



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

by [redacted] JP BSc (Hons) MPlan MRTPI MIHE

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

Date 29 February 2024

Marine and Coastal Access Act 2009

Objections by [redacted] on behalf of The Berthon Boat Company Limited

Regarding Coastal Access Proposals by Natural England

Relating to Highcliffe to Calshot

Site visit made on 22 August 2023

File Ref: MCA\Highcliffe to Calshot O\72\HCS0033

Objection Ref MCA\Highcliffe to Calshot\O\72\HCS0033

The Shipyard, Bath Road, Lymington, Hampshire SO41 3YL

- On 14 March 2018, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Highcliffe to Calshot under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
- Natural England submitted its reports 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 9 May 2018, concerns Report Chapter 2 of the Report (Hurst Spit to Lymington Bridge (east)) and relates to route sections HCS-2-SO36 and HCS-2-SO41

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

Procedural and Preliminary Matters

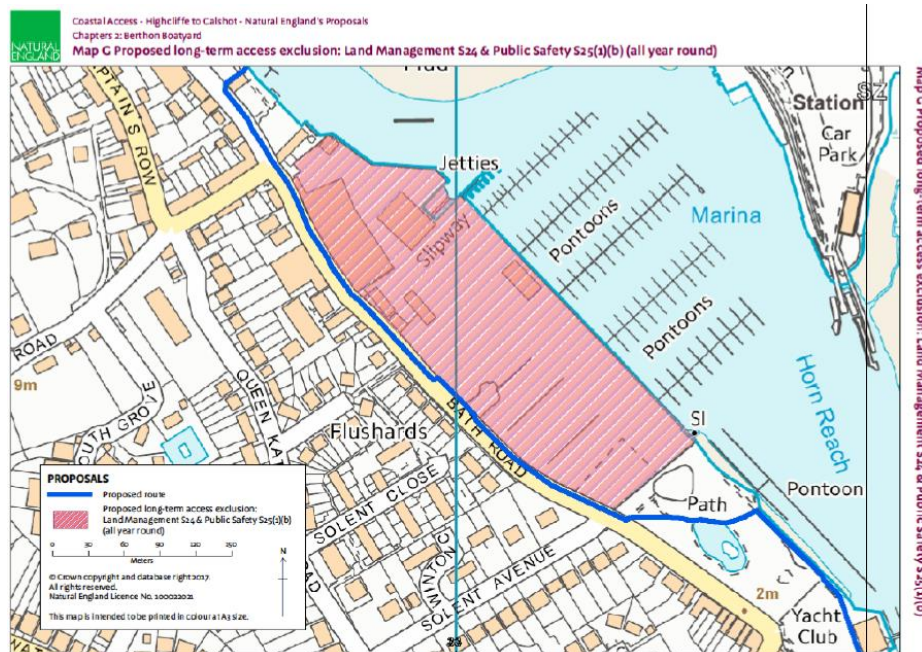
1. I have been appointed to report to the Secretary of State (SoS) on objections made to Natural England's (NE) Report. This report summarises the submissions made by [redacted] on behalf of the Berthon Boat Company Limited (the objector), the response of NE and my conclusions and recommendation.

The Objection

2. The report submitted by NE to the SoS sets out the proposals for improved access along a 57km stretch of the Hampshire coast between Highcliffe and Calshot. The period for making formal representations and objections to the report closed on 9 May 2018 with 140 representations being received.
3. The objection considered in this report relates to The Shipyard, Bath Road, Lymington (hereafter referred to as "the Berthon boatyard") - see extract plan below. The other extant objections are considered in separate reports.

Site visit made on 22 August 2023

File Ref: MCA\Highcliffe to Calshot\O\51\HCS1812, O\49\HCS0791, O\65\HCS1821, O\26\HCS1796, O\32\HCS1630, O\40\HCS0560, O\55\HCS1814, O\50\HCS1811 and O\57\HCS1750



Site Visit

4. I carried out an unaccompanied site inspection on the morning of 22 August 2023. I viewed the proposed alignment of the English Coastal Path ("the trail") along Bath Road and was able to see into the Berthon boatyard. My understanding of the site has been aided by detailed written submissions from the objector as well as notes provided by the previous Inspector.

Main Issues

5. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the SoS to exercise their relevant functions to secure two objectives.
6. The first objective is that there is a route for the whole of the English coast which:
 - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
7. The second objective is that, in association with the trail, a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
8. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the SoS must have regard to:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and

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- (c) the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.
9. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
10. NE's Approved Scheme 2013¹ ("the Scheme") sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
11. Beyond the seaward limit of an estuary, NE has a discretion under section 301 of the 2009 Act to extend the trail further upstream on either side (or both sides) as far as the first bridge or tunnel with pedestrian public access, or to a specified point between the seaward limit and that first bridge or tunnel. Chapter 10 of the Scheme explains the statutory estuary criteria that section 301 of the 2009 Act requires to be taken into account in deciding whether or not to include an estuary. This requires NE, in assessing its discretion to address matters such as the character of the land, the topography, and the extent of excepted land.
12. 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 SoS accordingly.

The Coastal Route

13. The trail, subject to Part 2 of NE's Report, runs from Hurst Spit (grid reference: 429976, 90860) to Lymington Bridge (East) (grid reference: 432870, 96136) as shown on maps 2a to 2e. The trail generally follows existing walked routes including public rights of way and promoted routes and maintains good views of the sea.
14. In the vicinity of the Berthon Boatyard, the proposed trail is aligned along Bath Road, an unclassified road which runs roughly parallel to the estuary of the River Lymington and links the town centre to the Royal Lymington Yacht Club. Bath Road has a well-used footway running along its eastern flank and already forms part of the Solent Way, an established long distance walking route.
15. The Berthon boatyard is enclosed by established boundaries consisting of mature laurel hedging and high metal fencing. This provides a formidable physical and visual barrier to Bath Road. Consequently, the only meaningful views into the site are through the barriered access point. In light of the boundary treatments described above and the prevalence of conspicuous warning signage, the Berthon boatyard is unmistakably private land.
16. Following discussions with [redacted], NE originally agreed to amend their proposals by excluding all of the Berthon boatyard from the Coastal Margin by Direction. This is reflected in paragraph 2.3.10 of the Report which states:
- "Access is to be excluded all year-round at Berthon Boatyard, adjacent to route section HCS-2-S036 to HCS-2-S039 under s24 of the Countryside and Rights of Way Act (2000) for the purpose of land management in order to prevent*

¹ Approved by the Secretary of State on 9 July 2013

disruption to ongoing commercial activity (boatyard operations), and under s25(1)(b) of the Countryside and Rights of Way Act (2000) for the purposes of ensuring public safety. This exclusion will not affect the route itself and will have no legal effect on land where coastal access rights do not apply".

The Objection

17. The objection is from [redacted], the Managing Director of Berthon and Lymington Marina Limited (a subsidiary of Berthon and a tenant of part of the boatyard). The objector's residence is Shipyard House located at the north-western end of the Berthon boatyard. The thrust of the objection is that the Direction proposed by NE to exclude the boatyard from the coastal margin would be inappropriate and unlawful. The objection sets out nine arguments supported by sixteen appendices. These are summarised below:
- a) The Berthon boatyard abuts the Lymington River and has no actual "foreshore" on its eastern boundary. The vertical nature of that boundary results in there being no tract of land between the high mean and high low water marks. As a result, the conjunctive criteria of Article 3(2)(c) of the Access to Countryside (Coastal Margin) (England) Order 2010 ("the Order") cannot be satisfied. The Berthon boatyard cannot therefore qualify as "access land" within the proper meaning of section 1(1)(da) of the Countryside and Rights of Way Act 2000 (the CROW Act);
 - b) The Berthon boatyard area extent is completely populated by buildings, two dwellings, and structures, which, together with their curtilages, satisfy the descriptions in paragraphs 2, 3 and 14(1)(a) of Schedule 1 to the CROW Act. Thereby, all of the extent of that area qualifies as "*excepted land*" and so, by operation of section 1(2) and (1), must be excluded from the scope of section 1(1)(da) "*coastal margin*". It follows that the Berthon boatyard cannot, nor could, become access land under section 1(1) nor can or could the public entitlement to access that land arise under section 2(1). No public rights of access can arise "by virtue of section 2(1)".
 - c) Whilst NE has notional powers under section 24(1)(b) and 25(1) of the CROW Act to impose Directions on land, the purpose of each power is expressly rooted in sections 24(1) and 25(3)) in section 2(1). However, since the Berthon boatyard does not comprise "access land", section 2(1) cannot arise. Consequently, the notional powers would not be *Padfield*² lawful in relation to the Berthon boatyard.
 - d) Since the Berthon boatyard is "excepted land", NE cannot be satisfied that the land would engender public rights of access in the event that the proposals in the Report are approved. Consequently, NE acts in breach of section 55D(5) of the 1949 Act. The proposed Direction is therefore expressly inconsistent and so unlawful.
 - e) The Directions are otiose because they are expressed on their face as not having effect on respect of "excepted land". See paragraphs 6.6.5, bullet 1, and 2.3.10, bullet 2 of Chapter 2 of the Scheme.

² *Padfield v Ministry of Agriculture, Fisheries and Food* [1968] AC 997.

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- f) There is no relevant expert evidence or risk assessment that the Berthon boatyard engenders a risk justifying a Direction to protect the public. The public safety Direction would therefore be unjustified.
 - g) There is no need for a Direction due to the intervening private land across which the public is not entitled to enter or remain.
 - h) The sole basis of risk of entry to the (ostensibly private) Berthon boatyard by the public lies in the Ordnance Survey (OS) 1:25,000 Explorer map, and the digital maps (whose legends are not evident to users on a small screen). The use of a magenta wash to depict the coastal margin would imply an entitlement to access. It is, therefore, incorrect for NE to assert that it has "no role" to play in the mapping of the "coastal margin":
 - i. NE supplied the "trusted data" in relation to the Berthon boatyard to the OS;
 - ii. NE is required by section 55D(3)(a) of the 1949 Act to include "a map showing the landward boundary of the coastal margin", and it is implicit that NE has ascertained the true situation of the "coastal margin" as applied to the Berthon boatyard, and
 - iii. NE is required to have reasonably acquainted itself in respect of the true facts of the existence of buildings and structures (and their curtilages), and their extent, at the Berthon boatyard.

Proposed Modification

- 18. The objector suggests a number of modifications in Appendix 4 of his objection. Put succinctly this involves the deletion of the part of the new Route identified as HCS-2-S036 FW to HCS-2-S041 RD shown on Map 2e and the removal of any hatching, Directions or references to the Berthon boatyard.
- 19. Rather than aligning the coastal path around the Lymington River estuary (Option 1), the objector advocates Option 2 (see page 20 of the Overview document). This would create a break in the trail albeit that people would still be able to walk between the two ends of the route which would remain linked by the existing Solent Way that runs along Bath Road.

Response by NE

Coastal margin and use of Direction

- 20. The "*margin of land along the length of the English coast*" spoken of by section 296(3) of the 2009 Act, and defined by the Order, is intended to be one single and complete margin for the whole coast, including the coast along estuaries which NE proposes to engage with for this purpose.
- 21. NE disagree with the objectors' assertion that because of the construction of a quay at this site, there is no foreshore and therefore Article 3(2)(c) of the Order does not create any margin between the quay and the trail, which passes inland of it. Construction of this quayside in the water meant that instead of there being a lateral foreshore, as would have existed beforehand, the tide now rises up and down the vertical face of the quay. This range of rising and falling vertically now constitutes the foreshore and is why the OS map shows both mean high and mean low water as coincident with the edge of the quay.

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22. For built development to be capable of confiscating the very existence of any foreshore for statutory purposes would be surprising. The fact that the changes made by coastal access legislation to the definition of a "building" in Schedule 1 'Excepted Land' of the CROW Act, included one stating that "*does not include...any slipway, hard or quay*", clearly shows that such areas were intended to form part of the coastal margin.
 23. Notwithstanding the above definition, the objector argues that the whole of the boatyard is excepted land under Schedule 1 to the CROW Act. If the objector now wishes to rely on that position rather than having in place the exclusion that was originally agreed, NE does not object to the removal of the Direction.
 24. NE has already confirmed to the objector that it would be happy to undertake in writing to support any such representation to the SoS. However, the objector should note that this approach would place the onus on him to assert to the public that the land is excepted land; and also that they would theoretically be open to challenge from the public.
 25. Our proposals for exclusion of coastal access rights in this area represented a 'belt and braces' approach of the type NE often use in more urban areas to state very visibly and transparently to the public that certain, often substantial areas, that are considered unsuitable for public access are definitely excluded from their new rights.
 26. The Direction NE give to implement such exclusions, always makes clear that nothing in it affects any excepted land within the area in question. For most landowners in the more urban type of area, this approach is preferable to being left to assert to the public themselves that their land is excepted automatically from the rights under Schedule 1. This is especially so given that NE has no role in definitively identifying excepted land.
 27. NE note however that the site is already closely managed, being wholly enclosed with access gates and security in place at the entrance points. That being so, the objector appears to prefer to do without the exclusion NE have proposed.

OS mapping

28. The decision as to how to depict the trail and associated coastal margin on OS maps was taken following detailed discussions during 2012 with the National Stakeholder Group that had advised on the details of coastal access implementation. This Group, with balanced representation including user, conservation and land manager organisations, considered it imperative that both the trail and the coastal margin should be depicted on these maps. This advice reflected the importance afforded by the Group to the statutory duty both to establish both a 'long distance walking route' around the coast of England, and a margin of land within which the public will also have access, subject to the provisions for excepted land and for any necessary local exclusions.
29. Where NE have to align the route well inland, the resulting coastal margin may contain much land not subject to coastal access rights - either because it is excepted land, or because it is necessary to impose statutory restrictions on the rights. So, in contrast to the position with 'open access land' under the CROW Act, the depiction of coastal margin on OS maps is not a depiction of 'access land'

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- per se. It is a depiction of the status of the land, rather in the same way that national park boundaries are depicted on these maps.
30. This distinction was something that the National Stakeholder Group was keenly aware of and was central to the OS's decision to depict coastal margin in a unique way on its maps. It was felt that because the existing open access 'yellow wash' is well-known by users and often perceived to mean that all areas within it are accessible, a different coloured wash with an equally distinctive boundary should be used to depict the coastal margin in order to emphasise the different nature of this land status and the need for new users to understand what it denotes.
31. The National Stakeholder Group concluded that to show the coastal margin boundary only, without a wash, would not achieve the desired effect. Also, where coastal access rights have superseded pre-existing open access rights on the coast, showing the boundary only would have meant removing the existing yellow access land wash in order to avoid confusion. That could have created the misleading impression of a loss of public access rights as a result of coastal access implementation.
32. This was the background to the depiction standard actually decided upon by the OS. Because of their operational needs, the colour they chose for depicting the margin itself was a 10% magenta wash, bounded on its landward edge by distinctive magenta semi-circles. Both are quite unlike anything else that appears on OS maps and this drives the map user who is at first unfamiliar with it to look up the depiction in the map key to see what it means. The Key, which is displayed on both the paper and digital versions of the map states:
- "All land within the 'coastal margin' (where it already exists) is associated with the England Coast Path (nationaltrail.co.uk/England-coast-path) and is by default access land, but in some areas it contains land not subject to access rights – for example cropped land, buildings and their curtilage, gardens and land subject to local restrictions including many areas of saltmarsh and flat that are not suitable for public access. The coastal margin is often steep, unstable and not readily accessible. Please take careful note of conditions and local signage on the ground."*
33. In summary, NE support the OS's approach to identifying and explaining the status of the Coastal Margin on their 1:25000 maps, and NE are not aware of any practical problems that have arisen from its use in this way since 2014.

Modifications

34. As set out above, NE do not oppose the removal of the previously agreed Direction to exclude access over the Berthon boatyard. In that regard, NE request that the Appointed Person notes NE's intention not to proceed with the aforementioned Direction unless the SoS determines otherwise.
35. However, for the reasons set out above NE cannot support the other modifications put forward by the objector. NE's proposals strike a fair balance between the occupier's interests and the public's interest in having access rights over land.
36. Section 5 of the Overview Report sets out NE's reasons for exercising its 'estuary discretion' at the Lymington River. There is no case for a break in the trail in this

area. Indeed, this would be contrary to NE's duty at s296 of the 2009 Act to provide a "*route for the whole of the English coast*" and to paragraph 4.7.1 of the Scheme which states:

"Where there is an existing national trail along the coast - or another clear walked line along the coast, whatever its status - NE normally propose to adopt it as the line for the England Coast Path so long as:

- It is safe and practicable for the public to use;*
- It can be used at all times; and*
- The alignment makes sense in terms of the other statutory criteria and principles set out in the Scheme."*

Conclusions

37. While the objector's concerns regarding the extent of the coastal margin are well understood, it is germane that NE agreed to a Direction which would have had the effect of excluding the whole boatyard from the default coastal margin. The Direction would not have had any effect on what is or is not excepted land. Nonetheless, the objector argues that the Direction would be "*inconsistent and unlawful*".
38. Given the objector's somewhat unorthodox position, I wrote to him seeking clarification. I have carefully considered the response dated 13 November 2023 in which the objector reaffirmed his position that the exclusion of coastal access rights from the Berthon boatyard would be unlawful and as a result, he should not be "*forced to state a preference for one of two alternatives when he does not agree with either of them*".
39. I am satisfied that it would not be appropriate for the SoS to exclude coastal access rights from the Berthon boatyard given that the objector has expressly rejected that approach. NE has not raised any objection to the removal of the exclusion and has proposed a modification to the Report accordingly (see Proposed Change 3 to the Proposed Modifications Report). In light of circumstances set out above, I see no reason why the SoS should not accept that change. Given I have found the Direction to be unnecessary, the arguments raised by the objector relating to its lawfulness fall away.
40. It is evident from the objector's response dated 13 November 2023 that he is aware of the implications of removing the exclusion i.e., it would place the onus on him to assert to the public that the land is excepted. In that regard, Schedule 1 to the CROW Act³ identifies certain categories of 'excepted land' in order to protect the interests of private landowners, such as land covered by buildings or the curtilage of such land. Although it is not my role to adjudicate on what is or is not excepted land, that being a matter for the Courts, it may give the objector some comfort to know that in this case I consider it would be difficult to argue that the majority of the boatyard does not serve the buildings in some "*necessary or useful manner*"⁴ and could therefore be considered curtilage.

³ See also in Figure 1 of the Approved Scheme.

⁴ *Sinclair- Lockhart Trustees v Central Land Board* [1950] 1 P & CR 195.

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41. However, those comments need to be weighed against the changes made to the Excepted Land list in Schedule 1 to the CROW Act. One of these was that the definition of “*building*” “*does not include...any slipway, hard or quay*”. This change may make it difficult for the objector to assert that all of the boatyard notably the slipways and quays, are excepted land.
42. Putting these issues to one side, arguments as to what is or is not curtilage makes no real difference in practicable terms. This is because the physical characteristics of the Berthon boatyard, make it almost inconceivable that anyone would claim access rights over it. One only has to visit the site to understand that this scenario would be extremely improbable.
43. The way the coastal margin is depicted on OS maps, is a matter for the OS and NE. I do not therefore intend to stray into this area, save for the observation that the accompanying key contains unequivocal wording in relation to the status of the magenta wash which has been used to depict the coastal margin since 2014. Neither NE nor OS are aware of any practical problems that have arisen from its use in that time nor has the objector drawn my attention to any. I am not therefore persuaded that any practical difficulties would arise in respect of the Berthon boatyard as a result of the site being included in the magenta wash particularly given the boatyard’s level of physical and visual containment as well as the prevalence of signage.
44. Turning to the modifications proposed by the objector, I am cognisant of the first objective of the coastal access duty to provide a “*route for the whole of the English coast*” (my emphasis)⁵. The 2009 Act makes clear the desirability of ensuring that so far as reasonably practicable, interruptions to the route are kept to a minimum. The reasons why NE decided to exercise its discretion for the Lymington River estuary are explained in Section 5 of the Scheme Overview. To my mind, the reasoning provided is unimpeachable and consistent with the NE’s and the SoS’s Coastal Access duty. It thereby follows that I consider the routing of the trail along Bath Road adjacent to the Berthon boatyard would accord with paragraph 4.7.1. of the Scheme. In reaching the above conclusions, I have carefully considered the objector’s comments dated 2 June 2023 and NE’s response dated 15 November 2023.
45. In response to the objector’s call for an Inquiry, I do not consider this necessary in light of my findings above. Both parties have been afforded additional opportunities to submit written material to support their cases. In response, the objector submitted large volumes of written material to support his case and to that end I am not persuaded he would be prejudiced by my decision not to hold an Inquiry.
46. Finally, I have noted the objector’s comments about shortcomings in NE’s Habitat Regulation and Environmental Impact Assessments. Having considered all the information in the round, I am satisfied that NE has taken a robust and proportionate approach to HRA. On a further matter of judgement, I am satisfied there would be no likely significant effects on any European Sites or their qualifying features. Annex C contains further information to assist the SoS in this regard.
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⁵ Section 296 of the Marine and Coastal Access Act 2009 also paragraph 1.2.2 of the Scheme <https://publications.naturalengland.org.uk/file/5352294828736512>

Recommendation

47. Taking account of all matters viewed on my site inspection, as well as the objection, representations and comments made in response to it, I conclude, subject to Proposed Change 3, that the proposals do not fail, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraph 3(3)(a), (b), (c) or (e) of Schedule 1(a) to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

[redacted]

APPOINTED PERSON

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

1. This is to assist the Secretary of State, as the Competent Authority, in performing the duties required by 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**).
3. 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 would be provided which maintain the ecological coherence of the UK National Site Network.
4. On 24 May 2022, NE produced its Habitats Regulations Assessment of England Coast Path proposals between Highcliffe and Calshot on Solent and Southampton Water Special Protection Area (**SPA**) and Ramsar site, Solent and Dorset Coast SPA, Solent Maritime Special Area of Conservation (**SAC**), Solent and Isle of Wight Lagoons SAC, The New Forest SPA, Ramsar site and SAC - (Version 2). This detailed document revised and updated the previous habitats regulations assessment (**HRA**) undertaken in preparation for its Coastal Access Report published on 14 March 2018 (the Report) and replaced the HRA element of the previously published Access and Sensitive Features Appraisal.

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5. NE's proposals for the England Coast Path (**ECP**) fall within the scope of a European Court judgement handed down in April 2018. Known colloquially as *People over Wind*, the judgement clarified how the impact of proposals on European protected sites is to be assessed.
 6. This latest HRA (known also as 'the shadow HRA' and referred to from hereon as '**the HRA**') was prepared to inform the determination process in light of that case and has prompted a number of proposed modifications to NE's 2018 access proposals for the section of coast between Highcliffe and Calshot (and listed in Annex 2 on page 183). (These modifications have been considered in the accompanying report.)

Overall scope of the HRA

7. In the HRA, NE has considered whether its detailed proposals for coastal access between Highcliffe and Calshot might have an impact on Solent and Southampton Water SPA, Solent and Southampton Water Ramsar site, Solent and Dorset Coast SPA, Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, The New Forest SPA, The New Forest Ramsar site and The New Forest SAC.
8. The qualifying features of the five coastal and marine sites potentially affected by the proposals are listed in Table 3 (birds) and Table 4 (habitats and species other than birds)(pages 21/22). Those for the land-based New Forest sites are set out in Table 5 (page 25).

Screening of the plan for appropriate assessment

9. The Coastal Access Plan is not directly connected or necessary to the management of the European sites for nature conservation listed above. As a result, this further HRA is required in addition to the work previously undertaken.
10. As a first stage, the HRA must consider whether those constituent elements of the plan or project which are (a) not directly connected with or necessary to the management of the European Site(s) features and (b) could conceivably adversely affect a European site, would have a likely significant effect, either alone or in combination with other plans and projects, upon the European sites and which could undermine achievement of the site's conservation objectives.
11. In accordance with case law, the HRA has considered an effect to be 'likely' if it 'cannot be excluded on the basis of objective information' and 'significant' if it 'undermines the conservation objectives'.
12. It takes into account the precautionary principle (where there is scientific doubt) and excludes, at this stage, any measures proposed in the submitted details of the plan/project that are specifically intended to avoid or reduce harmful effects on the European site(s). Each of the project elements has been tested in view of the European Site Conservation Objectives and against each of the relevant European site qualifying features. An assessment of potential effects using best available evidence and information has been made.
13. In Part C of the HRA, NE identifies possible risks to each of the relevant qualifying features, taking account of their sensitivity to coastal walking and other recreational activities associated with coastal access proposals and in view of each site's Conservation Objectives.

14.NE's conclusion is that proposals for coastal access, without incorporated mitigation, may have a significant effect on Solent and Southampton Water SPA, Solent and Southampton Water Ramsar site, Solent and Dorset Coast SPA, Solent Maritime SAC, and Solent and Isle of Wight Lagoons SAC.

The appropriate assessment

15.In Part D of the HRA, NE sets out its "Appropriate Assessment and Conclusions on Site Integrity". Here it considers the risks in more detail, taking account of avoidance and mitigation measures incorporated into its access proposals.

16.These measures are summarised in Table 2 (on page 11). These include:

- aligning and maintaining the path so as to avoid more sensitive areas;
- restriction or exclusion of coastal access rights where there is a risk of increased recreational activity in sensitive areas;
- new or replacement notices;
- avoiding installing new infrastructure in areas of qualifying habitat.

17.The risks to the site conservation objectives are summarised in Table 7 (at page 47) in relation to anticipated environmental pressures. These potentially adverse effects are firstly assessed alone (but taking into account mitigation measures) and are considered in terms of:

- disturbance to breeding and non-breeding waterbirds, and of breeding terns and Mediterranean gull, from recreational activities;
- disturbance to non-breeding waterbirds, terns and Mediterranean gull from construction works;
- damage to coastal habitats and associated rare wetland invertebrate or plant species following changes in access; and
- loss of feature extent through installation of new access management infrastructure.

18.In addition, the HRA examines these potentially adverse effects in combination with other plans and projects.

19.Based on its analysis, NE concludes that, in view of site conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of Solent and Southampton Water SPA, Solent and Southampton Water Ramsar site, Solent and Dorset Coast SPA, Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, the New Forest SPA, the New Forest Ramsar site or the New Forest SAC either alone or in combination with other plans and projects.

The section of the England Coast Path to which objection has been made

20.The section of the ECP relevant to this report is considered in Section 3.2A (Milford on Sea to Lymington) of the HRA. However, there are no HRA matters directly relevant to the Berthon Boatyard

21.Annex 4 of the HRA (at page 185) lists additional measures included in the access proposals for conservation reasons although none are proposed for the section of the proposed trail considered in this report.

22. Annex 9 of the HRA (at page 191) lists proposals for new infrastructure within European sites along this stretch of coast. For the section of the proposed trail considered in this report, all surface and other proposed improvements are landward of the SAC/Ramsar and SPA sites.

Conclusions

23. NE is satisfied that its proposals to improve access to the English coast between Highcliffe and Calshot, including the section objected to, are fully compatible with the relevant European site conservation objectives.
24. It is open to the Secretary of State to consider these proposals and make a decision about whether to approve them, with or without modifications. If the Secretary of State is minded to modify NE's proposals, further assessment under the Habitats Regulations may be needed before approval is given.
25. NE considers that the proposed route alignment (as modified in light of the HRA) strikes an appropriate balance between coastal access and wildlife legislation.
26. There is no contrary evidence to give rise to a conclusion that, in respect of the relevant sites or features, the appropriate balance has not 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] JP BSc (Hons) MPlan MRTPI MIHE

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

Date 29 February 2024

Marine and Coastal Access Act 2009

Objections by [redacted] and [redacted], [redacted], [redacted] and [redacted],
[redacted], [redacted], [redacted] (on behalf of the Cadland Estate), [redacted],
[redacted] and [redacted], and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Highcliffe to Calshot

Objection Refs: MCA\Highcliffe to Calshot: O\51\HCS1812, O\49\HCS0791, O\65\HCS1821, O\26\HCS1796, O\32\HCS1630, O\40\HCS0560, O\55\HCS1814, O\50\HCS1811 and O\57\HCS1750

Stansmore Point to Calshot

- On 14 March 2018, Natural England submitted reports to the Secretary of State setting out the proposals for improved access to the coast between Highcliffe to Calshot under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
- Natural England submitted its reports in accordance with its duty under the Marine and Coastal Access Act 2009 (the 2009 Act) to improve access to the English Coast.
- The objections dated 24 April - 9 May 2018, concern Chapter 5 of Natural England's report, Lower Exbury House to Calshot (Maps 5d – 5f), route section refs. HCS-5-S008 and HCS-5-S017 to HCS-5-S027.

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

Procedural and Preliminary Matters

48. I have been appointed to report to the Secretary of State (SoS) on objections made to Natural England's (NE) Report. This report summarises submissions made by Objections by [redacted] and [redacted], [redacted], [redacted] and [redacted], [redacted], [redacted], [redacted] (on behalf of the Cadland Estate), [redacted], [redacted] and [redacted], and [redacted] (hereafter referred to as "the objectors"), the response of NE and my conclusions and recommendation.
49. As the objections relate to the same section of the trail and raise a number of common themes, I have decided to deal with them in the same report.
50. NE have proposed a series of modifications to the original Report in its Change Report dated 8 June 2022. Proposed Changes 18 and 19 relate to the section of the proposed trail covered in this report (See Annex A and B).

Site Visit

51. I carried out an unaccompanied site inspection on 22 August 2023. I was able to walk the section through Lepe Country Park before travelling northwards and then along Stanswood Road. I was also able to walk currently accessible sections of the route around Calshot for example Castle Lane and Jack Maynard Road.

Main Issues

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

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

54. 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.

55. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the SoS must have regard to:

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

56. 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.

57. NE’s Approved Scheme (“the Scheme”) was approved by the Secretary of State on 9 July 2013 sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE’s proposals within the Report.

58. 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 SoS accordingly.

The Route

59. From the east side of Lepe Country Park, the proposed route follows Stone Lane to the Stanswood Road. Stone Lane is a privately maintained gravel access road and new pedestrian access rights would be created by the proposals. The proposed route then follows Stanswood Road for approximately 1.5 miles to the outskirts of Calshot village. From Stanswood Road the route initially follows a public footpath towards Elmfield Lane and then a proposed new section of path through farmland to Hillhead. From Hillhead the route follows the seafront towards Calshot. The route would be established and maintained to National Trail quality standards.

The Objections

60. The Report submitted by NE to the SoS set out the proposals for improved access along a 57km stretch of the Hampshire coast between Highcliffe and Calshot. The period for making formal representations to the Report closed on 9 May 2018 and 140 representations were received.

61. The objections considered in this report relates to the Cadland area between Stansore Point and Calshot Beach. Other extant objections are considered in separate reports. The objectors raised a number of related concerns which are summarised below.

Extent of Coastal Margin

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62. Many of the objectors raised concerns over the size of the coastal margin (circa 700 acres) that would be created as a result of the proposed inland routing of the trail along Stanswood Road. While some of the land would be either excluded by Direction or as excepted land, portions of it would still be technically available for public access. This would not strike a fair balance.
63. It is further argued that the use of a magenta wash on the Ordnance Survey's (OS) maps would create confusion and/or accidental trespass. Given the size of the area between Stanswood Road and the coast, there should be some way for the public to discriminate between those areas of coastal margin that can be used by the public (i.e., spreading room) and those that cannot (land subject to directions or excepted land).
64. Some objectors argued that the use of a magenta wash to depict the whole coastal margin would be a particular problem in the Cadland area because at least fifty percent of the coastal margin would be either excepted land or excluded by Direction. Many objectors believe that it is improbable to expect walkers who have left the trail (perhaps encouraged or confused by the magenta wash) to stop their journey before they enter excepted land, or an area excluded by a Direction.

Alternative inland route

65. Some objectors have suggested that the above concerns could be addressed if NE were to classify the Stanswood Road route along as an "*alternative route*" under section 55C of the 1949 Act. Under the terms of the 2010 Order⁶, an alternative route does not by default generate a seaward margin. Some objectors argued that in order to justify classifying the intended route in this way, NE should have proposed an ordinary seaward route.

Nature Conservation and Habitat Regulation Assessment

66. Some of the objectors raised concerns that NE's proposed s26(3)(a) Directions have omitted areas seaward of the trail which are designated for their environmental importance as nature reserves and Sites of Special Scientific Interest. These include Tanneycroft Row, a wet coastal woodland that runs along the beach, Jugglers Moor, the marsh and Bourne River valley that runs south from Stanswood Road to the beach and Bournefield Plantation that runs east from the Bourne River above the beach.
67. In terms of the Habitat Regulations Assessment (HRA) carried out by NE, some of the objectors suggest that it cannot be concluded there would be no likely significant effects on internationally important wildlife sites without a more robust package of mitigation and preventative measures. The reasons for this are as follows:
- NE cannot expect Directions to exclude access, signage and fences to work effectively while a magenta wash is used on the OS maps.
 - The magenta wash includes areas subject to s26(3)(a) nature conservation Directions, therefore encouraging access to them.

⁶ The Access to the Countryside (Coastal Margin) (England) Order 2010

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- It is improbable to expect walkers to differentiate between areas of coastal margin that are available to the public for recreation and those covered by Directions.
 - NE lacks the resources to monitor and maintain fences and signs to prevent access to areas that are excluded from new access rights.

Private Land Conflicts

68. A number of objectors pointed out that their land is currently access-free, and they wanted to keep it that way. [redacted]'s objected on the basis that NE was unwilling to exclude access rights from his land thereby promoting encroachment on arable and grazing land, private gardens and environmentally sensitive areas. He argued that this *"does not fairly balance or represent the interests of a private landowner and therefore does not strike a fair balance"*.
69. Other objectors highlighted the presence of a commercial farm within the coastal margin which uses high pressure rain guns through the summer months to water the arable fields. Others have pointed to commercial shoots which take place on the land from September to end of January.
70. [redacted] raised health and safety concerns regarding the routing of the trail through fields used for stallion breeding. It is suggested that the route should continue on the existing footpath along Elmfield Lane thus removing the possibility of interference with livestock and risk to walkers.
71. [redacted] and [redacted] raised concerns that the area known as Jugglers Moor which is used for the grazing of water buffalo, would be included in the coastal margin. Among others, [redacted] raised concerns about the potential for inconsiderate parking along Stanswood Road and at the end of Stone Drive.
72. [redacted] argued that an unstable cliff top would make the proposed coastal margin unviable for public access.

Response by NE

Coastal Margin

73. NE investigated the possibility of a more seaward alignment in consultation with the Cadland Estate. However, the Estate argued strongly for the trail to be aligned inland for the following reasons:
1. There are sensitive conservation sites and species in the more seaward areas that needed to be avoided (see NE's HRA).
 2. Farming and land management practices such as the use of mobile high pressure watering systems and commercial forestry made it hard to find a viable alignment.
 3. A commercial shoot takes place on a number of areas seaward of the proposed trail. Pheasant pens are positioned at a number of woodland locations.
74. In light of the above, NE considered that an inland alignment along Stanswood Road was the most appropriate option. While NE recognises the desirability of sticking to the periphery of the coast, section 4.5.4 of the Scheme contemplates

scenarios such as this one where it states: *"Significant detours from the periphery of the coast may occasionally be necessary in order to take account of other uses of the land, or of wildlife sensitivities"*.

75. The seaward coastal margin is an automatic consequence of the trail's alignment. Accordingly, NE do not have the power to remove areas of land from it as asserted by some of the objectors. Nonetheless, the legislation builds in protections in the form of excepted land and Directions under the Countryside and Rights of Way (CROW) Act 2000 regime to ensure that the provision of any new access rights is compatible with established land uses.
76. The powers to give Directions excluding public access must be used within the constraints of the governing legislation and the provisions of Chapters 6 to 8 of the Scheme. Within these parameters, NE had lengthy discussions with legal interests and others to ensure the appropriate use of Directions in this area.
77. The decision on how to depict the trail and the 'coastal margin' on OS maps was the result of detailed discussions with the coastal access national stakeholder group. This group, representing a balance of interests including user, conservation and land manager representative organisations, considered it imperative that the route of the trail and the coastal margin should both be depicted. This decision reflected the importance of the statutory duty both to establish a long-distance walking route around the coast of England, and to identify a margin of land within which the public would also have access.
78. The depiction of the coastal margin on OS digital and paper products with a magenta wash comes with a clear, concise explanation in the key: *"All land within the 'coastal margin' (where it already exists) is associated with the England Coast Path and is by default access land, but in some areas it contains land not subject to access rights - for example cropped land, buildings and their curtilage, gardens and land subject to local restrictions including many areas of saltmarsh and flat that are not suitable for public access. The coastal margin is often steep, unstable and not readily accessible. Please take careful note of conditions and local signage on the ground."*
79. The new coastal access arrangements bring greater clarity on the ground about the rights of public access to coastal land. It is in the interest of all parties that information regarding these new rights and about the new coastal margin designation is depicted accurately and consistently on OS maps, with appropriate explanation. OS maps have used the magenta wash since 2014 and as far as NE is aware, no serious cause for concern has arisen in practice including implications for protected habitats.
80. In terms of whether the creation of the trail would cause confusion and/or inadvertent trespass, NE's experience is that deliberate trespass is rare. Where it does occur, factors that influence this can be identified and preventative measures put in place. Moreover, walkers do not like conflict with landowners and consequently a well waymarked path such as the trail is an attractive prospect. For that reason, NE would expect that the vast majority of people using coastal access rights in the area would stick to the line of the trail. Experience on national trails and other footpaths has shown that careful positioning of waymarker arrows at key locations greatly encourages walkers to stay on the path.

81. Some objectors have suggested that NE is mistaken in treating all of the land between the proposed trail) and mean low water on the open coast (or the relevant parts of a tidal river) as “*coastal margin*”. NE’s reasons for doing so are:

1. The language used by the relevant legislation is broad and inclusive. Section 3A(2)(a) of the CROW Act, and Article 3(2) of the 2010 Order, provide that land seaward of the trail is coastal margin if “*taken as a whole*” (that is, together with the route itself and a two-metre strip either side) it is coastal land. “*Coastal land*” means the foreshore and any land adjacent to the foreshore (see section 3(3) of the CROW Act). There is nothing in the definition that suggests that the land between the trail and the seaward extent of the foreshore would not be coastal margin.
2. The more restrictive definition of landward coastal margin at Article 3(3) of the 2010 Order reinforces that Article 3(2) is intended to be read broadly.
3. NE’s interpretation is consistent with the duties in section 296(2)-(3) of the 2009 Act to create a coastal route and “*a margin of land along the length of the English coast [that] is accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise ...*”. In proposing the line of the coastal route, Natural England must among other things have regard to the “*desirability of that route adhering to the periphery of the coast and providing views of the sea*” (section 297(2)(b)). In its broad character, the trail will always be a coastal route even if in places it must follow substantial inland diversions because of circumstances found closer to the sea or river itself.

Alternative inland route

82. NE considers that designating an “alternative route” in the manner suggested by some of the objectors would be legally flawed. This is because to justify classifying the intended route in this way, NE would need to propose an ordinary seaward route, while acknowledging that the public could never in practice be allowed to use that route for the reasons set out in its Report. That would clearly offend the principles of common sense as well as the legislation itself.

Private Land Conflicts

83. Some objectors resent the routing of the trail across land that is currently private. However, NE has a statutory duty under s296 of the 2009 Act to improve public access to the coast, much of which would have been previously inaccessible, this will invariably involve the creation of public rights across private land. These new rights would not interfere with existing statutory processes in relation to anti-social activities such as littering, vandalism, noise disturbance or inconsiderate/obstructive parking.

84. Where the proposed trail is aligned along Stanswood Road, the coastal margin includes farmland and woodland between the road and the shore. Much of this area would be excepted land, either because it is land used as a park or garden or is arable. It is therefore very unlikely that walkers would come into contact with irrigation equipment.

85. However, NE accept that coastal access rights would be created over some areas, leading to the possibility that new desire lines could develop. In evidence provided to NE by the Cadland Estate, two possible desire lines were identified.

The Estate confirmed that these routes are not currently in use and they did not intend to waymark or promote the routes or make accommodation for pedestrians where there are existing field boundaries or other obstacles.

86. In light of the remoteness of the excluded area from the trail, the presence of existing barriers and obstacles and the availability of shoreline access in the adjacent country park, NE consider the identified desire lines would be seldom used, if at all, since most people would not undertake a long walk over farmland without some visual cues to indicate a route. However, landowners may erect signs indicating the extent of the excluded or excepted area, should they wish to. Given the very low levels of anticipated use of these areas, there is not a case for a Direction to restrict or exclude access and that the activities can continue to be managed by standard informal land management techniques.
87. In terms of the unstable cliff top, NE is unable to exclude access under s25(1)(b) for public safety reasons. Nonetheless, very few, if any, walkers are expected to try and access this area. As with any part of the coast, walkers should take responsibility for their own safety. In that regard, land subject to coastal access rights benefits from the lowest level of occupiers' liability known under English law – considerably lower than the duty of care owed towards trespassers on private land, and this applies to risks from both natural and man-made features. This makes it extremely unlikely in normal circumstances that an occupier could successfully be sued in relation to injury on land with coastal access rights.
88. NE are satisfied that stock fencing would resolve any concerns raised by [redacted] regarding the routing of the trail across land used by grazing by horses. The alternative route proposed along Elmfield Lane was considered but discounted as it would take walkers away from the coast and through a housing estate which would significantly diminish the trail's recreational value. If this alignment was chosen, the fields seaward would also become part of the coastal margin and spreading room, which would increase the amount of grazing land in the coastal margin.
89. Finally, to address concerns raised by [redacted] and [redacted] regarding the water buffalo on Jugglers Moor, NE has opted to exclude public access all year round to this area on public safety and land management grounds in connection with the grazing of the water buffalo - see plan at Annex B and Proposed Change 19 in NE's Proposed Modifications Report.

Nature Conservation and the Habitat Regulation Assessment

90. NE's HRA was updated following the People over Wind legal judgment⁷. As part of the review, [redacted]'s 2017 report was taken into account by NE. However, the updated HRA found that neither the proposed route for this section of the trail nor the creation of coastal access rights would have an appreciable effect upon qualifying features of the sites concerned.
91. The HRA explains why NE are proposing to exclude access all year round from environmentally sensitive areas along the Cadland shore and Stone Marsh by s26(3)a Directions. To provide more clarity, NE have agreed with [redacted] to exclude a strip of foreshore along the seaward boundary of Cadland House

⁷ *People Over Wind and another v Coillte Teoranata* (Case C-323/17) EU (12 April 2018)

Registered Park and Garden. The revised boundary is Proposed Change 18 in NE's Proposed Modifications Report. The updated plan is shown in Annex A.

92. NE do not expect there to be a significant increase in people visiting other areas and, in any event, NE's experience supports the view that the vast majority of people using access land act in a responsible way and are respectful of signs and other informal access management measures. Accordingly, NE is satisfied, after discussion with landowners, that access can continue to be managed quite safely, using informal management measures.
93. NE are confident that its HRA is robust and there will be no likely significant effect on the sensitive features within the land in question. Accordingly, further mitigation measures including Directions to exclude access to Tanneycroft Row, Jugglers Moor or Bournefield Plantation are not considered necessary.
94. In terms of whether access should be restricted more generally, the Scheme is clear that NE's suggested access management measures should follow the principle of the '*least restrictive option*' that works. As the relevant authority, NE are not able to grant a Direction where it is not necessary and it is clear from wider experience that restrictions are most likely to be complied with where they are seen to be proportionate to the need, and a clear rationale for them is explained.

Conclusions

95. The key principles of the alignment and management of the trail are set out in the Scheme. The proposed route of the trail must adhere to the Scheme. Section 4.8.5 is clear that land seaward of the trail qualifies automatically as coastal margin. The size of the seaward coastal margin is therefore automatically dictated by the alignment of the coastal route.
96. While I accept that the proposed routing of the trail along Stanswood Road would result in a large tract of land falling within the coastal margin, to protect the interests of private landowners, section 5.4.1 of the Scheme makes clear that domestic buildings and curtilages and land used as a garden or park as well as arable land are all 'excepted' from coastal access rights. Accordingly, there would be no public rights over many of the areas of land highlighted by the objectors.
97. Speculation regarding the intentions of Parliament or the SoS are unhelpful. The Scheme expressly countenances scenarios where "*Significant detours from the periphery of the coast may occasionally be necessary in order to take account of other uses of the land, or of wildlife sensitivities*". The reasons provided by NE for not choosing an alignment closer to the coast, have not been challenged by cogent evidence. Accordingly, I consider the reasons provided by NE (see para 24 of this report) are valid.
98. The way the coastal margin is depicted on its maps, is a matter for the OS and NE. I do not therefore intend to stray into this area, save for the observation that the accompanying Key contains unequivocal wording in relation to the status of the magenta wash which has been used to depict the coastal margin since 2014. Neither NE, the OS nor the objectors have drawn my attention to any practical problems that have arisen from its use in that time. I am not therefore persuaded that the use of the magenta wash on the OS maps would cause problems for landowners in the Cadland area.

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99. Whilst I can understand the concerns of the objectors about the routing of the trail across private land as well as the extent of the coastal margin. The requirement of the coastal access duty is to secure a route for the whole of the English coast. As is made clear in the Scheme, the 2009 Act “*allows existing coastal access to be secured and improved and new access to be created in coastal places where it does not already exist*” (my emphasis).
100. There is simply no evidence before me to support the argument that the establishment of the trail would result in significant numbers of visitors to the area of coastal margin between Stanswood Road and the coast. I do not therefore consider significant problems would arise in relation to littering, vandalism, parking, noise and trespassing. Even if I am wrong about the numbers, in my experience, users of walking routes tend to be ordinary law-abiding citizens. I would therefore expect those who might be tempted to explore the coastal margin to be respectful of private property, adhere to signage and fencing and take responsibility for their own safety.
101. The designation of Stanswood Road as an “*alternative route*” as suggested by some of the objectors would manifestly conflict with the legal principles contained in the 1949 Act. I therefore concur with NE that this would not be a tenable approach.
102. I have carefully considered the document prepared by [redacted] on behalf of the Cadland Estate dated 24 May 2023 which makes a series of points about NE’s approach to HRA. I wrote to NE specifically on the points raised by [redacted] and have taken the subsequent reply dated 15 November 2023 into account as well as the post-site visit comments dated 15 June 2023 and NE’s updated HRA assessment dated 24 May 2022.
103. Having considered all the information in the round, I am satisfied that NE has taken a robust and proportionate approach to HRA. On a further matter of judgement, I am satisfied there would be no likely significant effects on any European Sites or their qualifying features. Annex C contains further information to assist the SoS in this regard.
104. The issues raised regarding water buffalo at Juggler Moor and the Registered Park and Garden at Cadland House have been addressed by the changes proposed by NE (Items 17 and 18 to NE’s Proposed Change Report). I am also satisfied that the issues raised by [redacted] and other landowners are capable of being resolved through standard land management practices such as signage and fencing and as such, no additional Directions are necessary.

Recommendation

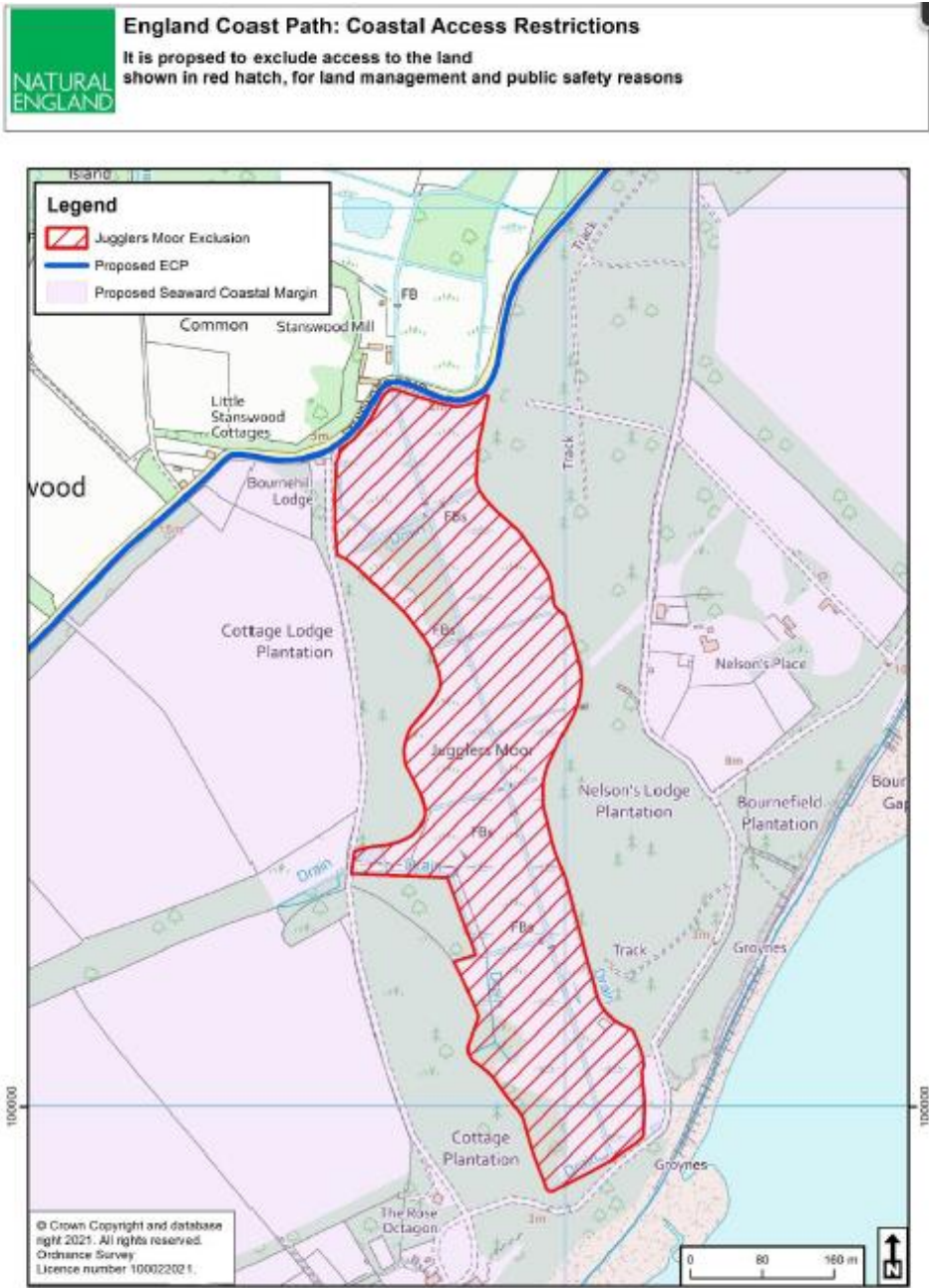
105. Taking account of all matters viewed on my site inspection, as well as the objection, representations and comments made in response to it, I conclude, subject to Proposed Changes 18 and 19, that the proposals do not fail, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraph 3(3)(a), (b), (c) or (e) of Schedule 1(a) to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

[redacted]

APPOINTED PERSON

Annex A - Change 18: Updated boundary of the s26(3)(a) direction on the Cadland Shore

18. Increase extent of the proposed direction at Cadland Beach to cover the part of the beach that is registered park and garden	DIR	Sd	Cadland Estate	<div></div> Cadland Estate O40	Ramblers R42	<p>We have used O62 as a hook to propose this modification to the direction. We have let <div></div> of Cadland Estate) know about this in our comments on his objection.</p> <p>We will write to those people (including the Cadland Estate) who responded to the call for evidence regarding our update of the HRA. This letter will include details of the proposed modifications in their ownership.</p>
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Annex B – Change 19: Jugglers Moor Exclusion

19. Add a land management/ public safety exclusion over marsh grazed by water buffalo – Jugglers Moor	DIR	Se	Cadland Estate	OS0	Manor of Cadland Farms R54 Cadland Estate R58	<p>raised the need for a direction in their objection OS0 (see Cadland area objections document). They do not have a legal interest in the buffalo or the land on which they are grazed. We have contacted the Estate's Herd Manager, who provided details about where the buffalo are grazed.</p> <p>NE has written to stating that we have proposed a new direction on Jugglers Moor. We will write to those people (including the Cadland Estate) who</p>
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ANNEX C: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT

27. This is to assist the Secretary of State, as the Competent Authority, in performing the duties required by the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations).
28. 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**).

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- 29.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 would be provided which maintain the ecological coherence of the UK National Site Network.
- 30.On 24 May 2022, NE produced its Habitats Regulations Assessment of England Coast Path proposals between Highcliffe and Calshot on Solent and Southampton Water Special Protection Area (**SPA**) and Ramsar site, Solent and Dorset Coast SPA, Solent Maritime Special Area of Conservation (**SAC**), Solent and Isle of Wight Lagoons SAC, The New Forest SPA, Ramsar site and SAC - (Version 2). This detailed document revised and updated the previous habitats regulations assessment (**HRA**) undertaken in preparation for its Coastal Access Report published on 14 March 2018 (the Report) and replaced the HRA element of the previously published Access and Sensitive Features Appraisal.
- 31.NE's proposals for the England Coast Path (**ECP**) fall within the scope of a European Court judgement handed down in April 2018. Known colloquially as *People over Wind*, the judgement clarified how the impact of proposals on European protected sites is to be assessed.
- 32.This latest HRA (known also as 'the shadow HRA' and referred to from hereon as '**the HRA**') was prepared to inform the determination process in light of that case and has prompted a number of proposed modifications to NE's 2018 access proposals for the section of coast between Highcliffe and Calshot (and listed in Annex 2 on page 183). (These modifications have been considered in the accompanying report.)

Overall scope of the HRA

- 33.In the HRA, NE has considered whether its detailed proposals for coastal access between Highcliffe and Calshot might have an impact on Solent and Southampton Water SPA, Solent and Southampton Water Ramsar site, Solent and Dorset Coast SPA, Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, The New Forest SPA, The New Forest Ramsar site and The New Forest SAC.
- 34.The qualifying features of the five coastal and marine sites potentially affected by the proposals are listed in Table 3 (birds) and Table 4 (habitats and species other than birds)(pages 21/22). Those for the land-based New Forest sites are set out in Table 5 (page 25).

Screening of the plan for appropriate assessment

- 35.The Coastal Access Plan is not directly connected or necessary to the management of the European sites for nature conservation listed above. As a result, this further HRA is required in addition to the work previously undertaken.
- 36.As a first stage, the HRA must consider whether those constituent elements of the plan or project which are (a) not directly connected with or necessary to the management of the European Site(s) features and (b) could conceivably adversely affect a European site, would have a likely significant effect, either

alone or in combination with other plans and projects, upon the European sites and which could undermine achievement of the site's conservation objectives.

37. In accordance with case law, the HRA has considered an effect to be 'likely' if it 'cannot be excluded on the basis of objective information' and 'significant' if it 'undermines the conservation objectives'.
38. It takes into account the precautionary principle (where there is scientific doubt) and excludes, at this stage, any measures proposed in the submitted details of the plan/project that are specifically intended to avoid or reduce harmful effects on the European site(s). Each of the project elements has been tested in view of the European Site Conservation Objectives and against each of the relevant European site qualifying features. An assessment of potential effects using best available evidence and information has been made.
39. In Part C of the HRA, NE identifies possible risks to each of the relevant qualifying features, taking account of their sensitivity to coastal walking and other recreational activities associated with coastal access proposals and in view of each site's Conservation Objectives.
40. NE's conclusion is that proposals for coastal access, without incorporated mitigation, may have a significant effect on Solent and Southampton Water SPA, Solent and Southampton Water Ramsar site, Solent and Dorset Coast SPA, Solent Maritime SAC, and Solent and Isle of Wight Lagoons SAC.

The appropriate assessment

41. In Part D of the HRA, NE sets out its "Appropriate Assessment and Conclusions on Site Integrity". Here it considers the risks in more detail, taking account of avoidance and mitigation measures incorporated into its access proposals.
42. These measures are summarised in Table 2 (on page 11). These include:
- aligning and maintaining the path so as to avoid more sensitive areas;
 - restriction or exclusion of coastal access rights where there is a risk of increased recreational activity in sensitive areas;
 - new or replacement notices;
 - avoiding installing new infrastructure in areas of qualifying habitat.
43. The risks to the site conservation objectives are summarised in Table 7 (at page 47) in relation to anticipated environmental pressures. These potentially adverse effects are firstly assessed alone (but taking into account mitigation measures) and are considered in terms of:
- disturbance to breeding and non-breeding waterbirds, and of breeding terns and Mediterranean gull, from recreational activities;
 - disturbance to non-breeding waterbirds, terns and Mediterranean gull from construction works;
 - damage to coastal habitats and associated rare wetland invertebrate or plant species following changes in access; and
 - loss of feature extent through installation of new access management infrastructure.
44. In addition, the HRA examines these potentially adverse effects in combination with other plans and projects.

45. Based on its analysis, NE concludes that, in view of site conservation objectives, the access proposals (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of Solent and Southampton Water SPA, Solent and Southampton Water Ramsar site, Solent and Dorset Coast SPA, Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, the New Forest SPA, the New Forest Ramsar site or the New Forest SAC either alone or in combination with other plans and projects.

The section of the England Coast Path to which objection has been made

46. There are two issues listed in Annex 2 as proposed changes to the original access proposals as a result of the HRA that affects the section of trail to which objection has been made. These are:

- 1) To increase extent of the proposed direction at Cadland Beach to cover the part of the beach that is registered park and garden, and
- 2) To add a land management/ public safety exclusion over marsh grazed by water buffalo at Jugglers Moor.

47. As noted in Section 3.2J of the HRA, the main risk to sensitive features in this location is through disturbance of non-breeding waterbirds and the breeding ringed plover from recreational activities and from trampling of qualifying and supporting habitat following changes in access.

48. Annex 4 of the HRA (at page 185) lists additional measures included in the access proposals for conservation reasons. One relates to this section of the proposed route and states "*At establishment stage, consider replacing existing National Nature Reserve signs to confirm public access is excluded from Cadland Beach and Stone Marsh*".

49. Annex 9 of the HRA (at page 191) lists proposals for new infrastructure within European sites along this stretch of coast. For the section of the proposed trail considered in this report, all surface and other proposed improvements are landward of the SAC/Ramsar and SPA sites.

Conclusions

50. NE is satisfied that its proposals to improve access to the English coast between Highcliffe and Calshot, including the section objected to, are fully compatible with the relevant European site conservation objectives.

51. It is open to the Secretary of State to consider these proposals and make a decision about whether to approve them, with or without modifications. If the Secretary of State is minded to modify NE's proposals, further assessment under the Habitats Regulations may be needed before approval is given.

52. NE considers that the proposed route alignment (as modified in light of the HRA) strikes an appropriate balance between coastal access and wildlife legislation.

53. There is no contrary evidence to give rise to a conclusion that, in respect of the relevant sites or features, the appropriate balance has not been struck between NE's conservation and access objectives, duties and purposes.