



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

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

Date:

Marine and Coastal Access Act 2009

Objection by Yvonne Clarkson
on behalf of Thomsen Estates

regarding Coastal Access Proposals by Natural England
relating to Whitehaven to Silecroft

Site visit made on 18 May 2015

File Ref: MCA/WHS/O3

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Objection Ref: MCA/WHS/O3

Land between Pow Beck, St Bees and Sea Lane, Culderton, Cumbria

- On 15 October 2014 Natural England submitted a 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, pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 5 December 2014 to Chapter 2 of the Coastal Access Report, *Whitehaven to Silecroft*, has been made by Yvonne Clarkson on behalf of Thomsen Estates. The land to which the objection relates are the route sections WHS-2-S009 to WHS-2-S016.
- The objection is made under paragraphs 3(3)(a) of Schedule 1A to the National Parks and Access to the Countryside Act 1949, in relation to the position of any part of the proposed route.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in the report do not fail, in the respects specified in the objection, to strike a fair balance as a result of the matters within paragraph 3(3)(a) of the 1949 Act.

Procedural matters

Objection considered in this report

1. On 15 October 2014 Natural England ("NE") submitted the Coastal Access Whitehaven to Silecroft Report ("the Report") to the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State"), setting out the proposals for improved access to the Cumbrian coast between Whitehaven and Silecroft. The Coastal Access Scheme¹ ("the Scheme") sets out the principles which were to be followed in producing the Report.
2. The period for making formal representations and objections to the Report closed on 10 December 2014 and four objections were received within the specified timescale. However, there was an oversight in relation to giving notice to a small group of landowners, who were then offered a further eight weeks to make a response to the report. A further objection was received by the extended deadline of 11 February 2015.
3. Four of the five objections were determined to be admissible and I have been appointed to report to the Secretary of State on those objections. This report relates to the objection reference APP/MCA/WHS/O3² ("O3"), with the remaining objections considered separately.

Site visit

4. On 18 May 2015 I made a site visit with respect to the objection O3. The objector was invited to attend this visit; however, she was unable to do so and informed the Planning Inspectorate that she was content for the visit to be made without her. In her absence I continued with the visit, accompanied by a representative from NE. As the point of the visit was to allow me to view conditions on the ground, with no opportunity for evidence to be presented or to discuss the merits of the case, I am satisfied that no prejudice arises. I did not enter the fields but viewed the land from the adjacent road and on land at the bottom of the cliff alongside the railway line. I make my recommendation taking full account of the written representations and my observations on the site visit.

¹ Coastal Access Natural England's Approved Scheme approved by the Secretary of State under section 298(2) of the Marine and Coastal Access Act 2009 on 9 July 2013

² NE Reference MCA\Whitehaven Silecroft\O\3\WHS0194

Main issues

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 ("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:
 - i) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - ii) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.
6. The second objective is that, in association with the English coastal route ("the route"), 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. This is referred to as the coastal margin whilst the trail is the path corridor through the coastal margin. The trail is referred to as the England Coast Path.
7. In discharging the coastal access duty there must be regard to:
 - i) the safety and convenience of those using the coastal route,
 - ii) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - iii) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
8. 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. A relevant interest arises where a person:
 - i) holds an estate in fee simple absolute in possession of the land,
 - ii) holds a term of years absolute in the land, or
 - iii) is in lawful occupation of the land.
9. The objector raised concerns that the fields were used for running bulls with heifers and cows, as well as for grazing cows and calves. She indicated that this could pose a problem for pedestrians, particularly those with dogs. She also said that the estate was in negotiation with a developer regarding the possibility of using the land as a solar farm.
10. Two alternative routes were suggested: either running along the bottom of the cliff next to the railway line; or, on the unclassified road to the east, named Nethertown Road on the relevant maps.
11. In addition to the objections, a total of twenty-one representations were made in relation to the Report. None of the representations relate to this land.
12. NE commented on the objection, arguing that it should be dismissed and the proposals approved without amendment.
13. My role is to determine 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 and to make a recommendation to the Secretary of State accordingly.

The Coastal Route

General description

14. The objection relates to parts of the route referred to in Chapter 2 of the Report. This section runs from Pow Beck, St Bees (grid reference: NX 969 511) to Seascale promenade (grid reference: NY 037 009), as shown on maps 2a to 2g.
15. The route generally follows existing walked routes, including public rights of way and minor roads. However, the majority of the route covered by Chapter 2, including that to which the objection relates, requires the creation of a new path. NE indicate that it mainly follows the coastline quite closely, maintaining good views of the sea.
16. Whilst sections to the south of Braystones³ generally follow the route of the existing Cumbria Coastal Way the northern sections, including that subject to the objection, departs from this. The trail follows a new route on higher ground, rather than along the foreshore, to avoid long sections on a shingle beach.
17. Although there are few artificial barriers to accessibility on the proposed route, much of this length will not be easily accessible to users with reduced mobility due to the undulating terrain and surface.
18. The route passes through sites designated for nature conservation or heritage preservation. None have been identified in relation to the objector's land.
19. There are proposals for the trail to 'roll back' either in direct response to coastal erosion, or other geological processes or to link with other parts of the trail that need to roll back.

The sections referred to by O3

20. O3 relates to sections WHS-2-S009 to WHS-2-S016, shown on maps 2a and 2b. This is not an existing walked route and so proposal is for new access over grass on the cliff top.

Case in objection

21. The land is used for running the bull with cows and heifers, including cows with calves at foot. This could potentially be a problem for pedestrians, particularly if they have a dog.
22. There are current negotiations with a developer about the possible use of the land as a site for a solar farm. This is at a stage where there are costs which need to be met.
23. The route could be diverted either to the bottom of the cliff, next to the railway line or onto the unclassified road to the east of the cliffs, which runs along the hedge boundary.

Natural England comments on the objection

24. NE have followed the key principles of alignment set out by the Scheme. The proposed route represents the best route option available and is consistent with the approach set out in paragraphs 8.1.10 and 8.2.11 of the Scheme. The proposed route on the seaward edge of the land is unlikely to significantly affect any potential solar farm development. The proposals would not prevent any lawful development of the land, even once approved. There was no opportunity

³ Map 2d

for NE to discuss the scale and layout of the potential solar farm at an earlier stage. Nonetheless, there are powers to amend the access arrangements after the coastal access report is confirmed, if necessary as a result of changes not foreseen at the time of the initial proposals. Although aware of the intent to develop the land the details have not been made available.

25. It is not feasible to establish and maintain a safe route on the land between the foreshore and fields as much of the land is in the ownership and management of Network Rail and so would be excepted from access rights. The topography and geology of the land between the railway and the foreshore would prevent the establishment of a safe and sustainable route in this area. A route on the foreshore itself would entail a significant length of walking on shingle, with limited refuge in the event of a rising tide. Sea defences nearby would be a barrier to safe progress along the beach at times of high tide.
26. The minor road would not be suitable as it is a narrow single track road, carrying significant volumes of commuter traffic associated with the Sellafield site⁴ at certain times of day, which can be fast moving. In many places sight lines are restricted and the verges steep and narrow, making it unsafe for walkers. Alignment along the road would not meet the principles that it is desirable that the route should adhere to the periphery of the coast and provide views of the sea. NE disagree with the suggested modifications.

Reasons

Agricultural Impact

27. The fields crossed by relevant sections were being used for grazing cattle at the time of my site visit. The Scheme notes that a great deal of land grazed by livestock has public access and the two uses are generally compatible⁵. Intervention may be necessary when cows have calves at foot, which is one reason for which the fields are used. This is a matter which would be dealt with during the establishment of the route.
28. Bulls are dealt with separately⁶ and it is noted that intervention may be necessary where dairy bulls or lone bulls of beef breeds are present. This does not appear to be the case here; there is no indication that dairy bulls would be present and the objection referred to the running of bulls with cows and heifers.
29. NE believes this is the most appropriate alignment of the trail. It meets the criteria set out in the Scheme for bulls and cattle in following the seaward edge of the field with no additional landward margin. This should minimise any potential conflict between livestock and access users.
30. I consider that the Secretary of State can be satisfied that the NE proposal implements the Scheme appropriately in relation to the current agricultural use of the land.

Development Impact

31. The objection indicated that there were negotiations underway to develop a solar farm on this land. Chapter 5 of the Scheme sets out that the 2009 Act does not take land away from owners or prevent any land from being developed in the future. It is also noted that there are powers to amend access arrangements

⁴ Situated to the south

⁵ Scheme reference 8.2

⁶ Scheme reference 8.1

after the confirmation of the report, if necessary as a result of changes in the use of the affected land.

32. No details have been provided of the potential solar farm. Local planning authorities must have regard to planning policy guidance about the coast which is contained in the National Planning Policy Framework⁷. This encourages them to improve public access to, and enjoyment of, the coast. NE will seek to work constructively with planners and developers with the aim of ensuring that planning proposals take account of the coastal access objectives and make provision for them where appropriate.⁸
33. I agree with NE that the location of the proposed trail on the seaward edge of the fields is unlikely to significantly affect such a development; the Scheme notes that when proposals for development are being considered the planning authority should look to include provision for the trail on the seaward side wherever practicable. It may be necessary for temporary arrangements to be made during the development or construction phases, however, I consider that this would be more appropriately dealt with through the planning procedures.
34. I consider that the Secretary of State can be satisfied that, on the basis of the currently available information, NE have taken appropriate account of the right of the landowner to make such use of the land, subject to the appropriate permission.

Alternative routes

Bottom of the cliff

35. The objector suggested two alternatives for the trail. The first was at the bottom of the cliff next to the railway line. NE has taken this to mean on the land to the north-east of the railway line and note that much of this area is in the ownership and management of Network Rail. As such this land is in the category of excepted land under Schedule 1 of the Countryside and Rights of Way Act 2000⁹. NE indicates that they approached Network Rail during the planning of the route but they were not open to any suggestions of a route in this area.
36. Immediately to the south-west of the railway line there are a number of properties, which are accessed via Sea Lane, south of WHS-2-S016. In addition to the difficulties caused by topography and stability, as well as excepted land in this area, I consider that a route here would be in conflict with the provisions of the Scheme that "*The trail will wherever possible be aligned to on the seaward side of...private residences and any gardens...associated with them...*"¹⁰. The alternative of a route on the seaward side would introduce potentially long distances of beach-walking, which would not be in accordance with the Scheme. Shingle is difficult to walk on for any distance and so NE will normally avoid aligning the trail along it.¹¹
37. The Scheme notes that cliff tops usually provide the most convenient route and, where there is a cliff, the trail should normally be aligned along it wherever practicable, because it usually provides the best views of the sea¹².

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

⁸ Scheme reference 5.5.5

⁹ Scheme Figure 1, page 11

¹⁰ Scheme reference 8.18

¹¹ Scheme reference 7.12.4

¹² Scheme reference 7.1

Nethertown Road

38. In the alternative the objector suggested the use of Nethertown Road, which lies adjacent to the affected fields to the north-east. The Scheme sets out that whilst coastal access rights do not apply to existing public highways this does not prevent the route from following a highway¹³. NE point out that the Scheme seeks that the route should normally be close to the sea.
39. Whilst I disagree with NE that the road does not provide views of the sea, I am satisfied that the views from the proposed trail will be preferable due to the proximity of the route to the sea. The proposed trail is in line with section 297(2) of the 2009 Act which sets out the principle that it is desirable that the route should adhere to the periphery of the coast¹⁴.
40. I agree with NE that the road is narrow with little space for refuge from vehicles. Nonetheless, whilst the road may not provide the most appropriate route at present, in comparison to the proposed trail, it provides potential options for users who may wish to avoid crossing fields with livestock.

Conclusion

41. I consider NE has appropriately balanced the issues relating to the potential alternative routes with the effect of the proposed route upon the landowner. I am satisfied that the proposed route meets the coastal access duty regarding the safety and convenience of those using the coastal route and the desirability of that route adhering to the periphery of the coast and providing views of the sea. I do not consider that either of the proposed alternative routes meets the coastal access duty.

Conclusion

42. Taking account of all matters viewed on my site inspection, as well as the objection and comments on it, I consider that the proposed position of the route balances the effect upon the landowner's management of the area and the requirements of public access. I conclude that the proposals do not fail, in the respects specified in the objection, to strike a fair balance as a result of matters within paragraph 3(3)(a) of Schedule 1(a) to the 1949 Act.

Other matters

43. I have noted all the representations made with respect to the Report, however, none are directly relevant to the objection dealt with in this report.

Recommendation

44. 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 objection. I therefore recommend that the Secretary of State makes a determination to this effect.

Heidi Cruickshank

Inspector

¹³ Scheme Figure 1, page 11

¹⁴ Scheme reference 4.5.1