

Countryside and Rights of Way (CROW) Act 2000

REVIEW OF STATUTORY DIRECTION(S)

SUMMARY FOR PUBLIC CONSULTATION

Prepared by Natural England

1. INFORMATION ABOUT THE PUBLIC CONSULTATION:

Access Authority: Lancashire County Council
Relevant Authority: Natural England
Local Access Forum: Lancashire

Land Parcel Name	Original Direction Ref.	Dates of restriction on original direction:	Reason for Exclusion
Glasson Salt Marsh	2005060354	Dogs excluded from 12th March 2010 to 31st March 2015.	CROW s24: Land Management

Natural England has commenced a review of the above direction in accordance with statutory guidance (further information provided at Annex One below).

An initial consultation has already been held with statutory consultees and the general public. This consultation period ended on October 17th 2014. Following that consultation, Natural England received feedback from the applicant and the following consultees:

- National Sheep Association;
- National Farmers Union;
- The Ramblers;
- Lancashire Local Access Forum; and
- Country Land & Business Association (North).

In summary:

- The applicant reported that the management and use of this land has not changed in any way, and is still being grazed by sheep and lambs.
- The National Sheep Association supported a continuation of the current restriction and felt the request was both reasonable and prudent. The Association supported this position with evidence from research undertaken on the impact on livestock from dogs not being under “proper control”.
- The National Farmers Union supported a continuation of the current restriction and reported that the situation on the ground has not changed since the original restriction was given in 2005.
- The Ramblers felt that due to the low level of use and demand for access to this site that a restriction is not required. However, they did note that no change in the situation has occurred since the Inspectors decision following an appeal in 2005

which set the current direction. Therefore given this, at the current time, they had no objections to the continuation of the current direction.

However, the Ramblers alluded to the introduction of Coastal Access rights and the impact this may have on demand to the site. However, the basis for reviewing and deciding whether a direction is necessary is based on whether something needs to be done now. When delivery of coastal access is underway, we will need to carefully consider the potential effects of improved coastal access in this area and at that time we will take advice from a range of different bodies once implementation commences.

- Lancashire Local Access Forum indicated that at the time of the appeal hearing the Inspector did their research, listened to the evidence and made a fair and correct decision. The view of the Forum was that there should be no change to the existing restriction due to the fact that the land in question is still being stocked and managed in the same way.
- The Country Land & Business Association supported a continuation of the current restriction to allow the continued management of grazing of this important marsh area.

Glasson Salt Marsh – The Site

The site is an area of saltmarsh on the estuary of the River Lune, to the west of Glasson. The conclusive map shows the land as registered common land. The applicant is both the owner and sole grazier/commoner.

The site is managed as an integral part of a more extensive area of land, which includes further areas of saltmarsh and an area of higher land to the east. The extent of the site is not distinguished from the rest of the land by any boundaries or other physical features.

As the site is a salt marsh, at certain times of the day, large parts of the land can be covered by the incoming tides. At low tide however the site reveals that it is covered by a variety of creeks and gullies – most of which remain wet and muddy even when the tides are not covering the site. The nature of the site and the general terrain means that the majority of the site is wet and marshy, although ground conditions along the eastern part of the site are much firmer and easier to walk upon.

The applicant grazes both cattle and sheep on the site, which the applicant has reported can at certain times of the year number in excess of 450 livestock. At times of high tide, the livestock usually leave the site to the east (not CROW access land) to find higher ground away from the incoming tide.

The area is within a HLS agreement and is currently grazed by cattle and sheep (predominantly cattle – 70%) between 1st April and 31st October. The exact stocking densities are not specified, rather a set of indicators of success which allows the applicant to adjust the stocking density to ensure the conditions of the marsh remain favourable. There are no conditions on the agreement which prevent grazing outside of the summer months.

Outcome of Initial Consultation and Next Steps:

In response to the initial consultation, there was a consensus from the relevant interests that as the situation has not changed since the appeal of June 2005, the current restriction is required.

Based on the evidence supplied Natural England, as the relevant authority, believes that the situation has not changed and has decided that the current restriction should remain

in place for the same reasons detailed in the Appeal Decision Report dated June 29th 2005 (See Annex 2). Therefore Natural England proposed to vary the current end date.

As we have decided to vary the direction, and are still proposing to make a long term restriction, then we are obliged to undertake a further round of consultation.

2. SUMMARY OF PROPOSED CHANGES TO EXISTING DIRECTIONS:

Details of restriction on original direction	Details of proposed new direction	Reason for Exclusion
Dogs excluded from 12th March 2010 to 31st March 2015.	Dogs excluded for a period of 6 years commencing from the conclusion of this review.	CROW s24: Land Management

3. SUBMITTING COMMENTS ON THE REVIEW:

If you wish to comment on the review of this direction then you must do so **before December 12th 2014** by emailing kevin.vigars@naturalengland.org.uk. Comments received after this date cannot be taken into account.

A map accompanies this notice and can be seen on the [Consultation Pages](#) of the Government's Website¹.

Using and sharing your consultation responses

In line with Natural England's [Personal Information Charter](#), any comments you make, and any information you send in support of them, will help us to determine the application and / or determine if the restriction is still necessary in relation to the review or reassessment of a current direction.

We may wish to pass such comments or information to others in connection with our duties and powers under the open access legislation. This may mean for example passing information, including your name and contact details, to the Secretary of State or their appointees, the Planning Inspectorate or to the relevant access authority(s).

We do not plan to publish individual comments in full, but we may publish extracts from them when we report on our consultation(s).

There may also be circumstances in which we will be required to disclose your response to third parties, either as part of the statutory process for consideration of representations and objections about our decision, or in order to comply with our wider obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.

¹ https://www.gov.uk/government/publications?publication_filter_option=consultations. To access the consultation enter "Open Access" into the free text box titled "Contains" and then filter by "Natural England" in the Department drop down.

Annex One:

In accordance with statutory guidance, Natural England has a duty to:

- review directions of a long-term character no later than their fifth anniversary; and
- revoke or vary directions where necessary.

Under CROW section 27(3) the relevant authority must review, at least every five years, any direction it has given that restricts access indefinitely; for part of every year; for part of each of six or more consecutive calendar years; or for a specified period of more than five years.

During the review the relevant authority must, having regard to the interest of the public in having access to the land, consider whether the restriction is still necessary for its original purpose; and if so, whether the extent and nature of the restriction is still appropriate for the original purpose.

Before reviewing a long-term direction the relevant authority must consult:

- the local access forum;
- the applicant or his successor in title, where reasonably practicable – for directions under section 24 or 25 made on application; or
- the relevant advisory body – for a direction made under section 26.

The authority must also publish a notice on a website (and send a copy to statutory consultees) that must explain that the authority proposes to review the direction in question; where documents relating to the review may be inspected and copies obtained; and that representations in writing with regard to the review may be made by any person to the authority by a date specified in the notice.

Once consultation is complete the relevant authority should have regard to any representations it receives before making a decision. If following the consultation, the relevant authority decides to:

- leave the original direction unchanged, the relevant authority should record the date that the decision was made and should schedule a subsequent review where necessary.

If following the consultation, the relevant authority decides to:

- vary a direction in any way (type, extent or date); the relevant authority must give a new direction under the same section that was used to give the original direction. If the new direction is long-term, it must be reviewed within five years of the date it is given;
- revoke a direction, the relevant authority must give a new direction under the same section to revoke it. There is no requirement to review the new direction.

Before varying or revoking a direction the relevant authority must: consult the original applicant or his successor in title, where reasonably practicable – for directions given under section 24 or 25 on an application; or consult the relevant advisory body – for

directions given under section 26. In either case, follow the consultation procedures set out in the Relevant Authority Guidance but only if it proposes to give a new direction that would restrict access indefinitely or for more than six months continuously.



Appeal Decision

Site visit undertaken 2 June 2005

by **Christopher Lindley MSc**

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

Planning Inspectorate
09 Kite Wing
Temple Quay House
The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
✉ mail: enquiries@planning
spectorate.gsi.gov.uk

date 29 June 2005

Appeal Reference: ACCESS/CA/R/05/12

Land at Glasson Salt Marsh, Old Glasson Farm, Glasson, near Lancaster, Lancashire

- This appeal is made by Mr John Burrow Lamb under section 30(3) of the Countryside and Rights of Way Act 2000 (the 2000 Act).
- The appeal is dated 16 December 2004 and is against the decision of the relevant authority – the Countryside Agency (the Agency) - not to act in accordance with an application for a direction to exclude or restrict access.
- No direction was given.

Summary of Decision: The appeal is allowed and the relevant authority is required to give a direction in the terms specified in the Annex to this decision.

Preliminary Matters

1. The appellant considers that – because of the unusual set of circumstances concerning his case - the standard application and appeal forms are not easily applied to his appeal. As a result, I found there to be a number of factual matters I had to clarify with the appellant at the site visit; these matters are outlined below.
2. The appellant indicates on the appeal form that he is appealing on the grounds that the relevant authority has not acted in accordance with his representations with regard to revoking or varying a direction. However, from the other written evidence of both parties and what the appellant told me at the site visit, the appeal is made because the relevant authority did not act in accordance with the appellants' application for a direction. I will therefore determine the appeal on this basis.
3. The appellants' application for a direction indicates that he is seeking a total exclusion on public access to the land. However - from the subsequent written evidence of both parties and what the appellant told me at the site visit - I understand that he is seeking a restriction preventing people bringing dogs onto the land.

The Appeal Site and the Application for a Restriction

4. The site is an area of saltmarsh on the estuary of the River Lune, to the west of Glasson. The conclusive map shows the land as registered common land, although I understand that the appellant is both the owner and sole grazier/commoner.
 5. The appellant is seeking a direction restricting access to people without dogs on the grounds of land management – specifically to prevent disturbance and danger to livestock. For the purposes of land management, the power to make such a direction lies in Section 24 of the 2000 Act, but the Agency considered a direction to be unnecessary in this case.
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6. The application is for a direction which restricts access indefinitely. I have considered whether the local access forum should be consulted, but have decided that this is not necessary as a Notice of Appeal has been placed on the Planning Portal web-site. No comments from any other party have been received.

The Main Issue

7. I consider the main issue to be whether the direction applied for is necessary for the purposes of the management of the land by the appellant.

Reasons

Statutory Guidance and Legislation

Relevant Authority Guidance

8. The Agency have prepared statutory guidance under section 33 of the 2000 Act – the Relevant Authority Guidance (RAG). The RAG has been endorsed by the Secretary of State and therefore I consider its contents as important to my decision.
9. The general approach in the RAG is that any restriction should be demonstrated to be necessary and should be the minimum required to address the problem. The RAG includes a range of criteria sets giving relevant authorities supplementary guidance on circumstances most commonly encountered in relation to land management for access land. It is however accepted (in section 2.5.41) that these sets cannot cover all the situations that will arise locally – so the relevant authority’s decisions must take full account of the circumstances in each particular case.
10. As have the Agency, I have considered the appeal against the criteria sets 11 (Other Cattle kept on access land) and 12 (Sheep kept on access land).

General Restrictions

11. In exercising their rights on access land, the public are subject to a number of general restrictions (referred to as national restrictions in the RAG and by the Agency) defined in Schedule 2 of the 2000 Act. The Schedule restricts persons by requiring dogs to be on short leads between 1 March and 31 July (paragraph 4) and at any time of year in the vicinity of livestock (Paragraph 5). However, I also note that Section 21(3) of the 2000 Act provides examples of the forms that other restrictions might take; this clearly envisages circumstances where public access to land should be exercisable only by persons who are not accompanied by dogs. I believe it to be an important part of this case that the parties disagree whether or not the general restrictions in Schedule 2 are sufficient to address the appellant’s concerns.
12. I understand that part of these concerns relate to people using the land with dogs off the lead. However, such people would be in breach of Paragraph 5 of Schedule 2 to the 2000 Act if there were livestock on the land. In addition – as the Agency note – it is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock. Whilst I appreciate that the appellant may have practical difficulties in controlling such access, a direction under the 2000 Act cannot address this situation. I shall therefore focus on whether the presence of dogs on leads accompanying the public would cause unacceptable disturbance and danger to livestock.

Site Conditions

13. The appeal site is managed as an integral part of a more extensive area of land, which includes further areas of saltmarsh and an area of higher land to the east. The extent of the appeal site is not distinguished from the rest of the land by any boundaries or other physical features. My visit was at or close to low tide and there were between 300 and 400 ewes and lambs grazing the land. The saltmarsh is interspersed with various muddy creeks and salt pans - the edges of which are typically overhung with vegetation. As the land is very flat, I noted that some of these creeks are not readily visible until they are approached.
14. From the appellant's evidence, I see that the site can become inundated at high tides and during flood conditions. Because the creeks and gullies on the land fill quicker than the interstitial land, areas of saltmarsh can be isolated by the rising tide before inundation occurs. I am satisfied that the livestock using the land – when left undisturbed – instinctively react to the tidal conditions and remove themselves to the higher ground in good time.

Livestock Disturbance by Dogs

15. The Agency consider the application against criteria sets 11 and 12 of the RAG and their general conclusion from this is that any disturbance to livestock from the presence of dogs is significantly reduced if they are on leads (as required by the general restrictions on access). In the Agency's view this restriction - together with the stocking density, the size of the site and the existing and predicted low levels of use as access land – mean any disturbance issues caused by dogs are minimised. The Agency believe that a further restriction is therefore unnecessary.
16. From the guidance in the RAG and the other factors identified by the Agency, I am persuaded that disturbance from dogs will be significantly reduced because they must be on short leads. That said, in my experience dogs on leads can still act in a threatening and aggressive manner towards livestock. On other land, I can see that this would cause little problem as livestock may simply move away. However, I consider the conditions on this site to be very limiting; any impediment (even for a short time) to stock moving off the land could cause them to become trapped in creeks or cut off by the rising tide. Because of the likely low level of use for access of this land, I consider the probability of stock movement being hampered by dogs on leads to be low. However, if it did occur it is likely to result in injury or fatality to livestock, with consequent effects for the appellant. In my view, dogs accompanying the public on this land pose an unacceptable risk of dangerous disturbance to livestock. I therefore conclude that a restriction is necessary for the purposes of the management of the land by the appellant.
17. I did consider whether a restriction could be limited to those times when livestock are present on the land. However, it seems that stock are present at most times of year and are moved on and off the land as ground and tidal conditions dictate. I consider it impracticable for the appellant to notify the Open Access Contact Centre of those times when stock will/will not be on the land. In my view, the minimum restriction necessary is to restrict access to people without dogs.

Other Matters

18. There is some evidence questioning the status of the Public Right of Way shown on the plans as the only legal entry for the public to access the land. Whether the public are able to legally access the land or not, I have based my reasoning on whether a restriction is necessary in the terms applied for. The question of how the public get to the land is not before me.

Overall Conclusion

19. Having considered all the other matters raised, I conclude that a restriction is necessary for the purposes of the management of the land by the appellant and that a direction should be given accordingly. I am satisfied that the direction will impose the minimum restriction which is necessary.

Formal Decision

20. For the above reasons I allow the appeal. I require the Agency to give a direction in the terms specified in the Annexe to this decision.

A handwritten signature in black ink that reads "Chris Lindley". The signature is written in a cursive style with a horizontal line underneath the name.

INSPECTOR

Annexe to Appeal Decision reference ACCESS/CA/R/05/12

In accordance with section 30(4)(b) of the Countryside and Rights of Way Act 2000, the relevant authority is required to give the appellant a direction under section 24 of the Act in the following terms:-

DIRECTION RESTRICTING ACCESS UNDER THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

Case reference number.....

The Countryside Agency gives this direction under section 24 of the Countryside and Rights of Way Act 2000 (CROW) to give effect to the restriction detailed below.

Need for restriction

Restriction of public access by virtue of section 2(1) of CROW (CROW access) to the extent specified is considered necessary for the avoidance of dangerous disturbance to livestock.

Nature of restriction

CROW access to the land detailed below is exercisable only by persons who do not take any dog on to the land or allow it to enter or remain on the land.

Period of restriction

The restriction given by this direction is effective from the date of issue.

Land affected

The attached map shows the land affected by this restriction shaded in green.

Conditions which apply to this direction

If for any reason after the giving of this direction a restriction becomes unnecessary to the extent specified, the applicant or his agent must immediately notify the Open Access Contact Centre.

Information

This direction affects only the availability of CROW access rights. It has no effect on any Public Rights of Way over the same land, or on any other access right tradition or custom, or any uses of the land permitted or tolerated by the landowner.

This direction does not apply to any excepted land as defined in Schedule 1 of the Act or to any land which is treated by section 15(1) of the Act as being accessible to the public under provisions other than the Countryside and Rights of Way Act 2000. The Open Access Website www.openaccess.gov.uk displays known areas of section 15 land.

The relevant authority may revoke or vary this direction by giving a further direction at a later date, if it considers this necessary.

The relevant authority will review the need for this direction within five years, as required by CROW section 27(3).

The Open Access Contact Centre details are: Email; openaccess@countryside.gov.uk; Post: The Open Access Contact Centre, PO Box 725, Belfast BT1 3YL: tel; 0845 100 3298.

Signed:

On behalf of

Date of issue

**MAP OF THE LAND TO WHICH THIS DIRECTION RELATES
(Indicative only and not to scale)**

