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

by Martin Elliott BSc FIPROW

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

Date

Marine and Coastal Access Act 2009

Objections by Mr H Harvey, I V Foster and A G Harris and Co and Mr P and Mrs J
Newson

Regarding Coastal Access Proposals by Natural England

Relating to Hopton-on-Sea to Sea Palling

Site visit made on 18 June 2015

File Ref(s): MCA/Hopton-on-Sea to Sea Palling/01, 02, 03, 04 & 08

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Objection Reference: MCA/Hopton-on-Sea to Sea Palling/01

Land at Sea Palling forming the landholding of Waxham Hall

- On 7 March 2014 Natural England ("NE") submitted a Coastal Access Report ("the Report") to the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State") 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").
- An objection dated 10 November 2014 to chapter 5 of the Report, Hopton-on Sea to Sea Palling, has been made by Mr Henry Harvey of Henry Harvey and Son. The land in the Report to which the objection relates is route section HSP-5-S008, HSP-5-S009, HSP-5-S010 and HSP-5-S011.
- The objection is made under paragraphs 3(3)(a) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

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

Objection Reference: MCA/Hopton-on-Sea to Sea Palling/02, 03 & 04

Land at Hall Farm, Sea Palling.

- On 7 March 2014 NE submitted a Coastal Access Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 18 November 2014 to chapter 5 of the Report, Hopton-on Sea to Sea Palling, has been made by I V Foster and A G Harris. The land in the Report to which the objections relate are route sections HSP-5-S012 (objection 02) and HSP-5-S013 (objection 03) and HSP-5-014 (objection 04).
- The objection is made under paragraphs 3(3)(a)(c) and (e) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

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

Objection Reference: MCA/Hopton-on-Sea to Sea Palling/08

Land at St Benedicts, Sea Palling, NR12 0UX.

- On 7 March 2014 NE submitted a Coastal Access Report to the Secretary of State under section 51 of the 1949 Act, pursuant to its duty under section 296(1) of the 2009 Act.
- An objection dated 25 November 2014 to chapter 5 of the Report, Hopton-on Sea to Sea Palling, has been made by Mr P and Mrs J Newson. The land in the Report to which the objection relates is route section HSP-5-S012.
- The objection is made under paragraphs 3(3)(a) & (c) of Schedule 1A to the 1949 Act on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

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

Procedural and Preliminary Matters

1. I have been appointed to report to the Secretary of State for Environment Food and Rural Affairs on objections made to a Coastal Access Report. This report includes the gist of submissions made by the objectors and those making representations, the gist of the responses of NE and my conclusions and recommendation.

Objections considered in this report

2. On 7 March 2014 NE submitted the Report to the Secretary of State, setting out the proposals for improved access to the Norfolk Coast between Hopton-on-Sea and Sea Palling. The period for making formal representations and objections to the Report closed on 24 November 2014.
3. Nine objections were received to the Report, which I deemed to be admissible. The five objections considered in this report relate to land between Waxham and Sea Palling HSP-5-08 to HSP-5-14. The objections relate to contiguous areas of affected land. It is therefore expedient to consider these objections together in this report. The other extant objections will be considered in separate reports.
4. The objection of Mr and Mrs Newson was submitted after the deadline for objections. However, Defra¹ had agreed with NE that additional time should be allowed to complete the form as Mr and Mrs Newson had notified of their intention to submit the form prior to the deadline.
5. In addition to the objections, a total of 32 representations were made in relation to the Report. Thirteen of those representations relate to the section of trail subject to this report and I have had regard to these representations in making my recommendation. Sea Palling and Waxham Parish Council made six representations in relation to HSP-5-S011 to HSP-5-S016; these representations make the same points. A further seven representations have been made including ones from Mr and Mrs Newson and A G Harris and Co. who have also made objections to the proposals. I have included the gist of their representations in the summaries of their objections. Representations have been made by E and D Quigley (Jesmond Dene), J Duncanson (property at Waxham) and T Korenius (Grenut). The relevant properties are identified on the location plans appended to this report.

Site visit

6. I carried out three separate site inspections on 18 June 2015 when I was accompanied by the respective objectors and representatives from NE. On the evening of 17 June I carried out an unaccompanied site visit when I walked the road between Sea Palling and Waxham returning along the beach.

Main Issues

7. The coastal access duty arises under section 296 of the 2009 Act and requires NE and the Secretary of State to exercise their relevant functions to secure a route for the whole of the English coast which:

¹ Department for Environment Food and Rural Affairs

- (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.
8. The second objective is that, in association with the English coastal route ("the trail"), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the coastal route or otherwise.
9. In discharging the coastal access duty there must be regard to:
- (a) the safety and convenience of those using the trail,
 - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
10. NE's Approved Scheme 2013² ("the Scheme") is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report.
11. NE and the Secretary of State must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
12. The objections have been made under paragraphs 3(3)(a), (c) and (e) of Schedule 1A to the 1949 Act.
13. My role is to consider whether or not a fair balance has been struck by NE 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. I shall make a recommendation to the Secretary of State accordingly.

The Coastal Route

14. The trail, subject to Chapter 5 of the report, runs from Warren Farm, Horsey (grid reference: TG4605 2458) to Sea Palling (grid reference: TG4298 2739) as shown on maps 5a to 5c (HSP-5-S001 to HSP-5-S016). The trail follows a mixture of newly established paths and existing walked routes and includes short sections of public footpath and footway at Waxham and Sea Palling. The trail follows the coastline although views of the sea are limited due to dunes that are seaward of the trail. The section of trail subject to these objections (HSP-5-S009 to HSP-5-S014) is, in the main, along a route which is not an existing walked route. The route is through mixed farmland and a County Wildlife Site, this latter section has a surface of grass and reed. The section HSP-5-S013 follows a track which provides access to a number of dwellings. The section identified as HSP-5-S014 is an existing walked route although I noted on my site visit signage which indicated that the use of this section is currently on a permissive basis.

² Approved by the Secretary of State on 9 July 2013

The case for the objectors

Objection 0/1

15. The farm is a mixed farm and the proposed trail will pass adjacent to or over fields where there will be, on occasions, sheep and beef cattle; some of the animals are pedigree. Worrying and stress by dogs can lead to injury and even death which has already been experienced on the farm. The risk of such problems will be higher with an increase in walkers, many of which will have dogs. There is also a possibility of faeces contamination.
16. The trail will cause difficulties with spraying fields with pesticides if there are people on the path. Any spraying would need to be done early in the morning or the contractor will have to wait for walkers to pass increasing the financial burden.
17. Access to the trail will be available at Waxham where the parking of cars along the road already makes access to fields and houses impossible. Access to the trail will just make the problem worse.
18. There will be no views and the public will prefer to walk along the dunes, whether permitted or not. The route should be modified to follow the dunes or the coast road.
19. The objector seeks clarification as to liabilities for any injuries occurring on the footpath.

Objections 0/2, 0/3 and 0/4

20. The objectors raise concerns as to liabilities, problems with rubbish, dog fouling and future maintenance of the path. Concerns are also raised as to the effect of the trail on the basic farm payment.
21. The beach or the road between Sea Palling and Waxham should be used as an alternative so as to strike a fair balance.
22. The privacy of the occupiers of a number of holiday chalets³ and that of St Benedicts will be invaded.
23. In respect of HSP-5-S014, this section was once a campsite. The development of the trail would prevent similar future use and could affect future farm diversification. The route over this section is a permissive path such as to allow for any future use of the land.

Objection 0/8

24. The property (St Benedicts) was purchased for its private and remote location. As the property is in an area of Area of Outstanding Natural Beauty it is not possible to erect any privacy fencing. The access road to the property, which is shared with three other properties, will be crossed by the trail and needs to be kept clear at all times for emergency vehicles. No gates can therefore be erected and the public will be able to use the access road to access the Waxham road.

³ These are privately owned but on land owned by the objector (HSP-5-S013)

25. The original driveway to the property (along Mill Lane and the track along HSP-5-S013) was constantly fouled by dogs and, although there is a dog waste bin, owners disregard the law. The objectors will have to contend with this problem again.
26. Concerns are raised as to security as the trail runs along two sides of the property. No problems have been experienced in 15 years because of the remoteness of the property. It is suggested that the property will probably be devalued and insurance could increase. The question is raised as to compensation.
27. The beach could be used for the trail. It cannot be understood why the public would walk behind the dunes when there is a lovely beach. The objectors have used the beach regularly without problem.

Representations

Representations R/1 to R/6 – Sea Palling and Waxham Parish Council

28. The Parish Council object to the proposed route from Eccles to Waxham/Horsey, their preferred route being along the beach. Although the Parish Council is aware that the Environment Agency and HM Coastguard do not support the route on safety grounds they point out that there are approximately eight exit routes for the public to leave the beach at high tides. The Parish Council notes that the route through to Eccles is along a beach and cannot see a reason why this should not continue.
29. The Parish Council propose an alternative along Waxham Road leaving the beach at Mill Lane. They advise that the County Council are funding and installing 'trods'⁴ which is a cheaper form of footway and would remove the dangers to walkers along the main road.

Representation R/8 - J Duncanson

30. Concerns are raised as to the safety of holiday makers at the property particularly in respect of children. The coastal access rights will result in financial loss to the business as holiday makers seek less risky locations.
31. There are implications as to the safety of walkers as the path will pass through an area of dense vegetation which houses a significant population of adders. Adders are a danger to small children and curious dogs. Summoning medical assistance in an isolated spot would not be easy. Given that adders are a protected species the routing of the trail through their habitat could be unlawful.
32. The proposed path borders fields occupied by sheep and lambs which are at risk from being chased by dogs or from dog faeces containing parasites.
33. Funding available should be used to secure an alternative route along the Sea Palling to Waxham road taking people past a local tourist attraction helping to boost the local economy.

⁴ Where a verge is cut into and filled with shingle type material.

Representation R/29 - The Right Path action group

34. The alignment process has been unfair and the representation raises a number of issues in relation to the accuracy of the report, being selective in reporting views and playing down certain elements. Concerns are raised in respect of the consultation process and the point is made that the representation and objection forms are not user friendly. The representation notes that the track leading to Jesmond Dene, St Benedicts and Walden is described as a path but the track is private.
35. The group fully supports an alternative route from Mill Lane onto Waxham Road. The opportunity of an alternative route along Waxham Road, is welcomed by two residents on Waxham Road, would benefit both the community and visitors and will support the local economy. The proposed route will expose the dunes to erosion by walkers.

Representation R/30 - E and D Quigley

36. The proposed route passes around the boundary of their isolated home (Jesmond Dene) giving passers-by clear views of the home and garden. Two adjacent properties are holiday homes with a potential to become residential again. The proposed route will have an adverse effect on the privacy of the property and although the route will be signed the public will attempt to access the private property
37. NE have applied double standards in respect of the development process by giving inaccurate descriptions of the surface of trail but disregarding representations if they contain a mistake. Concerns are also raised as to the difficulties in completing the relevant forms.
38. An alternative route from Mill Lane along Waxham Road is used all year round despite assertions by NE and the highway authority saying the route is unsafe.

Representation R/31 - T Korenius

39. The proposals will result in a loss of privacy. At present the access track is used to access other properties however, if the trail is approved then passers-by will be able to look directly into her home (Grenut). Although NE say that to use a route on the dunes would have an effect on privacy, the proposed route will have a greater effect.
40. Support is given for the coast path being aligned on the beach and an alternative route is along Mill Lane onto the Waxham Road. An alternative route along Mill Lane and the Waxham road would mean that there would not be a need to surround the property with trees and bushes.

Representation R/19 - The Ramblers

41. Concern is raised that the route is to the landward side of the dunes. It is contended that the dunes could be used in places or, in the alternative, publicity could be given to the availability of a route along the beach and sea wall with advice to check sea conditions and tides.

The response by Natural England

42. The objections or representations raise a number of common themes (all the objections and representations refer to alternative routes) and, to avoid duplication, I have summarised the responses to these issues separately to other more specific concerns raised in the objections and representations. The representations of Sea Palling and Waxham Parish Council all relate to the provision of an alternative route.

Alternative routes

The beach

43. Section 7.11.3 of the Coastal Access Scheme states that the trail will not normally be aligned on sandy beaches because they can be difficult to walk along and will be covered by high tides. Occasionally the trail will be aligned on a sandy beach where there are no other viable options if this offers the best fit with the statutory criteria.

44. NE has considered a route along the beach between Sea Palling and Waxham Gap; the beach is difficult to walk. NE has consulted both the Environment Agency and HM Coastguard. The Environment Agency advise that the availability of the beach for walkers could not be easily predicted and would only be available 80% of the time (50% in certain conditions). The Environment Agency do not support the use of the beach on public safety grounds. There are also a lack of suitable exits from the beach which when combined with the risk of being trapped by an incoming tide precludes the use of the foreshore.

45. The only viable optional alternative for use during high tides and severe weather is along the proposed route. NE take the view that the implementation costs of the proposed route are high and an unreasonable public expense if it were to be used as an optional alternative route.

Waxham Road

46. This option has been considered by NE but rejected for reasons given at paragraph 5.22 of the Report. The road is considered hazardous for walkers being busy with vehicles especially during the summer. There are no speed restrictions along part of the length⁵ and the verge is narrow with a deep drainage ditch making it dangerous for walkers to negotiate when watching out for fast moving traffic. The use of Waxham Road is not supported by the Highway Authority who consider that the route is hazardous and unsafe for walkers.

47. NE note the representations from the Parish Council as to the construction of a 'trod'. However, having regard to the Coastal Access programme and the criteria set out in the Scheme, the objective is to create a path and associated margin for the public to enjoy. There is also an expectation that this will be as close to the sea as possible. Further, any path should be pleasant, convenient and safe for users. In order to achieve this along the Waxham road it would be necessary to construct a path 1.2 metres wide for two people to pass without stepping into the road; this is on advice from the National Trails manager for Norfolk County

⁵ The southern section of the road is a single carriageway subject to the national speed limit of 60 mph.

Council. Whilst a 1.2 metre width could be achieved, in parts, the verges are of insufficient width to accommodate a path of this width for its entire length.

48. The alignment of the trail along Waxham Road will create a large area of coastal access margin giving a right of access to the land seaward of the road.

The dunes

49. The dunes form part of the main flood defence system. The Environment Agency advises that they could not support alignment along this section of dune because any erosion would compromise the key role against coastal flooding. For this reason a byelaw is in place restricting public access on this stretch of dune.

Liabilities

50. Objections 0/1, 0/2, 0/3 and 0/4 raise concerns as to liabilities in the event of any injury to a member of the public using the route. NE advise that the Scheme (paragraph 4.2.2) states that land subject to coastal access rights benefits from the lowest level of occupier's liability. It is unlikely that in normal circumstances a landowner could be sued in relation to injury on land with coastal access rights.

Objection 0/1

51. NE notes the concerns regarding the risks associated with dogs; the Scheme addresses these issues (8.2.2). It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock and, on land with coastal access rights, dogs are required to be kept on short leads in the vicinity of livestock.
52. The proposed route avoids entering the objector's fields as much as possible. It has been agreed to erect stock proof fencing at the western end of HSP-5-S011. There is already a fence separating the County Wildlife Site from the objector's grazing land and it is considered that no further action is required. In respect of the grazing of the fields crossed by HSP-5-S008 and HSP-5-S010, this is currently managed by the erection of three strand electric fencing. This appears to be acceptable to the objector although NE would be content to install stock proof fencing if that would be more preferable for the objector.
53. In addition to the fencing, signage will be erected warning walkers as to grazing stock and that dogs should be kept on a short lead.
54. As regards concerns relating to dog faeces this is addressed in the Scheme at paragraphs 8.6.12 to 8.6.16. The trail has been aligned so as to avoid direct contact with livestock. NE would also be happy to provide signs advising walkers with dogs to avoid direct contact with animals and to encourage people to help control the spread of disease by worming dogs regularly and picking up and disposing of dog waste.
55. Paragraph 8.15 of the Scheme deals with the use of pesticides. It is noted that most products in use in the countryside pose no risk to people providing they are used correctly. If the contractor is unable to avoid spraying at peak periods of visitor use then the use of temporary signs would reassure the public as to their safety.
56. NE is aware of the problem with visitors parking cars on tracks and verges in Waxham. However, NE advises that there is good parking provision in Sea

Palling. Section 4.3.12 of the Scheme notes that NE is not required to consider additional visitor facilities.

Objections 0/2, 0/3 and 0/4

57. NE maintains that the privacy of St Benedicts will not be affected by the proposed alignment. The property has an extensive garden and an existing fence and mature hedge provides screening to maintain privacy.
58. As regards dog fouling and future maintenance, walkers will be encouraged to follow the Countryside Code when exercising dogs which includes removing litter and cleaning up after dogs. Informal management measures, such as signage, have been offered to the landowner but this has been declined. In terms of maintenance this will be the responsibility of the Access Authority, Norfolk County Council, after commencement.
59. The proposed route along HSP-5-S012 follows the margin of the cropped field and there is no proposal to surface or fence the area. It is unlikely that the objector's basic farm payment scheme agreement will be affected.
60. Should the objector wish to re-establish a campsite over the land (HSP-5-S014) then the land would form excepted land although the trail could be provided for on an access strip. Should the landowner wish to re-establish a campsite then NE would consider an alternative alignment in liaison with the landowner.

Objection 0/8

61. St Benedicts has an extensive garden and the trail is some distance from the property. An existing fence and hedge provides screening and the garden and curtilage of the house will be excepted from any coastal access rights. Waymarking, hedging and fencing, an existing gate and the fact that St Benedicts will be excluded from coastal access will maintain privacy and security.
62. The proposed route crosses the access road to the property and NE presume that the condition that it must be kept clear for emergency vehicles was to prevent the parking of vehicles. However, coastal access provisions do not include any right to use or park vehicles. NE would be happy to erect signage reminding the public that there is no right of access along the access road, reinforced by waymarkers at the crossing point.
63. As regards dog fouling, walkers will be encouraged to follow the Countryside Code which encourages dog owners to clear up after their dogs. NE would be happy to install signage in liaison with landowners to remind walkers of their obligations.

Representation R/8 - J Duncanson

64. The proposed trail is separated from the property by a tall mature hedgerow preventing walkers straying from the trail. Although spreading room will include a mown area of grass outside the fenced curtilage of the property it is unlikely that people will use the area in preference to the dunes or beach. The public will not have access to the curtilage of the property as this will be excepted from coastal access rights. No evidence has been provided to support the view that the holiday let business will suffer a financial loss. Should evidence of such a loss

be provided in the future, following the commencement of coastal access rights, then NE will consider further management measures to address this.

65. The description of the route is limited due to the need to summarising the findings in the report. It is recognised that work will be required (5.1.6 and section 6 of the overview).
66. It is accepted that adders are to be found on the County Wildlife Site. Norfolk Wildlife Trust and Norfolk County Council's ecologist are content with the proposed alignment and have not submitted any representation to the contrary. As regards to any threat posed by adders, these reptiles are shy and non-aggressive. It is quite common for adders to be present where there is public access and problems are extremely rare.
67. At the western end of the County Wildlife Site the path will be located on a boardwalk and will be signed suggesting walkers wear sensible shoes and to keep dogs on a short lead. These provisions will limit risks to walkers. Dogs will be unable to enter the adjacent livestock field as this will be fenced off from the proposed route.

Representation R/29 - The Right Path action group

68. In developing proposals to improve coastal access NE have followed the process set out by legislation and the guidance set out in the Scheme. NE state that each landowner likely to be affected has been contacted and specialist agencies including the Environment Agency and Norfolk Wildlife Trust have also been consulted.
69. NE accepts that the proposed trail crosses the access track to St Benedicts. The track does not fall into a category of excepted land and NE do not anticipate adverse consequences from the route crossing it.

Representation R/30 - E and D Quigley

70. The Scheme recognises (section 5.4) that coastal access rights will become available on land which was previously only available for the owner or occupier. However, as outlined in Chapter 2 of the scheme, land such as the properties adjacent to HSP-5-S012 and the western end of HSP-5-S011 is excluded from coastal access rights thereby protecting the owner's and occupier's privacy. In this case the property would be excepted from coastal access rights and the garden is fenced and screened by plants and hedging.
71. In respect of the description of the existing surface of the route I revert to the observations of NE above [65]. Further, NE advise that none of the objections or representations have been disregarded and advice has been given as to how to complete the forms and when forms need amending.

Representation R/31 - T Korenius

72. As regards the effects on privacy NE make the same observations as with representation R/30 [70]. In addition NE advise that further planting could be made available to screen properties.

Representation R/19 - The Ramblers

73. Under the 2009 Act, as explained at 4.8.8 of the Scheme, there will be a right of access to the dunes and the beach. These areas of coastal margin will be shown on the 'Explorer' Ordnance Survey maps. Section 4.2 of the Scheme deals with safety on the trail and emphasises that visitors should take primary responsibility for their own safety when visiting the coast. This would include the checking of tide tables.

Conclusions

74. As noted above there are a number of common themes in the objections and representations. I have considered these common issues first, then dealing with other specific issues raised in the objections and representations.

Alternative routes

75. NE have considered alternative routes which follow the beach, the dunes and Waxham Road [43-48]. Having regard to these submissions the Secretary of State may wish to note that in discharging the coastal access duty there must be regard to a number of factors [9]. Whilst the proposed route does not provide views of the sea, there is no evidence that the route is unsafe. It may be that adders are present on the County Wildlife Site (HSP-5-S011)[31]. However, the risk to public safety, including small children and dogs, is extremely low. I do note the concerns as to the effect of the trail on the adder population on the site. However, NE state that they have consulted with Norfolk Wildlife Trust and Norfolk County Council's ecologist who are content with the proposed alignment [66]. There is no suggestion that the route is not convenient for people to use or that the route will be subject to interruption.

76. As regards the use of the beach, section 7.11.3 of the Scheme advises that the trail should not normally follow sandy beaches [43]. The beach between Sea Palling and Waxham is sandy and as I noted on my site visit this makes walking more difficult. In addition, in delivering the coastal access duty regard should be given to ensuring, so far as reasonably practicable, interruptions should be kept to a minimum [9]. The Environment Agency advises that on average the beach would only be accessible 80% of the time, as little as 50% in certain conditions. The Environment Agency do not support this route on public safety grounds. In view of this and the existence of a viable route, a route along the beach does not satisfy the requirements as set out in the coastal access duty. Given the safety concerns I do not consider it appropriate to publicise an alternative route along the beach [41] although a route along the beach will in any event be available when the tide permits.

77. Whilst there appears to be some considerable support, by those making objections and representations, for the use of Waxham Road, this route is considered by the Highway Authority to be unsafe [46]; some weight should be given to the views of the Highway Authority. It is not practical to provide a safe route for a national trail by the provision of a surfaced footway [47]. A 'trod' may provide much needed access between Sea Palling and Waxham but this, for the reasons given by NE, would also not be suitable, or provide a safe route, for a national trail. In my view the use of Waxham Road would be an inferior option in terms of enjoyment of the English coastline as the route is some distance from

the sea and there are no views thereof. Furthermore, even if a footway of an appropriate width could be provided, the route is adjacent to a road with fast moving traffic along part of its length. This would provide a poor experience for those following the coastal route.

78. The Secretary of State may also wish to note that the use of Waxham Road would mean that all the seaward land, other than that which will be excepted, will be subject to the Coastal access provisions [48]. In my view this has a greater impact on the land than that which will arise with the alignment proposed in the report.
79. Bearing in mind the above the alternative alignment along Waxham Road would not satisfy the coastal access duty.
80. In respect of a route along the dunes, these form part of the main flood defence system [49]. An alignment along the dunes would compromise the key role that the dunes play in the protection against coastal flooding. Although it appears that the dunes are used by the public a bylaw is in place restricting public access. As such a route along the dunes is not feasible or appropriate.
81. It is suggested that the proposed trail will result in greater erosion of the dunes [35]. However, the proposed trail will not provide additional access thereto and consequently I do not consider that there will be an increase in erosion.

Privacy

82. A number of objections and representations raise issues as to the effect on privacy.
83. As regards St Benedicts, the proposed route follows the outside of the perimeter of the property which is enclosed by hedges and fences. Although there will be public access around the perimeter of the property where there has previously not been any public access, given the presence of the boundary features [61] I do not consider the effect on privacy to be significant. Nevertheless privacy will be affected to some extent. In respect of the property known as Jesmond Dene, again this property is surrounded by fences and vegetation [70]. It should also be noted that the proposed route only follows the perimeter of the property along its south-western edge where the trail will be separated from the property by a mature hedge. Whilst, to some extent, privacy will be affected I do not consider that the effects will be significant.
84. The owners of St Benedicts raise concerns in respect of the access road to the property [24]. Although NE presume this to be an issue in respect of the parking of vehicles [62] I understand that the point being made in the objection is that the access road will need to be kept clear at all times and as such the public will use the road on foot to access Waxham Road. Whilst it is possible that the public may be tempted to use this route, NE has offered to provide signage advising that there is no public access along the road; this will assist in keeping walkers to the trail. Such signage will also deter access to St Benedicts and Jesmond Dene and it should be noted that the gardens and dwellings are excepted from coastal access.
85. In respect of Grenut, in the ownership of T Korenius, the effect on privacy will be more significant as the trail passes close to the property which has limited screening. It may be the case that the property will be excluded from the coastal

access rights [72] but given the proximity of the trail this will not provide a significant benefit in respect of privacy. NE advise that planting could be made available to screen the properties and this in my view would reduce the impact on privacy to some extent.

86. Objection 0/3 raises concerns as to the effect on the privacy of the holiday chalets on the land [22]. I have already considered the effect on Grenut. In respect of the other properties the proposed trail will have an impact on privacy although, given the layout of the properties, any impact will be less significant than the effect on Grenut.

Dogs

87. The proposed trail passes over land which will be grazed by livestock (objection 0/1). Although the Secretary of State may wish to note the concerns in respect of the effect on livestock [15], the proposed route avoids fields which are used for livestock as much as possible. NE have agreed to erect stock proof fencing at the western end of HSP-5-S011 and the land is separated from the County Wildlife Site by an existing stock proof fence [52]. In respect of HSP-5-S008 and HSP-5-S010 this is currently managed by the erection of electric fencing although NE would be prepared to erect stock proof fencing [52].
88. In addition to the fencing, other provisions are applicable in respect of livestock and dogs and coastal access rights [51].
89. The proposed mitigation in my view addresses the concerns raised in the objection and the representation of J Duncanson [32].
90. As regards concerns relating to dog fouling, the trail has been aligned to avoid direct contact with livestock [52]. Additionally walkers will be encouraged to follow the Countryside Code [58] and NE has offered to erect appropriate signage [54, 58 & 63]. Although it is likely to be the case that some walkers will not follow the Countryside Code and will not pick up after their dogs there is nothing to suggest that any problems arising from this will be of such significance that the proposals fail to strike a fair balance.

Liabilities

91. As noted by NE [50] land subject to coastal access rights benefits from the lowest level of occupiers' liability. This makes it extremely unlikely, in normal circumstance, that an occupier could be successfully sued in relation to injury on land subject to coastal access rights.

Objection 0/1

92. The objector claims that the trail will cause difficulties with the spraying of pesticides [16]. Section 8.15 of the Scheme addresses this issue. Whilst most products in use in the countryside pose no risk, this is providing they are used in accordance with the relevant regulation and guidance. Given the location of the trail it will be necessary for the objector to take additional measures. However, I do not consider that this will have any significant additional financial burden.
93. The Secretary of State may wish to note the concerns in relation to the parking of vehicles at Waxham [17]. It is possible that additional vehicles will park at this location but there is nothing to indicate that existing problems will be

exacerbated. Paragraph 4.3.12 of the Scheme indicates that NE are not required to consider additional facilities as part of the proposal. It should be noted that the issue to be considered is whether a fair balance is struck between the interests of the public having rights of access over coastal land and the interests of the owners and occupiers of any land subject to coastal access rights. No right is created in respect of access for vehicles.

Objections 0/2, 0/3 and 0/4

94. It is suggested that the trail will prevent diversification of the land [23]. The Secretary of State will note that coastal access rights do not prevent a change of use of the land or any re-development. The re-development of land, which is likely to result in the land being excepted from coastal access, will lead to the submission of a variation report to the Secretary of State.
95. The objector raises concerns as to future maintenance and the effect on any basic farm payment. I refer to the observations by NE [58].

Objection 0/8

96. The objector is concerned about security and raises issues relating to insurance premiums and provisions as to compensation [26].
97. As regards security, the proposed trail is separated from the property by fences and those straying from the route will be clearly identified. The property will remain isolated albeit that the trail will pass adjacent to the boundaries. Bearing this in mind there is nothing before me to suggest that the trail will have a significant adverse effect on security or that property values or insurance premiums will be significantly affected. There are no provisions as to compensation in respect of coastal access.

Representation R/8 – J Duncanson

98. The representation raises concerns as to safety [30]. As noted by NE the proposed trail is separated from the property by a mature hedge which will screen the property [64]. The Secretary of State may wish to note that a public footpath passes the entrance to the property and, although restricted, the public do access the dunes. Both the public footpath and the dunes provide views onto the property. Bearing this in mind, and the existence of the mature hedge, I do not consider that the proposed trail will create additional safety issues.
99. In terms of any adverse effect on the holiday let business there is nothing to indicate that there will be any detrimental effect although this may be a possibility. NE have indicated that they will consider further management measures in the event that there is an adverse effect [64].

Other matters

100. A number of representations raise concerns in respect of the consultation process and the accuracy of the Report [34 & 37]. Whilst the Secretary of State may wish to note these concerns, she will be aware that the issue to be determined is whether the proposals 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. The issues raised are not matters for consideration by the Secretary of State in respect of the determination. In

making my recommendation I have had regard to the objections and submissions from NE in respect of those objections, and, where relevant to my consideration, the representations.

Whether the proposals strike a fair balance

101. Having regard to all of the above, the proposed route of the trail will have some adverse effects on the land over which it passes and on adjacent properties, minor changes to land management practices in respect of the use of pesticides may also be necessary. NE offers further mitigation in relation to some of the concerns raised. Although there are alternative routes these are not viable or fail to discharge the Coastal Access Duty in respect of the relevant considerations [9]. The Secretary of State may wish to note that, although finely balanced, I do not consider that any adverse effects outweigh the interests of the public in having rights of access over coastal land. As such I do not consider that the proposals fail to strike a fair balance.

Recommendation

102. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections within paragraphs 3(3)(a), (c) and (e) of the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Martin Elliott

APPOINTED PERSON

