

Annex C



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

by [redacted] BA DPA MRTPI(Rtd)

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

Date 26 October 2021

Marine and Coastal Access Act 2009

Objection by [redacted]

regarding coastal access proposals by Natural England relating to
the England Coast Path, Kimmeridge Bay to Highcliffe, Dorset

Objection Ref: MCA/Kimmeridge Bay to Highcliffe/O/18

Route sections LCH-6-S062FW to S064FW

- On 21 June 2017 Natural England (NE) submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs (the SoS) under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) for improved access along the Dorset coast between Kimmeridge Bay and Highcliffe, pursuant to the duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act).
- An objection, dated 29 March 2018, has been made by [redacted] on behalf of Mudeford Sailing Club. The land to which the objection relates is the sections LCH-6-S062FW to LCH-6-S064FW and spreading room seaward of these sections.
- The objection is made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the ground that the proposals fail to strike a fair balance as a result of the failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal.

Summary of Recommendation: That the SoS makes a determination that the proposals do not fail to strike a fair balance as a result of matters within paragraph 3(3)(e) of Schedule 1A to the 1949 Act specified in the objection.

Preliminary Matters

1. I made a site visit on Tuesday 27 July 2021 accompanied by [redacted] and [redacted], representing NE.
2. Besides objections, representations may be made regarding NE's report. However, in assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections should be considered. In this case, a number of general representations were made which did not specifically refer to the section of the route objected to. I have noted and taken account of these representations in so far as they are relevant to the objection.

Background

3. Under section 296 of the Marine and Coastal Access Act (the 2009 Act), NE and the SoS have a duty to secure a route accessible to the public on foot or by ferry around the whole of the English coast, the England Coast Path (ECP), and an associated margin of land to be enjoyed in conjunction with it. In discharging this duty NE must aim to strike a fair balance between the interests of the public and those of people having an interest in land affected by the route. NE is also required to have specific regard to the safety and convenience of those using the route; the desirability of it adhering to the periphery of the coast and providing views of the sea; and the desirability of keeping interruptions to the route to a minimum as far as is reasonably practicable.
4. Sections LCH-6-S062FW to S064FW of the trail are proposed in the report prepared by NE to run along the footway on the south side of Stanpit.

Main Issue

5. The main issue in this case is whether the proposals in the report fail, in the respect specified in the objection, to strike a fair balance as a result of matters relating to the grounds set out above.

The Case for the Objector

6. The objection is made on behalf of Mundeford Sailing Club which owns a jetty and an area of foreshore which is used for boat storage. It is proposed that the exclusion area for public access on the saltmarsh should be extended to include the area between the low water mark and the public footpath running along Fisherman's Bank. This would avoid any conflict between recreational use of the land and the storage of boats and be clearer for the public.

The Case for NE

7. Boats are commonly stored in public areas around the coast and it is not expected that the introduction of access rights will result in any interference with boat storage.
8. The area concerned is not saltmarsh or flat and may be subject to existing public access rights which cannot be restricted.

Appraisal

9. The section of the existing public footpath along Fisherman's Bank which crosses the Sailing Club's land is not part of the proposed ECP and is a cul de sac route. It is said to already be used by members of the public to gain access to the foreshore, but it seems unlikely that the establishment of the ECP will result in a significant increase in its use.
10. Land between the footpath and the water's edge is registered common land to which the public may have a right of access which is not affected by the proposed ECP.

Conclusion and Recommendation

11. 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 within paragraphs 3(3)(e) of Schedule 1A to the 1949. I therefore recommend that the SoS makes a determination to this effect.

[redacted]

APPOINTED PERSON



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

by [redacted] BA DPA MRTPI(Rtd)

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

Date 26 October 2021

Marine and Coastal Access Act 2009

Objections by [redacted], [redacted]

regarding coastal access proposals by Natural England relating to
the England Coast Path, Kimmeridge Bay to Highcliffe, Dorset

Objections Ref: MCA/Kimmeridge Bay to Highcliffe/O/20,21
Route sections LCH-6-S062FW to S064FW

- On 21 June 2017 Natural England (NE) submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs (the SoS) under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) for improved access along the Dorset coast between Kimmeridge Bay and Highcliffe, pursuant to the duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act).
- Objections, dated 24 and 28 April 2018, have been made by [redacted] and [redacted] & [redacted]. The land to which the objections relate is the sections LCH-6-S062FW to LCH-6-S064FW and spreading room seaward of these sections.
- The objections are made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance as a result of the failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal and paragraph 3(3)(f) the exercise of a discretion conferred by section 301(3) of that Act (discretions which relate to a case where the continuity of any part of the coast is interrupted by a river).

Summary of Recommendation: That the SoS makes a determination that the proposals do not fail to strike a fair balance as a result of matters within paragraph 3(3)(e) and 3(3)(f) of Schedule 1A to the 1949 Act specified in the objection, subject to the extension of the exclusion area as proposed on the map at Annex O to NEs report on objections.

Preliminary Matters

12. A total of 24 objections were made to the proposals, 22 of which were found to be admissible. Two of these objections relate to the same sections of the proposed route and were made for similar reasons. Accordingly, to avoid unnecessary duplication, I propose to consider these together.
13. I made a site visit on Tuesday 27 July 2021 accompanied by [redacted] and [redacted], representing NE, and the objectors.
14. Besides objections, representations may be made regarding NE's report. However, in assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections should be considered. In this case, a number of general representations were made which did not specifically refer to the section of the route objected to. I have noted and taken account of these representations in so far as they are relevant to the objections.

Background

15. Under section 296 of the Marine and Coastal Access Act (the 2009 Act), NE and the SoS have a duty to secure a route accessible to the public on foot or by ferry around the whole of the English coast, the England Coast Path (ECP), and an associated margin of land to be enjoyed in conjunction with it. In discharging this duty NE must aim to strike a fair balance between the interests of the public and those of people having an interest in land affected by the route. NE is also required to have specific regard to the safety and

convenience of those using the route; the desirability of it adhering to the periphery of the coast and providing views of the sea; and the desirability of keeping interruptions to the route to a minimum as far as is reasonably practicable.

16. Sections LCH-6-S062FW to S064FW of the trail are proposed in the report prepared by NE to run along the footway on the south side of Stanpit.

Main Issue

17. The main issue in this case is whether the proposals in the report fail, in the respects specified in the objections, to strike a fair balance as a result of matters relating to any of the grounds set out above.

The Case for the Objectors

18. The objectors do not own land crossed by the proposed route of the ECP but own land, including sections of foreshore, which would become 'spreading room'. They are concerned that the foreshore including jetties is unsuitable and unsafe for public access and should therefore be excluded.
19. They also suggest that public access to the foreshore, which is part of the Christchurch Harbour Site of Special Scientific Interest (SSSI), would result in ecological damage.

The Case for NE

20. NE has carried out and published an Access and Sensitive Features Appraisal which concluded that the proposals for the ECP complied with its duty to act for the benefit of SSSIs.
21. NE have re-considered the extent of the proposed exclusion area with regard to public safety and conclude that an extension of it would be appropriate. It is therefore proposed to extend the exclusion area as shown on the map at Annex O to the report on objections. It is also proposed to erect a sign at the boundary between [redacted]'s property and Fisherman's Bank to explain that there is no through route from there to Mudeford Quay.

Appraisal

22. There is an existing public footpath along Fisherman's Bank which ends at the boundary of [redacted]'s land. It is possible that walkers might attempt to continue from this point towards Mudeford Quay by way of the foreshore, especially if this became 'spreading room' after the establishment of the ECP. However, this would be difficult and potentially dangerous, and it is therefore appropriate that this section of foreshore should be excluded for the purpose of public access by the proposed modification and discouraged by the proposed signage.
23. As concluded by NE, there seems little likelihood of the establishment of the ECP as proposed having a significant adverse effect on the SSSI.

Conclusion and Recommendation

24. 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 within

paragraphs 3(3)(e) and (f) of Schedule 1A to the 1949 Act, subject to the extension of the exclusion area as proposed on the map at Annex O to NEs report on objections. I therefore recommend that the SoS makes a determination to this effect.

[redacted]

APPOINTED PERSON



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

by [redacted] BA DPA MRTPI(Rtd)

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

Date 26 October 2021

Marine and Coastal Access Act 2009

Objection by [redacted] & [redacted]

regarding coastal access proposals by Natural England relating to
the England Coast Path, Kimmeridge Bay to Highcliffe, Dorset

Objection Ref: MCA/Kimmeridge Bay to Highcliffe/O/24
Route sections LCH-6-S062FW to S064FW

- On 21 June 2017 Natural England (NE) submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs (the SoS) under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) for improved access along the Dorset coast between Kimmeridge Bay and Highcliffe, pursuant to the duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act).

- An objection, dated 29 March 2018, has been made by [redacted] and [redacted]. The land to which the objection relates is the sections LCH-6-S062FW to LCH-6-S064FW and spreading room seaward of these sections.

- The objection is made on the grounds that the proposals fail to strike a fair balance as a result of the position of part of the proposed route [paragraph 3(3)(a)], the inclusion of proposals (in relation to an area subject to significant coastal erosion, encroachment by the sea or significant physical change due to other geomorphological processes) providing for the route to be determined in accordance with provision made in the proposals (rather than as shown on a map) or the nature of any such proposal [paragraph 3(3)(b)], the inclusion of, or failure to include, proposals for an alternative route, or the position of such a route or any part of it [paragraph 3(3)(c)], the inclusion of, or failure to include, proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal [paragraph 3(3)(d)], the inclusion of, or failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal [paragraph 3(3)(e)] and the exercise of a discretion conferred on Natural England by section 301(2) or (3) of the Marine and Coastal Access Act 2009, or the failure to exercise a discretion conferred by section 301(3) of the Act (discretions which relate to a case where the continuity of any part of the coast is interrupted by a river) [paragraph 3(3)(f)].

Summary of Recommendation: That the SoS makes a determination that the proposals do not fail to strike a fair balance as a result of matters within paragraph 3(3)(e) of Schedule 1A to the 1949 Act specified in the objection, but that consideration be given to modifying the report to make a route using the Mudeford Ferry the proposed route and the route around Christchurch Harbour an alternative to be used when the ferry is not operating.

Preliminary Matters

25. I made a site visit on Tuesday 27 July 2021 accompanied by [redacted] and [redacted], representing NE and [redacted].
26. Besides objections, representations may be made regarding NE's report. However, in assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections should be considered. In this case, a number of general representations were made which did not specifically refer to the section of the route objected to. I have noted and taken account of these representations in so far as they are relevant to the objection.

Background

27. Under section 296 of the Marine and Coastal Access Act (the 2009 Act), NE and the SoS have a duty to secure a route accessible to the public on foot or by ferry around the whole of the English coast, the England Coast Path (ECP), and an associated margin of land to be enjoyed in conjunction with it. In discharging this duty NE must aim to strike a fair balance between the interests of the public and those of people having an interest in land affected by the route. NE is also required to have specific regard to the safety and convenience of those using the route; the desirability of it adhering to the periphery of the coast and providing views of the sea; and the desirability of keeping interruptions to the route to a minimum as far as is reasonably practicable.
28. Sections LCH-6-S062FW to S064FW of the trail are proposed in the report prepared by NE to run along the footway on the south side of Stanpit.

Main Issue

29. The main issue in this case is whether the proposals in the report fail, in the respects specified in the objection, to strike a fair balance as a result of matters relating to the grounds set out above.

The Case for the Objectors

30. The proposed route around Christchurch Harbour will put undue pressure on the Harbour's status as a Site of Special Scientific Interest (SSSI), in particular the wildlife of the Stanpit Marshes and the recreational use of Fisherman's Bank.
31. More consideration should be given to use of the Mudeford Ferry and the possibility of it operating over a longer period.
32. The approval of the proposed route and adjoining coastal margin would result in increased footfall on Fisherman's Bank and consequent loss of privacy for adjoining property, an increase in anti-social behaviour and difficulty in repairing the bank if erosion occurs.

The Case for NE

33. NE has published an Access and Sensitive Features Appraisal which addresses the potential for impacts on the SSSI as a whole. It is maintained that the proposed route is in keeping with NE's duty with respect to the SSSI.
34. Christchurch Harbour is formed by the estuarial waters of the Rivers Avon and Stour. NE has chosen to exercise its discretion to propose that the route of the path should extend upstream to the bridges that are the first available public foot crossings so as to avoid frequent interruptions to the route between late October and late March when the ferry is not running.
35. When the ferry is operating walkers will be able to choose whether to use the ferry or the proposed route around the harbour and signage will be erected to make this choice clear.

36. There is an existing public footpath along the relevant section of Fisherman's Bank and land between the path and the water's edge is registered common land. Existing rights of access are unaffected by the proposals for the ECP. This path is not proposed to become part of the ECP and is in any event a cul de sac. It is unlikely that the establishment of the ECP will result in a significant increase in public access.

Appraisal

37. The 2009 Act makes it clear (Section 301) that NE has discretion in exercising its functions as if the 'sea' includes the waters from the seaward limit of estuarial waters of a river upstream to the first public foot crossing and this what has been proposed in this case. However, the 2009 Act also requires NE to have regard to the existence of a ferry service in deciding what route to propose.
38. In this case, a ferry service operates between Mundeford Sandbank and Mundeford Quay every day during British Summer Time and on weekends and holidays at other times, weather permitting. Both ferry embarkation points are on the proposed route of the coast path.
39. NE proposes to install signage to make it clear to users of the ECP that they have the choice of using the ferry (when operating) or taking the route around the harbour.
40. It may well be the case that most use of the ECP will take place during times when the ferry is operating and many users may choose to use it rather than taking the lengthy detour around Christchurch Harbour, much of which offers no view of the sea.
41. The harbour route is proposed to follow existing paths which would not be changed as a result of their designation as part of the ECP although it is possible that usage of them might increase. This objection (and some others) relates mainly to the land between the proposed ECP and the water's edge becoming 'spreading room' if the proposals are adopted. This being the case there may be some merit in considering the designation of the ferry route as the main route of the ECP and the harbour route as an alternative at times when the ferry is not operating. If this were to be done the issue of 'spreading room' in relation to the alternative route would not apply.
42. The section of the existing public footpath along Fisherman's Bank which crosses the objectors' land is not part of the proposed ECP and is a cul de sac route. It is said to already be used by members of the public to gain access to the foreshore, but it seems unlikely that the establishment of the ECP will result in a significant increase in its use.
43. Land between the footpath and the water's edge is registered common land to which the public may have a right of access which is not affected by the proposed ECP.

Conclusion and Recommendation

44. The report does not fail to strike a fair balance in respect of any of the grounds on which these objections are made.
45. However, although in my view there are some advantages of the proposed route around Christchurch Harbour, there are effectively two routes proposed, the harbour route and an alternative by way of the ferry. As many objections to the proposed route are concerned with the perceived implications of 'spreading room' resulting from the position of this route, it would be worth considering modifying the report so that the ferry route is the proposed route and the harbour route an alternative to be used when the ferry is not operating.
46. If the report were to be modified in this way, the advantages of the harbour route would be maintained but the provisions of the legislation regarding 'spreading room' would not apply in respect of this route and some of the objectors' concerns regarding the implications of this might not arise.
47. 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 within paragraphs 3(3)(a) to 3(3)(f) of Schedule 1A to the 1949 Act. I therefore recommend that the SoS makes a determination to this effect, but that consideration be given to modifying the report to make a route using the Mundeford Ferry the proposed route and the route around Christchurch Harbour an alternative to be used when the ferry is not operating. If such a modified report was adopted, this would help satisfy this objection and several others, particularly Objections O1,2,3,4,5,6,7,8,10,11,12,13,14,16 and 17, which are the subject of a separate report.

[redacted]

APPOINTED PERSON



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

by [redacted] BA DPA MRTPI(Rtd)

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

Date 26 October 2021

Marine and Coastal Access Act 2009

Objections by [redacted],

regarding coastal access proposals by Natural England relating to
the England Coast Path, Kimmeridge Bay to Highcliffe, Dorset

Objections Ref: MCA/Kimmeridge Bay to Highcliffe/O/22,23
Route sections LCH-6-S069RD and S070FW

- On 21 June 2017 Natural England (NE) submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs (the SoS) under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) for improved access along the Dorset coast between Kimmeridge Bay and Highcliffe, pursuant to the duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act).
- Objections, dated 30 April and 1 May 2018, have been made by [redacted]. The land to which the objections relate is the sections LCH-6-S069RD and LCH-6-S070FW and spreading room seaward of these sections.
- The objections are made under paragraph 3(3)(a) of Schedule 1A to the 1949 Act on the ground that the proposals fail to strike a fair balance as a result of the position of any part of the proposed route and paragraph 3(3)(e) as a result of the failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal

Summary of Recommendation: The proposals do not fail to strike a fair balance as a result of matters within paragraph 3(3)(a) and 3(3)(e) of Schedule 1A to the 1949 Act specified in the objection but would be improved if modified so as to route the ECP by way of Chichester Way rather than Old Quay Road, as proposed by the objector. I therefore recommend that the SoS makes a determination to this effect.

Preliminary Matters

48. A total of 24 objections were made to the proposals, 22 of which were found to be admissible.
49. I made a site visit on Tuesday 27 July 2021 accompanied by [redacted] and [redacted], representing NE, and the objector.
50. Besides objections, representations may be made regarding NE's report. However, in assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections should be considered. In this case, a number of general representations were made which did not specifically refer to sections LCH-6-S069RD and S070FW of the route. However, one representation supported the objector's view regarding the proposed position of the route. I have noted and taken account of these representations in so far as they are relevant to the objection.

Background

51. Under section 296 of the Marine and Coastal Access Act (the 2009 Act), NE and the SoS have a duty to secure a route accessible to the public on foot or by ferry around the whole of the English coast, the England Coast Path (ECP), and an associated margin of land to be enjoyed in conjunction with it. In discharging this duty NE must aim to strike a fair balance between the interests of the public and those of people having an interest in land affected by the route. NE is also required to have specific regard to the safety and convenience of those using the route; the desirability of it adhering to the

periphery of the coast and providing views of the sea; and the desirability of keeping interruptions to the route to a minimum as far as is reasonably practicable.

Main Issue

52. The main issues in this case relate to whether the proposals in the report fail, in the respects specified in the objections, to strike a fair balance as a result of matters relating to any of the grounds set out above.

The Case for the Objector

53. Old Quay Road does not have a continuous pedestrian footway. The road is busy and narrow at this point and pedestrians are obliged to walk in the road. A safer route to Mundeford Quay would continue eastwards a short distance and then turn right into Chichester Way.
54. The proposed protection of established rights of access by residents of properties adjoining the salt marshes appears to lack permanence and legal enforceability.

The Case for NE

55. The route proposed by the objector would be slightly longer with less views of the harbour but would be slightly safer than the proposed route. Adoption of this route would mean that several properties between Old Quay Road and Chichester Way would be included within the coastal margin but would be entirely excepted from consequent access rights as they comprise land covered by buildings and their curtilages. NE has written to the owners of these properties explaining the proposed modification and seeking their views but received no replies.
56. It is possible that people might still use the route along Old Quay Road whether it is signed as the ECP or not as it is shorter. On balance, NE has no objection to the proposed modification but does not think it offers any significant benefit either to the public or those with an interest in the land.
57. It is proposed to exclude public access rights to the saltmarsh as it is considered unsuitable for public access. However, this does not involve any restriction on activities permitted by the landowner.

Appraisal

The position of the route

58. Sections LCH-6-S069RD and LCH-6-S070FW of the trail are proposed in the report prepared by NE to run along Old Quay Road, which is a narrow, busy, one-way road which does not have a continuous pedestrian footway. Consequently, pedestrians are obliged to walk in the road for approximately 25 metres. On my visit I observed the route being used by vehicles and several pedestrians, some with pushchairs, walking in the road. Although traffic is likely to be slow moving in this road, a potential risk to pedestrians was apparent.
59. The suggested alternative route for the ECP along the existing footways of Mundeford and Chichester Way would be slightly longer than that proposed

and it may well be that local people might continue to use Old Quay Road whether it is signed as the ECP or not. Nevertheless, it is my view that it would be desirable to encourage pedestrians to use the proposed alternative route.

60. The objector's other objection expresses concern that residents' established rights of access to adjoining salt marshes might be affected by the proposals. However, although it is proposed in the report to exclude public access to the saltmarsh and flat, existing rights of landowners are not affected.
61. The objector also stated that the location of the mean high water mark shown is inaccurate and should coincide with the harbour wall. However, the mapped line is that provided by the Ordnance Survey and cannot be altered by any other body. In any event, the position of the high water mark does not materially affect the situation with regard to the exclusion of access.

Conclusion and Recommendation

62. 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 within paragraphs 3(3)(a) and (e) of Schedule 1A to the 1949 Act but would be improved if modified so as to route the ECP by way of Chichester Way rather than Old Quay Road, as proposed by the objector. I therefore recommend that the SoS makes a determination to this effect.

[redacted]

APPOINTED PERSON



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

by [redacted] BA DPA MRTPI(Rtd)

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

Date 26 October 2021

Marine and Coastal Access Act 2009

Objections by [redacted], [redacted], [redacted], [redacted],
[redacted], [redacted], [redacted], [redacted], [redacted],
[redacted], [redacted], [redacted], [redacted], [redacted],
[redacted], [redacted],

regarding coastal access proposals by Natural England relating to
the England Coast Path, Kimmeridge Bay to Highcliffe, Dorset

**Objections Ref: MCA/Kimmeridge Bay to Highcliffe/
O/1,2,3,4,5,6,7,8,10,11,12,13,14,15,16,17
Route sections LCH-6-S059FP and S060FP**

- On 21 June 2017 Natural England (NE) submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs (the SoS) under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act) for improved access along the Dorset coast between Kimmeridge Bay and Highcliffe, pursuant to the duty under section 296 of the Marine and Coastal Access Act 2009 (the 2009 Act).
- Objection, dated between 26 July and 16 August 2017, have been made by [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]. The land to which the objections relate is the sections LCH-6-S059FP and LCH-6-S060FP and spreading room seaward of these sections.
- The objections are made under Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance as a result of the position of part of the proposed route [paragraph 3(3)(a)], the inclusion of proposals (in relation to an area subject to significant coastal erosion, encroachment by the sea or significant physical change due to other geomorphological processes) providing for the route to be determined in accordance with provision made in the proposals (rather than as shown on a map) or the nature of any such proposal [paragraph 3(3)(b)], the inclusion of, or failure to include, proposals for an alternative route, or the position of such a route or any part of it [paragraph 3(3)(c)], the inclusion of, or failure to include, proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal [paragraph 3(3)(d)], the inclusion of, or failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal [paragraph 3(3)(e)] and the exercise of a discretion conferred on Natural England by section 301(2) or (3) of the Marine and Coastal Access Act 2009, or the failure to exercise a discretion conferred by section 301(3) of the Act (discretions which relate to a case where the continuity of any part of the coast is interrupted by a river) [paragraph 3(3)(f)].

Summary of Recommendation: That the SoS makes a determination that the proposals do not fail to strike a fair balance as a result of matters within paragraph 3(3)(a) to 3(3)(f) of Schedule 1A to the 1949 Act specified in the objection, but that consideration be given to modifying the report to make a route using the Mudeford Ferry the proposed route and the route around Christchurch Harbour an alternative to be used when the ferry is not operating.

Preliminary Matters

63. On 21 June 2017, Natural England (NE) submitted a report to the Secretary of State setting out the proposals for improved access to the coast between Kimmeridge Bay and Highcliffe under section 51 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
64. A total of 24 objections were made to the proposals, 22 of which were found to be admissible. Sixteen of these objections relate to the same sections of the proposed route and were made for similar reasons.

Accordingly, to avoid unnecessary duplication, I propose to consider these together and have summarised the objections and the grounds on which they are made in the form of a table below.

65. The grounds on which objections could be made are set out in paragraph 3 subparagraphs (3) and (4) of schedule 1A of the 1949 Act as follows:

- that the proposals in the report, 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 (in relation to an area subject to significant coastal erosion, encroachment by the sea or significant physical change due to other geomorphological processes) or the nature of any proposal under that subsection;
 - (c) the inclusion of, or failure to include, an alternative route or the position of any such alternative route or any part of such a route;
 - (d) the inclusion of, or failure to include, proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal or the nature of any proposal made under;
 - (e) the inclusion of, or failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, 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, discretions which relate to a case where the continuity of any part of the coast is interrupted by a river.

Paragraph references in the table below relate to those in paragraph 3 subparagraphs (3) and (4) of schedule 1A of the 1949 Act set out above.

Ref	Objector	(a)	(b)	(c)	(d)	(e)	(f)
O1	[redacted]	√		√			
O2	[redacted]	√	√	√	√	√	√
O3	[redacted]	√		√	√		
O4	[redacted]	√	√	√	√	√	√
O5	[redacted]	√		√		√	
O6	[redacted]	√		√		√	
O7	[redacted]	√					
O8	[redacted]	√	√	√			
O10	[redacted]	√		√			
O11	[redacted]	√		√	√	√	√

O12	[redacted]	✓		✓			✓
O13	[redacted]	✓		✓		✓	✓
O14	[redacted]	✓		✓			
O15	[redacted]	✓			✓	✓	✓
O16	[redacted]	✓		✓			
O17	[redacted]	✓		✓	✓	✓	

66. I made site visits on Tuesday 27 July 2021 accompanied by [redacted] and [redacted], representing NE, and a total of 10 of the objectors.

67. Besides objections, representations may be made regarding NE's report. However, in assessing whether the proposals strike a fair balance, only those representations which are relevant to the matters specified in admissible objections should be considered. In this case, a number of general representations were made which did not specifically refer to the section of the route objected to. I have noted and taken account of these representations in so far as they are relevant to the objections.

Background

68. Under section 296 of the Marine and Coastal Access Act (the 2009 Act), NE and the SoS have a duty to secure a route accessible to the public on foot or by ferry around the whole of the English coast, the England Coast Path (ECP), and an associated margin of land to be enjoyed in conjunction with it. In discharging this duty NE must aim to strike a fair balance between the interests of the public and those of people having an interest in land affected by the route. NE is also required to have specific regard to the safety and convenience of those using the route; the desirability of it adhering to the periphery of the coast and providing views of the sea; and the desirability of keeping interruptions to the route to a minimum as far as is reasonably practicable.

69. Sections LCH-6-S059FP and LCH-6-S060FP of the trail are proposed in the report prepared by NE to run along an existing Public Footpath which crosses plots to the rear of properties in Stanpit and the front of properties in Fisherman's Bank. The land crossed by the footpath and between the path and the high water mark of the estuary of the Rivers Avon and Stour is also registered common land (CL243).

Main Issue

70. The main issue in this case is whether the proposals in the report fail, in the respects specified in the objections, to strike a fair balance as a result of matters relating to any of the grounds set out above.

The Case for the Objectors

71. The main concerns of the objectors can be summarised as follows:

- NE should not have proposed a route around Christchurch Harbour as this is not part of the coast and the route should have made use of the harbour mouth ferry instead;
- use of the route along Fisherman's Bank will adversely affect the residents' privacy, security and enjoyment of their land;
- the proposed route along Fisherman's Bank is unsafe;
- there would be an increased need for maintenance and pressure to change the character of the path along Fisherman's Bank;
- increasing numbers visiting Fisherman's Bank would have a detrimental effect on the Christchurch Harbour Site of Special Scientific Interest (SSSI);
- the route should continue along the footway of Stanpit instead of Fisherman's Bank.

The Case for NE

72. Christchurch Harbour is formed by the estuarial waters of the Rivers Avon and Stour. NE has chosen to exercise its discretion to propose that the route of the path should extend upstream to the bridges that are the first available public foot crossings so as to avoid frequent interruptions to the route between late October and late March when the ferry is not running.
73. When the ferry is operating walkers will be able to choose whether to use the ferry or the proposed route around the harbour and signage will be erected to make this choice clear.
74. The proposed route around the harbour follows existing paths throughout, the majority of which are public rights of way. Much of the proposed route provides views over a tidal landscape and passes many features of historic and natural interest. It has also attracted significant support from organisations and individuals and concerns expressed about the impact of the route relate only to the short section at Fisherman's Bank.
75. This section of the proposed route is already a public footpath. The land seaward of the proposed route, although said to form part of private gardens, is also registered common land to which the public may have a right of access. Whether or not this is the case, the routing of the ECP along the existing footpath will not affect the situation. If the land comprises private gardens not subject to public access, it is excepted land which will not become 'spreading room' if the ECP is established.
76. With regard to the question of public safety, NE consulted the local council's engineer regarding this matter and discovered that, although there are no official records of flood incidence, it was estimated that flooding occurs on average twice a year.
77. Such occasional flooding is not unusual on the coast path and, in this case, it would not present a significant risk to path users. It is possible for path users to view and assess conditions from either end of the section of path before setting out along it and, if necessary, by-pass the section by using the footway of Stanpit.

78. Neither NE nor the local access authority anticipate any need for improvement of the surface of the existing footpath if it becomes part of the ECP. The only change to the appearance and character of the area considered likely is the addition of the ECP logo to the existing footpath signs.
79. In the light of objections, NE has undertaken a review of its published Access and Sensitive Features Appraisal with regard to the proposed route at Fisherman's Bank. It concluded that the increase in use of the existing path is not likely to be sufficient to warrant any special measures to protect the SSSI, particularly in the more sensitive winter period. Nevertheless, NE has offered to install information signs at Fisherman's Bank which could also include encouragement for walkers to keep dogs on leads to reduce possible disturbance to birds.
80. The alternative route along Stanpit is further away from the harbour than Fisherman's Bank and offers no views of the sea. It is therefore less appropriate as a route for the ECP than the existing public footpath along Fisherman's Bank.

Appraisal

The route around Christchurch Harbour

81. The 2009 Act makes it clear (Section 301) that NE has discretion in exercising its functions as if the 'sea' includes the waters from the seaward limit of estuarial waters of a river upstream to the first public foot crossing and this is what has been proposed in this case. However, the 2009 Act also requires NE to have regard to the existence of a ferry service in deciding what route to propose.
82. In this case, a ferry service operates between Mudeford Sandbank and Mudeford Quay every day during British Summer Time and on weekends and holidays at other times, weather permitting. Both ferry embarkation points are on the proposed route of the coast path.
83. NE proposes to install signage to make it clear to users of the ECP that they have the choice of using the ferry (when operating) or taking the route around the harbour.
84. It may well be the case that most use of the ECP will take place during times when the ferry is operating and many users may choose to use it rather than taking the lengthy detour around Christchurch Harbour, much of which offers no view of the sea.
85. The harbour route is proposed to follow existing paths which would not be changed as a result of their designation as part of the ECP although it is possible that usage of them might increase. Many of these objections (and some others) relate mainly to the land between the proposed ECP and the water's edge becoming 'spreading room' if the proposals are adopted. This being the case there may be some merit in considering the designation of the ferry route as the main route of the ECP and the harbour route as an alternative at times when the ferry is not operating. If this were to be done the issue of 'spreading room' in relation to the alternative route would not apply.

The effect on residents' privacy, security and enjoyment of their land

86. The land seaward of the route is registered common land which residents argue is not subject to public access rights and, although unenclosed, forms parts of their private gardens which they maintain and care for as such. They are concerned that, if the ECP is established as proposed, this land will become 'spreading room' to which the public will have the right of access. This they state would have a serious adverse effect on their enjoyment of the land and the security of their boats and other items kept on it. It is my view that the question of whether the public has an existing right of access to the common land is currently unresolved but is not affected by the proposed ECP and that, if the land is private gardens, it is excepted land not subject becoming 'spreading room'. Consequently, the proposed routing of the ECP along Fisherman's Bank will not affect residents' privacy, security and enjoyment of their land except in so far as this may result from increased usage of the existing footpath.

87. The residents also state that, although they experience some problems as a result of path users straying onto their garden land, most current users are local people who respect their private property. They are however concerned that the establishment of the ECP on the proposed route will result in an increase of use of the path and the attraction of people not familiar with the area with a consequent increase in the problems experienced. It is difficult to predict the amount or type of use the ECP will bring but it seems reasonable to assume that this will be more than the current usage.

The safety of the route

88. Although this section of the proposed route can flood during exceptional weather conditions, this only appears to occur occasionally. Even when this does happen it is unlikely to jeopardise public safety as visibility of the section is good and an alternative route is readily available.

Increased need for maintenance and pressure to change the character of the path

89. The existing path is fairly narrow (less than 1m) and the current surface is a mixture of compacted gravel and soil which is consistent with the nature of many sections of the ECP. There are no plans to alter this by widening, re-surfacing or the installation of lighting.

The effect on the Christchurch Harbour SSSI

90. As concluded by NE, there seems little likelihood of the establishment of the ECP as proposed having a significant adverse effect on the SSSI.

Possible route along Stanpit

91. Although this would shorten the route to a limited extent, use of the footway alongside the road would take the ECP away from the coast and not offer views of the water. This would seem inappropriate given the presence of an existing public footpath without these disadvantages.

Conclusion and Recommendation

92. The report does not fail to strike a fair balance in respect of any of the grounds on which these objections are made.
93. However, although in my view there are some advantages of the proposed route around Christchurch Harbour, there are effectively two routes proposed, the harbour route and an alternative by way of the ferry. As many objections to the proposed route are concerned with the perceived implications of 'spreading room' resulting from the position of this route, it would be worth considering modifying the report so that the ferry route is the proposed route and the harbour route an alternative to be used when the ferry is not operating.
94. If the report were to be modified in this way, the advantages of the harbour route would be maintained but the provisions of the legislation regarding 'spreading room' would not apply in respect of this route and many of the objectors' concerns regarding the implications of this might not arise.
95. 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 within paragraphs 3(3)(a) to 3(3)(f) of Schedule 1A to the 1949 Act. I therefore recommend that the SoS makes a determination to this effect, but that consideration be given to modifying the report to make a route using the Mundeford Ferry the proposed route and the route around Christchurch Harbour an alternative to be used when the ferry is not operating. If such a modified report was adopted, this would help satisfy these objections and at least one other, Objection O24, which is the subject of a separate report.

[redacted]

APPOINTED PERSON