
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
Objection by Mr P Crawley, Sunrise Poultry
Regarding Coastal Access Proposals by Natural England
Relating to Hopton on Sea to Sea Palling

Site visit made on 18 June 2015

File Ref: MCA/Hopton-on-Sea to Sea Palling/09

Objection Reference: MCA/Hopton on Sea to Sea Palling/09

Land at Poplar Farm, Waxham, NR12 0EF

- 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 24 November 2014 to chapter 5 of the Report, Hopton-on Sea to Sea Palling, has been made by Mr P Crawley of Sunrise Poultry. The land in the Report to which the objection relates is route section HSP-5-S003.
- The objection is made under paragraphs 3(3)(a) 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 as a result of the proposed position of route section HSP-5-S003 and the failure to include proposals as to the directions to be made under Chapter 2 of Part 1 to the Countryside and Rights of Way Act 2000 (the 2000 Act) for the exclusion or restriction of a right of access.

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 objector, the response of NE and my conclusions and recommendation. Numbers in square brackets refer to paragraphs contained in this report.

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. I have been appointed to report on them to the Secretary of State. The objection considered in this report relates to land at Poplar Farm, Waxham (HSP-5-S003). The other extant objections will be considered in separate reports.
4. In addition to the objections, a total of 32 representations were made in relation to the Report. The representations include two made by the objector in respect of the same section of the trail (HSP-5-S003). These representations do not raise any additional issues to those contained in the objection. A representation from The Ramblers raises issues as to the lack of views of the sea from the proposed route of the trail which is on the inland side of the dunes. It is suggested that the route could follow the dunes in places and utilise the beach subject to the tides. I have had regard to this representation in making my recommendation. No other representations were made which relate to the section of the trail subject to the objection.

Site visit

5. I carried out an accompanied site inspection on the morning of 18 June 2015 when I was accompanied by representatives of NE, Mrs S Fishwick and Mrs D Curtis, and Mr P Crawley the objector.

Main Issues

6. 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:
 - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
7. The second objective is that, in association with the 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.
8. 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.
9. NE's Approved Scheme 2013¹ ("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.
10. 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.
11. The objections have been made under paragraphs 3(3)(a) and (e) of Schedule 1A to the 1949 Act.
12. 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

13. 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

¹ Approved by the Secretary of State on 9 July 2013

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 the objection follows an existing walked route (HSP-5-S003) which has a grass surface. The proposed trail along this section is adjacent to the ranging area of Poplar Farm a free range poultry farm.

The case for the objector

14. The proposal fails to strike a fair balance because the trail has been routed onto the objector's land to the detriment of business interests and livestock.
15. The proposed route is undesirable because, whilst the public will not have good views of the sea, the route will allow dogs to see the hens² on the farm at close range. A single dog in the ranging area could cause considerable loss in terms of deaths to birds and a drop in egg numbers due to stress. The birds may also need treatment with antibiotics for secondary infections such as peritonitis, the onset of which is common after stressful events such as from dog aggression.
16. The objector notes that for the above reasons it is proposed to erect a fence. However, it is considered that this will not be wholly satisfactory as any fence would need to be dog proof. This would give the objector an onerous maintenance obligation. It is suggested that the Access Authority could not carry out daily inspections and it is not reasonable that the obligation should fall to the objector.
17. The extent of the ranging land is marked on site with a high voltage electric fence although this is not the full extent of land in the ownership of the objector³. The presence of electric fences increases the need for a dog proof fence because distress would be caused to any dog making contact with the electric fence. Additionally, should a dog get through any electric fence it is unlikely that a dog would want to return. This would mean an extended period in the ranging area and the risk of the dog owner attempting to cross the fence with a risk of shock and injury. In the interests of bio-security the public should not be entering the ranging area.
18. Although the land is an existing walked route it is not a public right of way and use is generally by birdwatchers who tend not to have dogs.
19. The objector contends that EN has not considered all the options. The objector notes that EN has rejected the option of the trail following the beach on the grounds that it is difficult to walk on for long distances and on public safety grounds. The beach is however open to the public and is used by walkers on a regular basis. There are a number of access points to the beach for farmers and the Environment Agency which could be used to exit the beach in an emergency. The use of the dunes has also been rejected on the basis that this would lead to the erosion of sea defences. However, the dunes are already in regular use by walkers and few houses would be affected by this route.

² The flock is of 31,500 birds.

³ See Doc 1 attached to the objection.

20. It is suggested that a proposal which would strike a fair balance would be to provide a route along the beach for use at low and falling tide and an alternative route using the dunes for use at high tide or in rough weather. A signing system could be used to indicate which route is open. This would provide reasonable protection to the public (and hence reduce occupier's liability on coastal access land), would prevent excessive erosion, allow maximum views of the sea and keep dogs away from the poultry.
21. The objector proposes a further option to make a direction to exclude dogs from the route where it passes through the farm leaving dogs to use the beach or dunes. This option would not remove the need for dog proof fencing as people with dogs may still be tempted to use a route though the farm.
22. It is suggested that the current proposal is harmful to the public interest because the route will need to be securely fenced and dogs will need to be kept on a lead. No such restrictions would apply on the alternative routes proposed. There may be times when the proposed route would need to be restricted for bio-security reasons. An alternative route would mean that this would not impact on users of the route.

Response from NE

23. NE considers that the proposals strike a fair balance between the occupier's interests and the public's interest in having access rights.
24. The proposal will not interfere in any significant way with the operations of Sunrise Poultry Farms Limited. The Report includes provision for keeping dogs away from ranging hens. This will be achieved by the provision of notices reminding walkers to keep dogs on a short lead in the vicinity of livestock and additionally by the installation of a fence along the north-western end of the section HSP-5-S003. At this point the ranging hens are between 25 and 110 metres from the proposed route. The Access Authority will maintain the fence to ensure it conforms to published standards for National Trails and will remain dog proof. The design of the fencing and signage will be agreed with the landowner.
25. NE notes the request of the objector to extend the fencing along the whole length of HSP-5-S003. NE maintains that the risks of dogs getting close to the hens or the electric fence is minimised by the greater distance between the trail and the ranging area. The area between the trail includes rough grass which provides some screening and is between 130 and 190 metres from the ranging area. A fence along the whole length is therefore unnecessary.
26. As regards concerns over the ability to close the route for bio-security reasons, the Scheme notes that animal health legislation provides access prohibition powers to control public access where it is considered necessary to enable the containment of notifiable disease. Such prohibitions automatically prevail over coastal access rights. Consequently directions are unnecessary to contain notifiable diseases and are unlikely to be necessary in relation to normal farm bio-security requirements. Nevertheless NE may consider directions in exceptional circumstances where other solutions are unavailable or such solutions are inadequate.
27. NE has given close consideration to an alignment along the dunes. However, the dunes form part of the main flood defence system. The Environment Agency has

advised that they cannot support a route along the dunes because erosion would compromise the key role they play against coastal flooding. For this reason the Environment Agency has a bylaw in place restricting access to this section of the dune.

28. NE has also explored the alignment of the route on the beach. The Environment Agency has advised that the frontage from Waxham Gap to Poplar Farm has some very low beach levels. In consequence they have placed a lot of rock in front of the sea wall which can make access to the beach difficult. From Poplar Farm to Horsey Gap the Environment Agency advise that the beach is more volatile than the length behind the reefs to the north and is not available at all states of the tides. A route along the beach could therefore not be supported on public safety grounds.

Conclusions

29. Of principal concern to the objector is the adverse effect on the business arising from the potential impact of dogs entering the ranging areas on the farm resulting in hen mortality and a decrease in egg production [15].
30. The trail, at its north western end of the section, is located between 25 metres to 110 metres from the ranging area which is surrounded by electric fencing. The report at paragraph 5.1.6 identifies that a barrier fence will be erected along this section and is to be maintained by the Access Authority. Although the objector raises concerns as to the construction of any fence [16] NE indicate that the design of the fence is to be agreed with the landowner [24]. As such there is further opportunity to ensure that any fence will restrict access by dogs of all breeds.
31. The objector does not consider the provision of a fence to be a wholly satisfactory solution and raises additional concerns [17]. However, in addition to the fence, the ranging area is separated from the trail by a ditch and an area of rough grass which provides some screening of the area. It should also be noted that whilst the smallest distance between the trail and the ranging area is 25 metres the majority of the trail is at a greater distance of between 130 and 190 metres. NE also propose the erection of appropriate signage which will be agreed with the landowner [24]. The Secretary of State may also wish to note that there is a requirement, as on other land with access rights under Part 1 of the 2000 Act, that a dog must be kept on a short lead in the vicinity of livestock. Livestock includes poultry.
32. Bearing in mind the above, whilst it is always possible that a dog might gain access to the ranging area the risk is minimised and in my view any risk is very low.
33. The objector notes [19] that NE have rejected the option of aligning the route along the beach or on the dunes although NE say that they have considered both options [27 & 28].
34. In respect of a route along the beach, it may be the case that the beach is currently used by walkers and that there are a number of access points which could be used in an emergency to exit the beach [19]. However, The Environment Agency, a statutory consultee, is unable to support a route option along the beach on public safety grounds [28]. Formalising a route along the

- beach would be contrary to the considerations as to safety set out in section 297 of the 2009 Act [8]. It should also be noted that a route along the beach is not available at all states of the tide. Again section 297 of the 2009 Act [8] states that in discharging the coastal access duty regard must be given to the desirability that, so far as reasonably practicable, interruptions to the route are kept to a minimum.
35. As regards the use of the dunes, the Environment Agency raises concerns as to the impact on flood defences in consequence of erosion caused by public access [27]. Although the dunes appear to be used by the public, access is restricted in consequence of a bylaw. Given the concerns of the Environment Agency, it would appear unlikely that any restrictions would be lifted. As such any route which uses the dunes is not viable.
36. The objector considers that a proposal which would strike a fair balance would include the use of the beach and the dunes [20]. However, bearing in mind the above such a route could not be achievable.
37. The objector identifies a second option [21] but again, as noted above, the use of the beach and the dunes is not a feasible option. As regards the exclusion of dogs from the proposed route of the trail the Scheme states at paragraph 6.7.7 that access rights should not be restricted unnecessarily and at paragraph 6.7.8 that where there would be a long term need to exclude dogs it is likely that the trail would be aligned in a different way. There is nothing before me to suggest that the trail could be aligned in a different way whilst satisfying the coastal access duty.
38. Although NE suggest that the objector has raised concerns as to the ability to close the route for bio-security reasons [26], the objector appears to raise this issue in the context that the use of the alternative options would mean that access can be maintained when there is a need to restrict access for bio-security reasons. Whilst the Secretary of State may wish to note the provisions for bio-security [26], for the reasons given above [34 & 35], the alternative options are not appropriate as routes for the trail. As such the alternative options provide no benefits in maintaining access at times when restrictions are necessary for bio-security.
39. Bearing in mind the above, I note the concerns of the objector in terms of the potential effect on the business in consequence of the ranging areas being accessed by dogs. However, given the mitigation and the physical attributes of the land, I consider the risk attributed to dogs is very low. The risk does not in my view outweigh the interests of the public in having rights of access over coastal land. Whilst the objector (and The Ramblers) has proposed alternative options for the route of the trail, these are not feasible.
40. It is accepted that the trail will be fenced to safeguard livestock, that dogs may be required to be kept on leads and that the views of the sea are limited [4, 15 & 22]. Nevertheless this does not mean that the proposed route for the trail is harmful to the public interest or that the route along the inland side of the dunes should not be pursued. The proposed route, in the circumstances, provides the best route to fulfil the coastal access duty.

Recommendation

41. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraphs 3(3)(a) and (e) of Schedule 1(a) to the 1949 Act. I therefore recommend that the Secretary of State makes a determination to this effect.

Martin Elliott

APPOINTED PERSON