

## **Countryside and Rights of Way (CROW) Act 2000:**

### **NOTICE OF RELEVANT AUTHORITY DECISION FOLLOWING CONSULTATION ON A PROPOSED LONG-TERM RESTRICTION OF CROW ACCESS**

Prepared by Forestry Commission

**Case reference number:** 2014087340  
**Name of site/land parcel:** Cinderford Northern Quarter - CNQ  
**Grid reference:** SO643151  
**Access authority:** Forestry Commission  
**Local access forum:** Gloucestershire County Council  
**Consultation began:** 20 November 2014  
**Consultation ended:** 18 December 2014

**Date of direction notice:** 4<sup>th</sup> February 2015

The Forestry Commission has now decided how to proceed following its consultation about a proposed direction to restrict CROW access on this land. The relevant authority's decision is to give a direction restricting CROW access in a different way from that originally proposed.

This is because it is necessary to restrict CROW access to this extent for site management purposes

A copy of the direction is enclosed for your information. Details of the restriction will appear on the relevant map of access land on the Open Access website at <http://www.naturalengland.org.uk/openaccess>.

You should note that the applicant has the right to appeal within six weeks against our decision not to act in accordance with the application submitted to us. Only the applicant can appeal against this decision. Details of any appeal will appear on the Planning Inspectorate's website at <http://www.planning-inspectorate.gov.uk/>.]

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 are obliged to review it within five years of the date of issue.

#### Justification for direction

1. The consultation period ran from 20th November 2014 to 18th December 2014 with the proposal published on the GOV.UK consultation web site. FS also notified the following formal consultees of the application for their comment:

- The Local Access Forum (Gloucestershire County Council in this instance)
  - Local Highway Authority (Gloucestershire County Council in this instance)
  - British Association for Shooting and Conservation
  - British Mountaineering Council
  - Country Land and Business Association
  - National Farmers Union
  - Open Spaces Society
  - Ramblers' Association
2. Of these statutory consultees only one response was made - by the Ramblers' Association (RA). This response recognised the value of the closure to safeguard people during tree felling operations. The RA asked that signage was erected for this purpose.
  3. The rest of the consultation responses were made by the public and local groups. Towards the end of the consultation period two local groups: Dean Natural Alliance (DNA) and Forest of Dean Friends of the Earth (FoDFoE) contacted the FC to ask for more information about the proposal and information on the guidance that would be used to assess the application (the Relevant Authority Guidance). On 17<sup>th</sup> December 2014 Forest Services (FS) wrote to these groups to provide the information requested. Their messages prompted FS to review the application and on this basis we decided that the closure should be considered for Site Management (section 24) purposes rather than public safety (section 25(1)(b)). This was because the majority of the closure period was necessary for the removal of great crested newts (GCN) from the mitigation site, rather than the actual tree felling, although both are covered under our decision.
  4. FS notified DNA and FoDFoE of this change and agreed to accept any further comments that either of these groups wished to make, until Monday 12<sup>th</sup> January 2015 so they had the opportunity to consider the additional information provided.
  5. Both groups requested that a new consultation period should be instigated on the basis that the reasoning for closure had now changed. FS concluded there was no need to restart the consultation because of this, as it was an administrative correction and did not change:
    - The nature of the proposed work.
    - The consultation process.

- The nature of the consultation responses addressed the trapping of the newts or other wildlife interest, and very few, if any, were directly identifying closure of the access to be an issue.
6. This accords with the Relevant Authority Guidance (RAG) which allows the Relevant Authority to give a direction that differs from the application<sup>1</sup> and FS have not sought to increase the area of land under the direction (the RAG limits the directions for the purposes of land management purposes to the area of land that is subject to the application).
  7. By 18<sup>th</sup> December 2014, FS had received 144 comments on the closure. On 14<sup>th</sup> January 2015 DNA provided their response and on 16<sup>th</sup> January FoDFoE provided their response (updated further on the 23<sup>rd</sup> January 2014). These were accepted because FS was still working through the other responses at the time and FoDFoE had requested an extension due to a computer failure they had experienced.
  8. Around 120 of the responses were based on template list objections or were variants of this:

Concern	FS Response
<b>That the application was premature because planning permission has not yet been granted and that the Secretary of State is considering whether to intervene.</b>	<i>Planning permission was granted on the 14<sup>th</sup> November 2014 and on the 15<sup>th</sup> December 2015 the SoS confirmed they would not call in the application.</i>
<b>The purpose of the tree felling is “to facilitate a development project” not forestry purposes.</b>	<i>FS are considering the CROW closure in terms of the impact on access land, not the merits of the tree felling and development.</i>

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<sup>1</sup> Annex 1 of the RAG states –  
 Giving a direction that differs from the application  
 I.3.8 The relevant authority may decide to give a direction that differs from the one applied for.

Concern	FS Response
<p><b>Consideration of the application by FS would be biased because the applicant (FE) was also part of the Forestry Commission.</b></p>	<p><i>The application was made by Forest Enterprise (FE) which manages the Public Forest Estate (PFE) in England. FE is currently managed by the FC as a 'close in' Agency though the Government has stated their intention of legislating to make FEE an independent arm's length body, and this change will take place as soon as legislative time allows.</i></p> <p><i>The application is being considered by FS. FS have no direct involvement in the management of the PFE. In addition to CROW closures, FS regulate FE's forestry activity, including tree felling and restocking, open habitat restoration, forest roads and plant health work to ensure the regulations and Government's Forestry Policy are met to the same standards as those expected from all woodland owners. When considering CROW closures FS work to the same guidance as other Relevant Authorities such as Natural England (NE) and the National Parks.</i></p>
<p><b>Major development does not come within the areas of responsibility for the Forestry Commission therefore the reason to restrict public access is invalid.</b></p>	<p><i>The Forestry Commission are the relevant authority for the closures of land which is or is predominantly woodland and has access dedicated under section 16 of the CROW Act 2000 (section 21(6) of the CROW Act 2000). With the Forestry Commission, this role is fulfilled by FS.</i></p>
<p><b>The development and works are on Public Forest Estate land which the Minister in a parliamentary statement made clear is not available for transfer.</b></p>	<p><i>The use of PFE land for the development and any associated land transfers are a separate matter to the CROW and is for others to address.</i></p>
<p><b>The development runs entirely against the policy of Natural England that it seems to form part of i.e., "Protecting and improving people's enjoyment of the countryside".</b></p>	<p><i>The development and its links to policy are not considerations for the CROW closure which is concerned with the impact of closing access land.</i></p>
<p><b>Access to the countryside helps people</b></p>	<p><i>FS recognise the value placed on</i></p>

Concern	FS Response
<b>enjoy the countryside, understand the natural environment and benefits people physically and mentally.</b>	<i>public access to woodland and the benefits this provides. However, in this instance the closure will affect 6% of the available access land in the Crabtree and Serridge Forest Management Unit and accounts for only 0.15% of the total access land under Forest Enterprise's management in the Forest of Dean. The closure does not affect any of the existing public or permissive footpath or track network, which remain open for visitors to use. This is also a temporary closure.</i>

9. Other individual responses raised other concerns:

Concern	FS Response
<b>The land cannot be closed due to public access agreements on some of the land.</b>	<i>The closure FS is considering relates to the application made under the CRoW Act 2000. While an agreement between the FC and the FoDDC applies to the land this is a separate matter to the CRoW closure.</i>
<b>Forest Services have no right to close the land because any new enclosures within the FoD must be placed before the Forest of Dean Enclosures Commission.</b>	<i>The Enclosures Commission have a role in deciding whether to allow the enclosure of areas of tree planting to protect those trees from grazing animals. This is to ensure an acceptable amount of land remains available for grazing. In this instance the closure of the land is not for this purpose and the Enclosures Commission have no role to play.</i>
<b>The mitigation site is Forest Waste and therefore subject to rights of common.</b>	<i>The site subject to the application is not currently Forest Waste as it is currently managed for timber production.</i>
<b>The site is inappropriate as a mitigation site as due to the existing population of GCN. The impact the amphibian fencing would have on the existing population of GCN.</b>	<i>The suitability of the mitigation area and movement of the great crested newts is a matter for NE who has awarded a licence for their translocation and any concerns about the animals welfare would be a consideration for them either when they issued the licence or when they consider an application to modify the current licence.</i>
<b>The site was inappropriate as a mitigation site due to the impact it</b>	<i>The impact on bats relates to the tree felling in the closure area which</i>

Concern	FS Response
<b>will have on bats that forage and commute over the area.</b>	<i>is again a separate matter to the temporary loss of access and has been considered in the Appropriate Assessment for the development and its associated mitigation which has been accepted by NE.</i>
<b>The application is invalid as it is not accompanied by any supporting documents.</b>	<i>There is no supporting information beyond that included in the application form. This document sets out the additional information FS has gathered in considering the application and reaching its decision on the closure.</i>
<b>The closure is excessive and out of character because other areas of the Forest are not closed for tree felling work.</b>	<p><i>For the most part Forest Enterprise seek to manage their operations through informal restrictions to access (i.e., management with signage and planning) but FE do use outline directions to formally close land for tree felling in the Forest. In 2011 there were 11 such closures, in 2012 there were 4, and in 2013 one full closure was made. Although numbers have decreased, CRoW closures are on occasion used by FE where informal approaches would not address the risks to the public.</i></p> <p><i>In this instance the purpose of the closure is to support the use of security fencing to ensure that no accidental damage is caused to the amphibian fencing, not for the tree felling alone.</i></p>

10. While some consultation responses expressed dissatisfaction at the closure of the land none described a material impact in terms of closing the access.

### **Decision and Summary of Reasons**

11. FS has decided to award a direction for the long-term closure until 30<sup>th</sup> November 2015 (as per the application) but on the grounds of site management rather than public safety. However, the closure will be revoked in the event that either:

- a) The section 106 agreement fails to be put in place before 31<sup>st</sup> May 2015. **Reason:** the 106 agreement provides further assurance the development is likely to proceed (notwithstanding the probability of challenge). While this planning decision may be subject to legal

challenge, providing an extension to safeguard the GCN trapping and translocations done to date, will ensure this work is not undermined. Failure to do so would result in the whole process having to restart with a new closure, should the challenge against the planning decision fail. The outcome of this would inevitably lead to a new closure period that lasts longer than the current. While there is a risk that a challenge leads to double handling of the GCN this is considered in the second condition below.

- b) A further modified licence to collect and translocate GCN from the site is not issued before 31<sup>st</sup> May 2015. **Reason:** without the modified licence being in place by this time there is no basis for the amphibian fencing to remain in place as the required amount of GCN trapping could not be achieved. Similarly, there would be no basis for the security fencing/closure to safeguard the amphibian fence from incidental harm. While there is a risk of legal challenge to the planning decision FS have concluded that, if a modified EPS licence were issued within this timeframe it would demonstrate NE's acceptance that the animals maybe double handled should the development ultimately not proceed.
- c) The development company confirms at any stage that it does not intend to continue with the project.

12. This decision has been taken by FS and endorsed by the [England National Committee](#).

13. FS has considered the advice in the RAG on taking account of other licenses and agreements (chapter 2 section 2.5.12 to 2.5.15). In this case the land is subject to a licence for the collection of GCN. This requires the use of amphibian fencing to ensure these animals do not move into the site during the collection period. The use of security fencing to safeguard amphibian fencing is advised in areas of public access in the English Nature Guidance on the Exclusion fencing and drift fencing in [Great Crested Newts Mitigation Guidelines \(2001\)](#). FS therefore accept the merit of such fencing and recognise that in the Forest of Dean it would prevent or minimise the risk of incidental damage by wild boar as well as accidental damage by members of the public or their dogs.

14. In this context FS have concluded the security fencing and temporary closure of this area of CRoW access land is justified in association with this licence and the same outcome could not be achieved through informal management. Due to the level of immediately available access land, FS do not see the closures restrict access unnecessarily. FS are also required to pay particular attention to any loss of income that might result if the applicant is unable to comply with the terms of a licence. In this case, while the licence does not specifically require

security fencing, it is considered good practice and in the event there was incidental damage to the amphibian fencing it could result in a requirement to restart the trapping programme at an estimated cost of £200-250k. Again, in light of the available access land (see 22) and short-term nature of the closure FS believe the closure has the potential to reduce the risk of such a cost being incurred.

15. The closure applies to 10.9 hectares of land. This accounts for 6% of the forest management unit and 0.15% of the land managed for public access in the Forest of Dean. No consultation responses identified an adverse impact of the closure in relation to access. Therefore there is no evidence of significant public access use of the closure area. There is a substantial area of alternative access land in the local vicinity with equal or greater utility. No footpaths or tracks used for access are affected by the closure.
16. GCN trapping has commenced on the site: between 17 to 26 trapping nights have been completed across the mitigation areas. 60 nights are required under the second licence modification (if approved), an increase from 30 nights identified in the original licence. Some compartments will have to start from the beginning due to the flood damage earlier in the year. If the fencing were damaged at this stage it would require the trapping to restart completely from new, resulting in a potentially longer overall closure period.
17. The period of the closure is approved on the grounds that even once the trapping is complete the tree felling will not commence until October – after the dormice have completed their nesting. During this period the amphibian fencing will remain on the site to prevent GCN re-entering the land before tree felling.
18. A key concern was that there is no certainty that the development will proceed and therefore that the works driving the closure are necessary. While FS recognise the logic of this argument. FS has considered this and applied appropriate conditions to the closure that relate to the settlement of a section 106 agreement, the award of a modified EPS licence, or subsequent withdrawal from the development, to ensure that the forest area can be re-opened at the earliest opportunity.

### **General criteria for restricting access on the grounds of land management or public safety**

19. In reaching its decision FS considered the application against the general criteria for restricting access on the grounds of land management or public safety if the other criteria sets do not contain relevant guidance (criteria set 25 in the RAG).



20. **Step 5 - Is it necessary to do anything?** FS have decided the circumstances are sufficient to warrant intervention and accepted the application and that informal access management was not considered practicable solution based on the criteria below:

- Incompatible activities: *Certain activities may be fundamentally incompatible with the access rights, and intervention may be necessary to separate them.*

**The fencing to safeguard amphibian fencing from incidental damage is good practice and will also help prevent incidental damage by wildlife such as wild boar.**

- Other statutory requirements: *The land manager's wider statutory obligations (e.g., under health and safety at work legislation) are not themselves a material consideration for the relevant authority in deciding whether a restriction is necessary – though any restriction it considers necessary in itself may help him to discharge them.*

**The land manager must comply with the Conservation of Habitats and Species Regulations 2010 which protects GCN and dormice. To meet this requirement the land manager has obtained a licence for the translocation of GCN. This requires amphibian fencing and, in line with good practice, the use of security fencing. These points have led to the closure to date which will help discharge duty under the regulations through by protecting the amphibian fencing from incidental harm.**

- Existing arrangements and local experience: *The need for intervention may already be met by existing management arrangements. Consider if intervention has been necessary in these or similar circumstances at other sites in the local area.*

**Up to this point the land has been subject to closure under an outline direction term closure to safeguard the amphibian fencing from incidental damage.**

21. **Step 6 - Is statutory restriction necessary?** Based on the criteria below FS consider informal management would not be practicable or effective and could impose a significant financial burden on the land manager:

- Legal basis for restriction: *Does CROW provide legal grounds for a restriction of the type applied for?*

**CRoW allows for a restriction under section 24 - site management purposes, though there is also a question of**

**public safety (section 5(1)(b)) during the tree felling operation.**

- Other access rights: *Would the existence of other access rights or public rights of way affect the effectiveness of any restriction?*

***There are no other access right on the closure area which would compromise the effectiveness of the restriction.***

- Previous arrangements and local experience: *Have restrictions been needed in similar circumstances locally?*

***The same land has been subject to a short-term closure to safeguard the amphibian fencing from incidental damage up to this point.***

- Cost and practicability of informal solutions: *If the land manager considers an informal access management solution too expensive or difficult, or is unwilling to try it or permit it, the relevant authority needs to decide whether a restriction is necessary in all the circumstances – and whether in the absence of informal management it will have any practical effect on the situation.*

***Informal management would not provide the same level of safeguard from incidental damage to the amphibian fencing which if damaged could incur a cost of £200-250k.***

**22. Step 7 - What is the lowest level of restriction necessary?** Having concluded the restriction is appropriate, FS have determined the form of restriction based on the needs of land management and public safety, while taking into account the requirement to minimise disruption to the access rights.

- *Purpose: The restriction should be targeted on the concern it is seeking to address, and should not unduly affect other types of recreational use.*

***The restriction is limited to the area only to the area of concern.***

- *Timing and duration: Restrictions should only apply (or be capable of being applied under an outline direction) at times when they are necessary and appropriate. Where possible, restrictions should be avoided at peak visiting times such as weekends and bank holidays.*

***The restriction applies to the minimal possible time which accommodates the work of the EPS licence for GCN***

***relocation, protection for dormice during nesting season and tree felling.***

- *Extent: Restrictions should only apply to as much land as is reasonably necessary for the purpose. Residual access should be provided wherever possible, and use of public rights of way will be unaffected.*

***The restriction is limited to the area and affects only 6% of the available access land in the forest management unit (and less than 1% of the CROW access land in the Forest of Dean). It will not therefore unduly affect recreational use.***

- *Other constraints on CROW rights: The relevant authority must not restrict activities that are not included in the CROW rights – including activities covered by the Schedule 2 national restrictions – and should take due account of other restriction powers available to the applicant, e.g., the discretionary powers at CROW sections 22 and 23.*

**Deliberate damage to the amphibian fencing would be a criminal act and therefore subject to a 'national restriction'. However in this case the good practice of using security fencing and this closure are to protect the fencing from accidental damage by the public or their dogs. The fencing will also help protect the amphibian fencing from damage by wildlife such as wild boar. Due to the costs such damage could incur and due to the available access land FS have made the closure.**

**The discretionary power under section 22 would not allow the land manager to restrict use of the land for long enough (section 22 restrictions are limited to 28 days in each calendar year.**

**The discretionary power under section 23 relates to restriction on local access for dogs in certain situations (grouse breeding and shooting and lambing) would not apply here.**

- *Other conditions: The relevant authority may impose under the direction such other specific conditions as it thinks fit in order to ensure that access will be only restricted to the extent necessary for the purpose in question.*

**FS have applied conditions to the closure that it will be reviewed if the section 106 agreement is not agreed, a**

**modified EPS licence for the work is not granted. Without these there would no reason for the closure to continue.**

Forest Services  
4<sup>th</sup> February 2015