

**Department for Environment, Food and Rural Affairs**

# **Notice by the Secretary of State under section 52 of the National Parks and Access to the Countryside Act 1949**

## **Ramsgate to Folkestone**

**March 2015**

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# Introduction

On 28 October 2013 Natural England submitted a coastal access report relating to Ramsgate to Folkestone (“the coastal access report”) to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”).

A person was appointed under paragraph 4(2) of Schedule 1A to the 1949 Act, inserted by Schedule 19 to the 2009 Act (“the Schedule”), for the purpose of considering whether the proposals in the coastal access report failed, in the respects specified in the objections received by Natural England under paragraph 3 of that Schedule in relation to that report, to strike a “fair balance” as a result of the matter or matters specified in those objections<sup>1</sup>.

In reaching her determination under section 52 of the 1949 Act the Secretary of State has considered:

- a. Ramsgate to Folkestone - Natural England’s coastal access report submitted to the Secretary of State on 28 October 2013;
- b. in accordance with paragraph 16(1)(a) of the Schedule, the objections which the appointed person determined to be admissible objections;
- c. in accordance with paragraph 16(1)(b) of the Schedule, Natural England’s comments on the admissible objections which it sent to the Secretary of State;
- d. in accordance with paragraph 16(1)(c) of the Schedule, the report given to the Secretary of State by the appointed person in respect of the objections which the appointed person determined to be admissible objections; and
- e. in accordance with paragraph 16(1)(d) of the Schedule, representations made by a person within paragraph 2(2)(b) to (f) of the Schedule, and the summary of other representations made, and Natural England’s comments on those representations which it sent to the Secretary of State on 21 March 2014.

In this notice –

(a) “objection” means an objection about the coastal access report which is made under paragraph 3 of the Schedule; and

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<sup>1</sup> A “fair balance” means 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, as set out in section 297(3) of the 2009 Act and paragraph 1(b) of the Schedule. A person has “a relevant interest in the land” if he is the owner of the land, holds a term of years absolute in the land, or is in lawful occupation of the land: see section 55J(2) of the 1949 Act.

(b) “representation” means a representation about the coastal access report which is made under paragraph 7 of the Schedule.

## Secretary of State’s approval of coastal access proposals

The Secretary of State has determined to approve the proposals set out in the coastal access report so far as they relate to those parts of the route (and associated coastal margin) in relation to which no objections or representations were made, and to which objections were made but which the appointed person determined not to be admissible objections.

In the respects specified in the objections set out at **Annex A** to this notice, the Secretary of State determines that the proposals set out in the coastal access report **do not fail** to strike a “fair balance” as a result of the matters specified in the objection. She therefore approves the proposals set out in the coastal access report, so far as they relate to that part of the route (and associated coastal margin) to which those objections relate.

In the respects specified in the objection set out at **Annex B** to this notice, the Secretary of State determines that the proposals set out in the coastal access report **fail** to strike a “fair balance” as a result of the matters specified in that objection. She therefore approves the proposals set out in the coastal access report, so far as they relate to those parts of the route (and associated coastal margin) to which that objection relates, with modifications described in the Annex, and, in accordance with paragraph 17(4) of the Schedule, sets out her reasons for her determination in that Annex.

The conclusions and observations of the Secretary of State in relation to the representations are set out in **Annex C** to this notice.

The Secretary of State has made a copy of this notice available at [www.gov.uk](http://www.gov.uk) and Natural England has also made available:

- a. Ramsgate to Folkestone - the coastal access report;
- b. Representations made by a person within paragraph 2(2)(b) to (f) of the Schedule, and Natural England’s comments on those representations which it sent to the Secretary of State on 21 March 2014;
- c. Summary of other representations, and Natural England’s comments on those representations, which it sent to the Secretary of State on 21 March 2014.

The Planning Inspectorate has made available on its website <http://www.planningportal.gov.uk/planning/countryside/coastal> the reports given to the Secretary of State by the appointed person in respect of objections MCA/Ramsgate to Folkestone/O/2 to MCA/Ramsgate to Folkestone/O/6. It is noted that objection

MCA/Ramsgate to Folkestone/O/1 was made to Natural England but was subsequently determined by the appointed person not to be an admissible objection.

## **Annex A: objections which did not fail to strike a “fair balance”**

In the respects specified in the objections set out below, the Secretary of State has determined that Natural England’s proposal in the coastal access report did not fail to strike a “fair balance” as a result of the matters specified in those objections.

### **Objection Ref: MCA/Ramsgate to Folkestone/O/2**

Kingsdown, Kent

Mr Ian Williams

The land to which the objection relates is the spreading room seaward of route sections RFK-S088 to S089.

### **Objection Ref: MCA/Ramsgate to Folkestone/O/3**

Kingsdown, Kent

Mr Nigel Blundell

The land to which the objection relates is the spreading room seaward of route sections RFK-S087 to S088.

### **Objection Ref: MCA/Ramsgate to Folkestone/O/4**

Sandwich Road, Ramsgate, Kent

Vigocrest Ltd.

The land to which the objection relates is that crossed by route sections RFK-S018 to S019 south-east of Sandwich Road, Ramsgate.

The Secretary of State determines that at the end of paragraph 1.2.9 of the report the following words should be added:

“At the western end of RFK-S018 the trail corresponds to an existing walked path, established close to the definitive line of the public footpath.”

### **Objection Ref: MCA/Ramsgate to Folkestone/O/5**

Prince’s Golf Links, Sandwich Bay, Kent

Ramac Holdings (Trading) Ltd.

The land to which the objection relates is part of the proposed position of route sections RFK-1005 to 1009.

**Objection Ref: MCA/Ramsgate to Folkestone/O/6**

Richborough Port, Sandwich

Ramac Holdings (Trading) Ltd.

The objection relates to Natural England's failure to exercise its discretion conferred by section 301(3) of the 2009 Act where the continuity of the coast is interrupted by a river.

## **Annex B: objections which fail to strike a “fair balance”**

In the respects specified in the objection set out below, the Secretary of State has determined that Natural England’s proposal in the coastal access report fail to strike a “fair balance” as a result of the matters specified in this objection.

### **Objection Ref: MCA/Ramsgate to Folkestone/O/6**

Richborough Port, Sandwich

Ramac Holdings (Trading) Ltd.

The land to which the objection relates is the proposed position of route sections RFK - S034 – S036 and the failure to include proposals for an alternative route.

The Secretary of State determines that Natural England’s proposals fail to strike a fair balance as a result of matters within paragraph 3(3)(a) and (c) of Schedule 1A to the 1949 Act as specified in the objection. In view of this the Secretary of State approves the proposals subject to modification in relation to route sections RFK-S034 and RFK-S035, which are periodically used as permitted vehicle storage areas. The modification is to establish an alternative route to be used during periods when the area north of Kingfisher Sluice (RFK-S034) and Richborough Wharf (RFK-S035) are being used for commercial purposes which are incompatible with public access.

The Secretary of State further determines that these periods should be determined and notified by the commercial operators in accordance with a direction to this effect given by Natural England.

## Annex C: conclusions and observations on representations

The Secretary of State has considered, in relation to the coastal access report, the following representations made under paragraph 7 of the Schedule.

### Representation No: MCA\Folkestone to Ramsgate\R\1

Name of representation: Individual

Report chapter and route section:

- Whole report
- Chapter 2
- RFK-I001 to RFK-I009

Secretary of State's conclusion and observation:

Under section 297(2) of the 2009 Act, Natural England must have regard to the “desirability of the coastal route adhering to the periphery of the coast and providing views of the sea”, while ensuring that costs of the route are reasonable and proportionate. Secretary of State notes the representation but she considers that an appropriate balance has been struck and approves route sections RFK-I001 to RFK-I009

Secretary of State also notes the representation on costs but believes that Natural England's proposals will provide significant new access to around 5.6km of the coast around Pegwell Bay and on the Sandwich peninsula.

### Representation No: MCA\Folkestone to Ramsgate\R\2

Name of representation: Ramsgate Town Council

Report chapter and route section:

- Chapter 1
- RFK-S001 to RFK-S018

Secretary of State's conclusion and observation:

Secretary of State notes that the existing 'Contra trail' runs along the proposed coastal route around the northern part of Pegwell Bay to Ramsgate, so she considers that future joint promotion of this trail and the England Coast Path should be possible through Explore Kent, Kent County Council and Ramsgate Town Council.

## **Representation No: MCA\Folkestone to Ramsgate\R\3**

Name of representation: The Ramblers

Report chapter and route section(s):

- Whole report

Secretary of State's conclusion and observation:

Secretary of State notes the representation and expression of support.

## **Representation No: MCA\Folkestone to Ramsgate\R\5**

Name of representation: The Kennel Club

Report chapter and route section(s):

- Chapter 1 and 2.
- RFK-S007 to RFK-S037
- RFK-I005 to RFK-I009

Secretary of State's conclusion and observation:

Secretary of State notes the representation and expression of support for the majority of Natural England's proposals. She further notes the comments made that restrictions on access are not justified on areas 3 and 4, outwith the notified wintering and migrating periods, and the dogs on-lead restriction on area 7.

Secretary of State recognises the importance to dog walkers of being able to exercise their dogs off leads in areas where this is lawful and practicable. However, she notes that Natural England looked to find the best outcome that secured opportunities for engagement and access so far as is practicable while ensuring appropriate protection of key sensitive features. Natural England considered that special intervention was necessary within this National Nature Reserve due to the likelihood of more people using the sensitive areas of the Bay as a direct consequence of coastal access. Natural England therefore adopted the least restrictive access option to ensure it met the obligations of European legislation on wildlife sites as well as protecting an important range of habitats and species found here.

Secretary of State notes that the evidence and advice is detailed in the Nature Conservation Report, published alongside Natural England's report for the stretch. She approves Natural England's proposals:

- a. in Areas 3 and 4 permanent exclusions of coastal access rights; and
- b. in Area 7 a permanent 'dogs on lead' restriction along the 1.5km section.

## **Representation No: MCA\Folkestone to Ramsgate\R\6**

Name of representation: Individual

Report chapter and route section(s)

- Chapter 1
- RFK- S012 to RFK- S018

Secretary of State's conclusion and observation:

Secretary of State notes the representation and recognises that Natural England sought to propose the least restrictive policy on Area 7 ('the undercliff'), which creates a formal right of access to this 1.5km stretch of beach for the first time, whilst requiring people to keep dogs on lead.

Secretary of State notes that the evidence and advice is detailed in the Nature Conservation Report, published alongside Natural England's report for the stretch. She approves Natural England's proposal in Areas 3 and 4 for a restriction requiring people to keep dogs on the lead, the aim of which is to prevent dogs from running across the beach and the mud flats which could disturb the populations of important migratory birds.

## **Representation No: MCA\Folkestone to Ramsgate\R\7**

Name of representation: Individual

Report chapter and route section(s):

- Chapter 1
- RFK-S019 to RFK-S021

Secretary of State's conclusion and observation:

Secretary of State notes the representation and recognises the importance to dog walkers of being able to exercise their dogs off leads in areas where this is lawful and practicable. However, she notes that Natural England looked to find the best outcome that secured opportunities for engagement and access so far as is practicable while ensuring appropriate protection of key sensitive features. Natural England considered that special intervention was necessary within this National Nature Reserve due to the likelihood of more people using the sensitive areas of the Bay as a direct consequence of coastal access. Natural England therefore adopted the least restrictive access option to ensure it met the obligations of European legislation on wildlife sites as well as protecting an important range of habitats and species found here.

Secretary of State notes that the evidence and advice is detailed in the Nature Conservation Report, published alongside Natural England's report for the stretch. She

therefore approves Natural England's proposals in Area 7 for a permanent 'dogs on lead' restriction along the 1.5km section.

## **Representation No: MCA\Folkestone to Ramsgate\R\8**

Name of representation: Individual

Report chapter and route section(s):

- Chapter 1
- RFK- S007 to RFK-S037
- Chapter 2
- RFK-I005 to RFK-I009
- Chapter 11

Secretary of State's conclusion and observation:

Secretary of State notes the representation and recognises the importance to dog walkers of being able to exercise their dogs off leads in areas where this is lawful and practicable. However, she notes that Natural England looked to find the best outcome that secured opportunities for engagement and access so far as is practicable while ensuring appropriate protection of key sensitive features. Natural England considered that special intervention was necessary within this National Nature Reserve due to the likelihood of more people using the sensitive areas of the Bay as a direct consequence of coastal access. Natural England therefore adopted the least restrictive access option to ensure it met the obligations of European legislation on wildlife sites as well as protecting an important range of habitats and species found here.

Secretary of State notes that the evidence and advice is detailed in the Nature Conservation Report, published alongside Natural England's report for the stretch. She therefore approves Natural England's proposals:

- a. in Areas 3 and 4 permanent exclusions of coastal access rights; and
- b. in Area 7 for a permanent 'dogs on lead' restriction along the 1.5km section.

Secretary of State further notes that there was increasing concern about recreational disturbance in the responses to Natural England's draft Consultation Report in 2012, the Kent Wildlife Trust survey and report of birds and recreational disturbance across the Bay which showed a *possible* link between people's activity and bird numbers and distribution, and the BTO's Alert status on the turnstone population, showing a reduction in the population, with possible reasons for the decline including increased recreational disturbance. In view of concern from the owners of the land (Thanet District Council) and

other interests in the National Nature Reserve she notes that Natural England reviewed its original draft proposals in developing its final proposals as were submitted to her.

### **Representation No: MCA\Folkestone to Ramsgate\R\9**

Name of representation: Thanet District Council

Report chapter and route section(s):

- Chapter 1
- RFK-S001 to RFK-S031

Secretary of State's conclusion and observation:

Secretary of State notes the representation and expression of support for Natural England's proposals and for the restriction and exclusion measures identified as necessary within Sandwich and Pegwell Bay. She further notes that Natural England assessed its proposals under the Habitats Regulations 1994 and has committed to undertake monitoring, as detailed in section 4.3 of the Coastal Access Ramsgate to Folkestone Nature Conservation Assessment Reports (Sandwich).

### **Representation No: MCA\Folkestone to Ramsgate\R\10**

Name of representation: National Grid

Report chapter and route section(s):

- Chapter 1 and 4
- RFK-S027 and RFK- S028
- RFK-S203

Secretary of State's conclusion and observation:

Secretary of State notes the representation and general expression of support for Natural England's proposals. She recognises that the proposed route will be over steps and near a road where the National Grid may need operational access to maintain the England-France Interconnector infrastructure. She further notes that Natural England has discussed this with National Grid and it has been agreed that coastal access rights will not interfere in any significant way with the operational needs of National Grid.

Secretary of State asks Natural England to discuss the need for any local restrictions and exclusions if informal management cannot meet National Grid's operational needs.

### **Representation No: MCA\Folkestone to Ramsgate\R\11**

Name of representation: Network Rail

Report chapter and route section(s):

- Chapter 4
- RFK-S152
- RFK-S160 to RFK-S198

Secretary of State's conclusion and observation:

Secretary of State notes the representation and that Natural England's proposed route is along the top of the slumped cliff area around Folkestone Warren, following the existing North Downs Way and Saxon Shore Way. This means that Network Rail's railway line would be within the resulting coastal margin, seaward of the trail.

She notes that 'land used for the purposes of a railway' is excepted land under paragraph 6 of Schedule 1 to the Countryside and Rights of Way Act 2000 and therefore will have no additional access rights or crossing points as a consequence of Natural England's proposals. She also notes that the ability of Network Rail to access, maintain and monitor land is not affected by Natural England's proposals, as coastal access rights will not interfere in any significant way with their operational needs.

Secretary of State asks Natural England to discuss the need for any local restrictions and exclusions if informal management cannot meet Network Rail's operational needs.

NB There is no representation MCA\Folkestone to Ramsgate\R\4.

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