

Cuckmere Coastal Change Pathfinder Project

Legislative Framework

March 2011

Introduction

This document, produced by East Sussex County Council, is designed as an introductory guide to some of the legislation relevant to the Cuckmere Estuary and its features and assets.

Please note that the legislation listed in this guide is not definitive nor exhaustive, and may be subject to amendment from time to time. No reliance should be placed on the accuracy of the list or on the contents of the legislation detailed as this may also be subject to amendment by central government from time to time. This guide should not be construed as legal advice and any person seeking to rely on any of the legislation detailed in this guide should seek independent legal advice.

Legislation and requirements are organised by theme.

1. Access – Highways

Legislation	Key requirements/powers	Process/notes
The Highways Act 1980, Road Traffic Act 1988 & Traffic Management Act 2004.	ESCC, as the Highways Authority, has a duty to keep the highway passable and safe (Section 41 of the Highways Act).	An Asset Management Plan sets out inspection regimes of the bridge and road for defects and remedial response times.

2. Access – Rights of Way

Legislation	Key requirements/powers	Process/notes
The Highways Act 1980 & Countryside and Rights of Way Act 2000.	ESCC, as the Highways Authority, has: <ul style="list-style-type: none">• A duty to assert and protect the rights of the public to their use and enjoyment;• The power but not obligation to make Public Path Orders to create, divert or extinguish RoWs (eg. in the public interest).	Rights of Way law is extremely complex and needs to be treated on a case-by-case basis.

3. Ecology & Biodiversity

Legislation	Key requirements/powers	Process/notes
<p>Countryside and Rights of Way Act 2000, The Natural Environment and Rural Communities Act 2006.</p>	<p>Natural England has a legal duty to act for the benefit of SSSIs, in maintaining good ecological status or potential to maintain good ecological status for a site.</p> <p>Public bodies & landowners with SSSIs must notify N.E. of any operation that may damage a SSSI, and N.E. has the legal power to withhold consent or can impose conditions to prevent damage.</p>	<p>The Cuckmere Estuary forms part of Seaford to Beachy Head Site of Special Scientific Interest (SSSI).</p>
<p>The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003</p>	<p>To comply with the Directive proposed development must not cause deterioration of water bodies and/or affect their ecological status.</p> <p>Regulation 17 places a duty on all public bodies to “have regard” to River Basin Management Plans (and supplementary plans) in exercising their functions.</p> <p>Regulation 19 requires all public bodies to provide information and provide "such assistance as the (Environment) Agency may reasonably seek in connection with its WFD functions ...”</p>	<p>The Directive aims to protect and enhance the ecological status of rivers, streams, estuaries and coastal waters.</p>
<p>Natural Environment and Rural Communities Act 2006, Section 40</p>	<p>General duty on all public bodies to have regard to the conservation of biodiversity in the proper exercise of their functions.</p>	
<p>The Habitats and Birds Directives, updated by the Conservation of Habitats and Species Regulations,</p>	<p>Exercise of functions in accordance with the Habitats/Birds Directive.</p>	<p>The Habitats Directive (Council Directive 92/43/EEC on the Conservation of natural</p>

Regulation 9(5),	This includes a duty on public bodies to have regard to sites designated under the Directives (Natura 2000 sites), which Cuckmere is NOT designated under. It also however states protected species.	habitats and of wild fauna and flora) is one of the EU's two Directives in relation to wildlife and nature conservation, the other being the Birds Directive. It aims to protect some 220 habitats and approximately 1,000 species.
Planning Policy Statement 9 – Guidance note	Local planning authorities have planning control duties set out in Planning Policy Statement 9 (PPS9) where they should adhere to key principles to ensure that the potential impacts of planning decisions on biodiversity, geological conservation and protected habitats and species are fully considered.	

4. Heritage

Legislation	Key requirements/powers	Process/notes
The Planning (Listed Buildings & Conservation Areas) Act 1990, the Ancient Monuments & Archaeological Areas Act 1979	<u>Listed buildings</u> : the Planning Authority would need to 'have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses'. <u>Scheduled monuments</u> : must apply to the SoS for prior written consent for 'works' (including flooding).	
Planning Policy Statement 5 (guidance note)	The absence of designation of heritage assets doesn't indicate that they are of lower significance than	

	designated sites.	
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5. Flood and coastal erosion risk management

Legislation	Key requirements/powers	Process/notes
The Water Resources Act 1981, Land Drainage and Sea Defence Byelaws 1981, The Coastal Protection Act 1949 (amended by The Flood & Water Management Act 2010 and others), The Flood & Water Management Act 2010.	<p>The Environment Agency has a strategic overview role for all flood and coastal erosion risk management.</p> <p>The EA has the power, but not the legal obligation, to manage flood risk from designated main rivers (i.e. including the Cuckmere Estuary) and the sea.</p> <p>Coastal protection authorities/coastal erosion risk management authorities (district, borough and unitary councils) must carry out work to manage coastal erosion risk in accordance with national coastal erosion risk management strategies.</p> <p>The may carry out coastal protection work if it has regard to the national strategy(ies) (as above).</p>	

6. Other

Legislation	Key requirements/powers	Process/notes
Town and Country Planning Act 1990	Planning permission required where works constitute development for the purposes of the Act (defined under Act).	<p>The Cuckmere Estuary also falls within the National Park. The purposes of the South Downs National Park:</p> <ul style="list-style-type: none"> - Conserve & enhance the natural beauty, wildlife and cultural heritage; - Promote opportunities for the understanding &

		enjoyment of the Park's special qualities by the public.
Environmental Impact Assessment Regulations 2010	A higher level of planning requirement for developments or plans of a certain scale.	
National Parks and Access to the Countryside Act 1949. Section 11A(2) (as amended by section 62(2) of the Environment Act 1995)	Local authorities (and others) should take account of the statutory purposes of National Parks when coming to decisions or carrying out activities relating to or affecting land in these areas.	This is a duty to have regard to the purposes of National Parks
Marine and Coastal Access Act 2009	Place duties on all public authorities (which includes local authorities - definition in section 332 of the Act). Section 125 requires relevant public authorities to exercise their functions in a manner that furthers (or least hinders) the conservation objectives of Marine Conservation Zones. Section 126 requires public authorities to consider the effect of activities that may have a significant risk of hindering the conservation objectives of a Marine Conservation Zone.	Ensures that the MMO is consulted on applications for terrestrial developments which may affect the marine environment for areas where the MMO is responsible

7. Coastal erosion and land ownership

The following text is taken from the Crown Estate Briefing note 'Shoreline Management Plans – Sea Level Rise & Coastal Erosion', available from www.thecrownestate.co.uk

Approximately half of the UK foreshore and around half of the tidal riverbeds are owned by the Crown and managed by *The Crown Estate*, in addition to virtually the entire UK seabed out to 12 nautical miles. The Crown Estate is governed by The Crown Estate Act 1961. The Crown Estate is a landowner and not a regulatory authority.

Foreshore has a legal definition which is the area between mean high water (MHW) and mean low water (MLW) and as such it is effectively a moveable freehold, subject to the doctrine of accretion and diluvion.

There is a legal presumption that the Crown owns all UK foreshore unless it can be shown that it has been the subject of a Crown grant or has been adversely possessed over a period of 60 years or more (burden of proof resting on the claimant).

Crown Estate comments on coastal management

Where realignment of the foreshore or bed has arisen by a sudden natural incursion of tidal water, or by artificial means, the title boundary remains where it would have been had a sudden natural incursion or artificial realignment not taken place.

The legal rules of a moveable freehold and changing shoreline would resume effect after the point of any deliberate inundation.

This interpretation can work in either direction, for example coastal defences such as groynes may have caused a build up of the foreshore through deposits above the MHW leaving such land in the ownership of the Crown. Deliberate inundation would not necessarily mean the land becomes part of The Crown Estate and there are instances where The Crown Estate has agreed boundaries prior to inundation in realignment schemes, for example at Abbots Hall and Wallasea Island in Essex.

In principle if coast protection works are removed or allowed to fall into disuse the realignment could be considered artificial. This would however also apply to the original construction of those works and therefore the removal of them simply returns foreshore to its natural state and the two artificial realignments would in effect be cancelling each other out.

In practice, agreeing boundaries can be problematical given the difficulty in establishing the true natural tide marks and a pragmatic approach is required.

Crown Estate position

The Crown Estate would not seek to influence policy other than in its position as a landowner, landlord (i.e. with obligations to its tenants) and stakeholder.

The Crown Estate Act imposes a statutory obligation on The Crown Estate to maintain and enhance the value of the estate, but also to have regard to the requirements of good management.

The Crown Estate would not seek to influence policy other than in its position as a landowner, landlord (i.e. with obligations to its tenants) and stakeholder.

The Crown Estate would seek to ensure that those involved in SMPs and managed realignment projects are aware of the title / ownership issues in order that they can be dealt with at an early stage rather than potentially delaying projects whilst ownership discussions take place.