

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:	Direction Ref.	Dates of restriction on existing direction:	Reason for Exclusion
Warton Sands	2009020074	Total Exclusion from April 8 th 2009 to December 31 st 2015	Nature Conservation (CRoW s26) – To protect sensitive wildlife

Natural England, as the Relevant Authority, has commenced a review of the above direction in accordance with statutory guidance (further information provided at Annex 1 below).

An initial consultation has already been held with statutory consultees and the general public. This consultation period ended on May 9th 2014. In addition a site visit was held with Lancashire County Council on April 14th 2014 to discuss the current restriction and patterns of use in the area.

Following that consultation and site visit, Natural England received feedback from a number of consultees including:

- 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)

In summary

- The LAF are generally supportive of the current restriction. However, they felt that interpretation on the ground was inadequate and needs to be improved, thereby informing the public of the restriction and to educate them about the impact of dogs on birds. They also requested that the restriction boundary be aligned to the channel at Quicksand Pool to the north and in the south the boundary be re-aligned to remove part of the current restriction between the northern end of the slag heaps, including the slag heaps, and Cote Stones, as the LAF members felt this was being used even with the current restriction in place.

- Lancashire County Council felt that the increase in access originally predicted has not occurred following the introduction of CRoW rights and in reality the current access patterns have remained the same since the introduction of CRoW rights.
- Lancaster Ramblers Group urged Natural England to remove the current total exclusion and replace with a total exclusion to people with dogs.
- The RSPB are keen to see the current restriction maintained and a way found to help spread the burden of enforcement and interpretation activity.
- The Ramblers considered that the current restriction is not in line with policy and therefore not the least restrictive option. They believe that the current restriction should be varied to a total exclusion of people with dogs.
- Mr Brodie believed that a case could be made for seeking a restriction to people with dogs, provided this was consistent across the whole area of the common.

In addition, a number of comments were received considering specific issues which we have addressed below.

- Reference was made to the fact that the restriction is contrary to highway legislation. As the restricted area has a Public Right of Way running through there is a potential for people to stray from the path due to the nature of the surface, therefore it is likely that this route could be historically founderous i.e. the public are assumed to have a right to deviate around it and no one has liability to unfounder it. As this restriction only applies to the rights bestowed by CRoW, any rights along the Public Right of Way, under highway legislation, would remain and not be affected by the current restriction.
- Reference was made that the exclusion included the area where stock car racing occurs. On looking at the site in more detail, the area of the track and associated land does not fall into the restricted area. Reference is also made to the validity of the racing car track and whether it has the relevant permissions, thereby making the restriction unlawful. This is not the case as the required permissions would be granted under Commons and / or Planning legislation and not under CRoW.
- There was concern that the restriction had been put in place to meet the needs of visitors with ornithological interests. As the main features of interest to Warton Sands, and the wider area of Morecambe Bay, are colonial breeders, wildfowl and waders, this may appear to be the case to users who do not share this interest. However, the current restriction was put in place following a detailed nature conservation assessment by English Nature, in line with duties under the Habitat Regulations. This assessment concluded that the introduction of CRoW rights would cause disturbance and have a “likely significant effect” on the features of interest. To mitigate against this concern it was deemed at the time that the least restrictive option is a total exclusion to all users. Depending on the outcome of this review we will look at working with the interested parties to ensure that all users adhere to any restrictions that are in place.
- A number of responses made reference to the introduction of Coastal Access and its implications to the current restriction. The basis for reviewing and deciding whether a direction is necessary or not is whether something needs to be done now to prevent or protect any sensitive features from existing access

rights. As a specific date for delivery of and commencement of coastal access on this stretch of coast has not yet been confirmed this is not a material consideration to take into account as part of this review. When delivery of coastal access is underway, we will need to carefully consider the potential effects of improved coastal access on any key sensitive features along each stretch of coast. This area will be no different and we will take advice from a range of different bodies once implementation commences.

On July 1st 2014, a meeting with the Responsible Officer from Natural England, as the Relevant Advisory body, along with representatives from the RSPB and Lancashire County Council was held to review the original detailed nature conservation access assessment for the site (dated 2004) and to consider the feedback received from the initial consultation.

Warton Sands – the site

Morecambe Bay is one of the most important areas for birds in the UK and Europe, and Warton Sands is one of the most important parts of the Bay and is internationally important for a range of bird species (it is designated as a Special Protection Area (SPA) and a Ramsar site). The intertidal mudflat areas in the Warton Sands area provide rich feeding grounds for many species of waders and wildfowl while the areas of salt marsh provide good grazing for Wigeon. The salt marsh also provides undisturbed high tide roosting sites.

In 2004, when the site was first assessed by English Nature, the RSPB and the Countryside Agency (now Natural England), felt that the saltmarsh acted as a sanctuary for these birds compared to other parts of the bay, where over many years recreational disturbance has had a detrimental effect on the numbers of roosting and feeding birds. The assessment undertaken in 2004 (prior to CRoW commencement) concluded that there could be a sufficient change in the levels and pattern of public use of the site post-CRoW; causing a potential impact on the specified features of nature conservation interest. At the time it was deemed unlikely that informal management solutions would be sufficient to address these concerns and that a total exclusion all year round was necessary.

A review was undertaken in 2009 with relevant bodies and concluded that the original direction (made in 2004) was still fit for purpose.

Today, Warton Sands continues to provide a 'sanctuary' for birds that have over the past few decades escaped increased disturbance across the Bay. Distribution of numbers across the site is not even nor fixed to specific locations – the birds present are tending to roost close to food sources, so it is likely that in these areas there may be a higher density, but birds also follow the tide when feeding so the location of these sensitive areas does change frequently.

Understanding current levels and patterns of use

The site is registered common land and so was subject to public access rights prior to the introduction of CRoW. In 2004 the RSPB reported a *low level use of the track beside the Keer up to the start of the Slag Tips had been in place for many years. This use is generally restricted to local residents mainly exercising their dogs. At present the use is relatively low key and not subject to big seasonal increases from tourists. This disturbance however does mean that there are no breeding waders along this section of the Keer channel but the RSPB felt this did not constitute a major conservation issue given the adjacent large area of undisturbed saltmarsh breeding habitat.* The RSPB also

indicated, at that time, *that the wider saltmarsh area is not at present accessed by the general public*, even though a legal right exists through the common land status.

Lancashire County Council and the RSPB have confirmed that areas to the north and south of the current restricted area are used. Due to its proximity to settlements the use in the south is greater than to the north. This use also increases in the spring / summer with the neighbouring caravan parks being occupied.

Although there may be an increase in use, the patterns of use appear to reflect that of 2004. There is evidence of a small number of people ignoring the restriction and walking dogs along the tops of the slag heaps. This may be unintentional due to a lack of knowledge of the restriction, due to signage being removed or simply undertaking a “local historical” use.

The grazier has reported seeing an increase in people with dogs on the marsh itself, but unclear how much of an increase as he only visits the site three times a week.

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 still need to consider the effect of disturbance from access to the coastal bird colonies as a whole.

In considering the “least restrictive option” we have 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; ranging from encouraging people to keep to paths to minimising or eliminating disturbance from dogs.

Conclusion following initial consultation

On balance we feel 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, has called into question the need for a continuation of the current restriction. Based on the concerns raised by the RSPB in 2004 and on current signage it could be argued that a dog on leads restriction may be the way forward.

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 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 feel the current restriction is not in line with government policy (the least restrictive option) and should be revoked. However, as the Relevant Authority, we appreciate that some other forms of management will be required and the question now is 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 feel that the first two options, either alone or in combination, would not address the issue. Therefore we feel 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 feel 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 needs 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.

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.

As above we feel 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 considered to not be the least restrictive option. Therefore we feel 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 feel the proposed restrictions would need to cover the full extent of the marsh as per the present restriction. We feel this would provide clarity to the user and assist with on-going management.

2. SUMMARY OF PROPOSED CHANGES TO EXISTING DIRECTIONS

Based on the information to date, Natural England, as the Relevant Authority, feel that the current restriction is not the least restrictive option and propose to **vary** the restriction from a total exclusion to:

1. a total exclusion of people with dogs from November 1st to July 31st each year across the proposed restriction area; and
2. A restriction on which dogs must be on a short lead from August 1st to October 31st each year across the proposed restriction area.

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 in 2016 to ascertain the effectiveness of the proposal.

Details of restriction on original direction:	Proposed details for new direction	Reason for proposed direction
Total Exclusion from April 8 th 2009 to December 31 st 2015	A total exclusion of people with dogs from November 1 st to July 31 st each year for a period of 6 years commencing from the conclusion of this review; and Dogs must be on a short lead from August 1 st to October 31 st each year for a period of 6 years commencing from the conclusion of this review.	Nature Conservation (CRoW s26) – To protect sensitive wildlife

3. SUBMITTING COMMENTS ON THE REVIEW:

If you wish to comment on the review of this direction then you must do so **before September 26th 2014** directly to Kevin Vigars on kevin.vigars@naturalengland.org.uk. A map accompanies this notice and is attached and can be seen on the Open Access website <http://www.naturalengland.org.uk/openaccess>.

Using and sharing your consultation responses

In line with Natural England's [Access to Information Statement](#), 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.

Annex 1

In accordance with statutory guidance, the relevant authority 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.