alternative route or any part of such a route;
 - (d) the inclusion of, or failure to include, proposals under one or more of paragraphs (a) to (c) of section 55D(2) or the nature of any proposal made under such a paragraph;
 - (e) the inclusion of, or failure to include, a proposal under section 55D(5) or the terms of any such proposal;
 - (f) the exercise of a discretion conferred by section 301(2) or (3) of the Marine and Coastal Access Act 2009, or failure to exercise a discretion conferred by section 301(3) of that Act, in relation to a river.
- (4) The second condition is that the objection specifies the reasons why the person making the objection is of the opinion that a fair balance is not struck as a result of the matter or matters within sub-paragraph (3)(a) to (f).
- (5) An objection under this paragraph may propose modifications of the proposals in the report if the person making the objection considers—
 - (a) that those modifications would remedy, or mitigate the effects of, the failure to strike a fair balance to which the objection relates, and
 - (b) that the proposals as so modified would satisfy the requirements of sub-paragraph (6).
- (6) Modified proposals satisfy the requirements of this sub-paragraph if what they propose—
 - (a) is practicable,
 - (b) takes account of the matters mentioned in section 297(2), and (where appropriate) section 301(4), of the Marine and Coastal Access Act 2009 (matters to which Natural England and the Secretary of State must have regard when discharging the coastal access duty), and
 - (c) is in accordance with the scheme approved under section 298 of that Act (the scheme in accordance with which Natural England must act when discharging the coastal access duty) or, where that scheme has been revised, the revised scheme.
- (7) The Secretary of State may by regulations make provision about—
 - (a) the steps to be taken by Natural England to make persons with an interest in affected land aware of their entitlement to make objections under this paragraph;
 - (b) the form and manner in which, and period within which, objections are to be made.