

Countryside and Rights of Way (CROW) Act 2000

NOTICE OF RELEVANT AUTHORITY DECISION FOLLOWING REVIEW OF DIRECTION RESTRICTING CROW ACCESS

Prepared by Natural England

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

Land Parcel Name	Original Direction Ref.	Details of restriction on original direction	Reason for Exclusion
Warton Sands	2009020074	Total Exclusion from April 8 th 2009 to December 31 st 2015	CROW s26: Nature Conservation

Natural England has now decided how to proceed following its review of the above mentioned direction to restrict CROW access on this land. Two separate consultations have been held with statutory consultees and the general public during this process.

The first consultation was held between April 14th and May 9th 2014. We received feedback from:

- Lancashire Local Access Forum (LAF);
- Lancashire County Council (via the site meeting);
- Lancaster Ramblers Group;
- The RSPB (Leighton Moss);
- The Ramblers; and
- Mr I. Brodie (member of the public)

Comments from all these organisations were considered and changes to the original direction were then proposed.

A second consultation was held between September 1st and 26th 2014. We received feedback from:

- Mr I. Brodie (member of the public);
- The Open Spaces Society;
- Lancaster Ramblers Local Group;
- Lake District Area Ramblers Local Group;
- Morecambe Bay Wildfowlers Association for Shooting and Conservation; and
- The Ramblers.

Outcome of the Review

Mr Brodie, the Open Space Society, the Lancaster Ramblers Local Group, the Lake District Area Ramblers Local Group and the Ramblers were supportive to the varying of the current direction to a total exclusion of people with dogs from November 1st to July 31st each year and dogs on a short lead from August 1st to October 31st each year. The Morecambe Bay Wildfowlers Association for Shooting and Conservation were in agreement about a need to control people with dogs.

However, the Morecambe Bay Wildfowlers Association for Shooting and Conservation were concerned that the restriction would impact on the Association's activities. They highlighted that dogs are an essential part of wildfowling allowing the retrieval of downed birds from both water and marsh land. The Association felt that the restriction would impact on their

operation and requested the following clause be included on any interpretation - "*with the exception of working dogs owned by owners/occupiers*"

We have clarified the situation with the Association and as the proposed restrictions are in relation to the public right of access over the land in question rather than private or permissive rights, the restrictions will have no impact on the way that the land is currently managed. Therefore the inclusion of the wording above in any interpretation above is not necessary.

What is the lowest level of restriction necessary?

In response to the initial consultation, there was a consensus from the relevant user interests that the current restriction is excessive and that a restriction to people with dogs was more in line with government policy, and the "least restrictive option".

The RSPB favoured the "precautionary principle" over the "least restrictive principle", especially in light of declining habitat and bird populations. Lancashire County Council believes that the increase in access originally predicted has not occurred and in reality the current access patterns prior to the introduction of the CROW rights have remained the same since the introduction of CROW rights.

Disturbance to birds is a complex issue, as it can result in a range of impacts, most of which involve a change in behaviour (such as birds flying away from particular areas). It is very difficult to interpret such behavioural responses in terms of their population context and a range of other factors (such as prey abundance) will interact to determine whether there are real consequences of disturbance at a population scale. The issue is particularly complex on Morecambe Bay, a large estuary system, where a range of factors may affect the birds.

As Warton Sands continues to provide a 'sanctuary' for birds and the species present are mobile and hence found in different locations across the marsh; at different times of the year, we needed to consider the effect of disturbance from access to the coastal bird colonies as a whole.

In considering the "least restrictive option" we also considered what would make sense to the user on the ground and to the land owner / access authority in managing. As the site is internationally important to a wide array of bird species the measures required to minimise disturbance vary from species to species.

Conclusion following consultation

On balance we felt that the anticipated levels and patterns of use have not occurred, especially as the restriction is not signed on the ground, and that the levels and patterns of use have remained the same following the introduction of CROW rights.

We also consider that in reality the terrain is not conducive to a huge access demand. The fact that the RSPB have also requested that users of this area keep their dogs on a lead, on the signage in the vicinity of the seat on the slag heaps, with no reference to the restriction, called into question the need for a continuation of the current restriction.

On looking at the information from 2004, the concerns raised by the RSPB focused on the disturbance caused by people with dogs. The Wildlife and Access Advisory Group Guidance reports ([NECR012](#)¹ and [NECR013](#)²) indicate that disturbance should be minimised or eliminated at key periods. Speaking to Mike Leakey (Senior Reserve Manager at Teesmouth National Nature Reserve) – we believe the key periods for over wintering birds on coastal

¹ Natural England Commissioned Report NECR012. Countryside and Rights of Way Act, 2000, Part 1 – Access to the Countryside: Guidance for Statutory Authorities involved in assessing the nature conservation implications of a statutory right of access in England and Wales under Clause 26.

² Natural England Commissioned Report NECR013. Access and Nature Conservation Reconciliation: Supplementary Guidance for England.

habitats is November 1st to the end of February (when day light is short and so time to look for food etc. is limited) and for breeding birds is from March 1st to July 31st.

Based on 10 years knowledge of the site and the uptake of open access generally across the country, we felt the current restriction was not in line with government policy (the least restrictive option) and should be revoked. However, as the Relevant Authority, we appreciated that some other forms of management will be required and the question was to define the extent of that so as to ensure no likely significant effect.

Management

As mentioned above the critical periods for the species present is from November 1st to July 31st and based on our experience and guidance we can consider a number of management options to mitigate against disturbance:

1. Confinement of people with dogs to defined linear routes; and / or
2. Restricted entry points; and / or
3. Minimising or eliminating disturbance from dogs.

Due to the nature of the site we felt that the first two options, either alone or in combination, would not address the issue. Therefore we felt that we should be looking at option three. The question we have is to what extent? Based on the current signage, as alluded to above; it could be argued that minimising disturbance through the use of a dogs on leads restriction could be the least restrictive option. However, having a better understanding of the site we felt that this would not be sufficient to mitigate against disturbance during this period. Therefore we believe that a total exclusion of people with dogs should be put in place from November 1st to July 31st across the areas of concern.

However, as the site has a number of species present all year round, that are vulnerable to disturbance, the period from August 1st to October 31st needed to be considered. Again based on our experience and guidance we can consider a number of management options to mitigate against disturbance:

1. Encouraging people to keep to paths; and / or
2. Steering people away from sensitive areas; and / or
3. Minimising disturbance from dogs.

As above we felt that the first two options would not address the issue. As the period in question is for three months and not a key period in terms of impact from disturbance; a continuation of the total exclusion of people with dogs is not considered to be the least restrictive option. Therefore we believe that a restriction keeping dogs on leads from August 1st to October 31st is more appropriate across the areas of concern.

Geographical Extent

As the species present are found in different locations across the marsh at different times of the year, it is difficult to narrow this down to a specific area so we felt the proposed restrictions would need to cover the full extent of the marsh as per the present restriction. We felt this would provide clarity to the user and assist with on-going management.

Taking into account all the information and evidence provided as part of this review, Natural England, as relevant authority, has decided that the current restriction should be varied to a total exclusion of people with dogs from November 1st to July 31st each year for and dogs on a short lead from August 1st to October 31st each year to protect sensitive wildlife.

The restrictions will be supported:

1. by a suite of interpretation, funded through Natural England, with contributions from land owners and other key stakeholders; and

2. Local on-site monitoring (to be agreed with between Natural England, the Access Authority and RSPB).

A reassessment of the restriction will be undertaken by 2016 to ascertain the effectiveness of the restriction.

Summary of changes made to the existing directions:

Land Parcel Name	Details of restriction on original direction	New details of restriction
Warton Sands	Total Exclusion from April 8th 2009 to December 31st 2015	A total exclusion of people with dogs from November 1st to July 31st each year, until July 31 st 2020 (Case Number 2009020074)
		Dogs on a short lead from August 1st to October 31st each year, until October 31 st 2020. (Case Number 2014107401)

Natural England's policy for long term directions is that they should not be given for a period of more than 6 years. Therefore the directions will have the following end dates:

- Case Number 2009020074 – July 31st 2020; and
- Case Number 2014107401 – October 31st 2020.

Copies of the directions are enclosed for your information. Details of the restriction will appear on the relevant map of access land on the Open Access Website³.

Where a direction restricts access indefinitely, for more than five years, for part of every year, or for part of at least six consecutive years, we have a statutory duty to review it within five years of the date of its issue.

Date review completed: 10/10/2014

³ The Open Access Website is at <http://www.naturalengland.org.uk/openaccess/>