

Countryside and Rights of Way (CROW) Act 2000

REVIEW OF STATUTORY DIRECTION(S) - PROPOSED CHANGE TO EXISTING DIRECTION(S)

SUMMARY FOR PUBLIC CONSULTATION Prepared by South Downs National Park Authority

INFORMATION ABOUT THE PUBLIC CONSULTATION

Access Authority: South Downs National Park Authority
Relevant Authority: South Downs National Park Authority
Local Access Forum: South Downs Local Access Forum

Original direction reference: 2006040060

Land Parcel Name	Details of restriction on current direction
Cheriton Wood, Hampshire	Direction to exclude the public from Cheriton Wood for a period of six years. The direction may operate for up to 210 days annually between 1st July and 1st February. The direction was given for reasons of public safety and land management, specifically game bird management. 28 March 2011 to 27 March 2017

The South Downs National Park Authority has begun a review of the above long term direction in accordance with statutory guidance (see Annex 1). A consultation has been held with statutory consultees and the general public that sought views on the existing direction.

We received feedback from four consultees: the landowner, the South Downs Local Access Forum (SDLAF), and two individuals.

1. SUMMARY OF CONSULTEE COMMENTS

The landowner requested that the access restriction is extended in order to allow the pheasants to habituate, and remain habituated throughout the shooting season. The landowner noted that there is attractive habitat for pheasants on neighbouring, commercially operated, shoots. The implication is that if pheasants are disturbed by members of the public in Cheriton Wood, they may fly onto, and

remain on, neighbouring land.

The South Downs Local Access Forum had no strong opinion against the existing arrangement. This was in light of the direction appearing to be working well, restrictions being appropriate for the land management, and there being no local opposition [expressed prior to the Forum's meeting on 20 July 2016].

Both individuals who responded said that they understood the need for an access restriction whilst shooting is taking place. One believed that access has no detrimental effect and asked that it be allowed to continue. The other objected to the direction to restrict access on days other than shoot days; they went on to describe how other woods in the area have been used by the public whilst tree harvesting operations have been progress.

After due consideration the SDNPA now proposes to vary the direction to extend it for another 6 years. This is for reasons of public safety whilst shooting is taking place, and for reasons of land management to allow for the release and management of game birds.

As the SDNPA has decided to vary the direction (and is still proposing to make a long term direction) it is obliged to undertake a further round of consultation.

2. SUMMARY OF PROPOSED CHANGES TO EXISTING DIRECTIONS

Details of restriction on original direction	Proposed details for new direction	Reasons for proposed direction
To exclude the public from Cheriton Wood for up to 210 days annually between 1st July and 1st February 28 March 2011 to 27 March 2017	To exclude the public from Cheriton Wood for up to 210 days annually between 1st July and 1st February 28 March 2017 to 27 March 2023	Avoidance of danger to the public and land management

The SDNPA must still review the direction no later than five years after its anniversary (or the date of the last review).

Summary of proposal

Cheriton Wood is a 91 hectare registered common situated approximately 1.8 km north-east of the village of Cheriton on the edge of the South Downs National Park. It is privately owned; the application to restrict access was made by the landowner. There is a single, non-practicing, commoner with rights of estover (wood collection). Public rights of way pass adjacent, or close, to parts of the western, southern and eastern boundaries of the wood. A public bridleway passes through the easternmost section of the wood. Cheriton Lane lies adjacent to part of the northern boundary.

The wood is managed as a pheasant shoot. The small size of the woodland and the risk of disturbance causing birds to fly off, plus the risk to public safety when shooting is taking place, makes a restriction necessary. An initial direction was given to exclude public access on specific periods around shooting days. The landowner was expected to use discretionary restrictions to manage all other operations. However this was subsequently found to be unduly burdensome for the landowner, and difficult to convey to the public.

A long term direction was given in 2006 to allow the exclusion of public access from the time the pheasant poults were released to the end of the final shoot. The restriction operated by notification from the landowner for a maximum of 210 days annually between 1 July and 1 February. This direction was extended for a further 6 years in 2011.

A site visit was carried out in 2016 as a part of this review. It was found that the the wood continues to be managed for pheasant rearing and shooting, and that the landowner is managing the access restrictions correctly by erecting signage and making notifications in a timely fashion. The landowner has improved the signage in recent years at the request of the Hampshire Countryside Access Forum (which was the Local Access Forum for the area prior to the establishment of the National Park). The SDNPA has no record of complaints being made about the restriction of public access to Cheriton Wood during the period of the current direction.

In determining applications for restrictions the Relevant Authority Guidance 2010 (RAG) must be followed. Criteria set 16.1 (Chapter 2.5), Released game bird management, states:

Estates where game birds are released are carefully managed to maximise the number of birds at the drive on the day of the shoot and to encourage the birds to develop the flight characteristics of wild birds that are considered best for shooting. Gamekeepers achieve this by providing supplementary food and water at or near the drive and by minimising disturbance in the areas used by the birds, from the time they are released until the last shooting day of the season.

Disturbance cannot be eliminated altogether, but it can be managed by predator control and through the strategic location of game areas.

Pheasant are normally put in pens in July or later. The pens are normally situated in woodland or other land with tree cover, which encourages birds to roost in trees where they are less vulnerable to predation.

Birds are held in the pens for two to four weeks and then released, but encouraged to remain in - or return daily to - the area where they will be driven and shot. Gamekeepers minimise disturbance in the four to six weeks following release, while the birds are establishing a strong bond (known as 'habituation') with the affected land.

Pheasants may be fed in the area of release or the gamekeeper may lay food trails leading from the release area to a nearby drive. This encourages them to return to the drives each morning from their roost.

Visitors may disturb birds and cause them to leave a feeding area or drive, but once they are habituated to the land, they are more likely to return to it after a temporary absence. Gamekeepers can sometimes counteract occasional disturbance, using dogs to move the birds back to their drive or changing the location of the drive, but manage access where possible in ways that minimise the need for this. Occasional, temporary displacement of birds following habituation is therefore unlikely to be significant until the lead up to a shoot, when there is no time to change the location of the drive or to recover the birds if they fly off.

Frequent disturbance may be damaging to shooting interests at any stage before the end of the shooting season, if it causes some birds to desert a drive altogether or significantly disrupts the daily movement of birds from their roosting site to the drive.

In addition, RAG Criteria set 18, Shooting live quarry, states:

It is well established that the primary responsibility for preventing injury lies with the user of the gun. Consequently it is extremely rare for countryside visitors to be injured as a result of shooting. However visitors in the vicinity of a shoot are potentially disruptive because:

- they can disturb the quarry, making it difficult to locate or to drive towards the guns – particularly if they bring dogs; and*
- those shooting can be distracted from their sport by the need for extra vigilance to prevent any risk of accidental injury to visitors.*

Access management techniques will often be necessary to minimize any such disruption.

Shooting seasons are specified in law and vary according to species.

And, in criteria subset 18.2, Danger to the public from shooting live quarry:

- *Shooters have to assume that members of the public may be present and take all necessary precautions, even at times when they are unlikely to encounter visitors.*
- *People using shotguns should be able to see the whole area where their shot could fall and must not shoot if anyone enters that zone of risk.*
- *People using rifles must choose a position that provides clear views against a safe backdrop before taking a shot. On flat ground, marksmen sometimes use raised seats that ensure that the bullet hits the ground behind the target if it misses.*
- *These standard precautions are normally sufficient to reduce risks to the public to an acceptable level. Further precautions may be necessary where the topography, vegetation cover or other obstacles obstruct the views of shooters over the zone of risk.*
- *Signs, flags or lookouts ('stops') may be used to let visitors know when shooting is taking place and recommend safe routes through or around the affected area.*

Cheriton Wood is managed through rotational coppicing to provide a warm and attractive habitat for the pheasants, which tend to habituate to the main ride through the middle of the wood. The landowner states that there is attractive habitat for pheasants on neighbouring, commercially operated, shoots. The wood is relatively small for a shoot; there are 12 drives on the shoot, 9 of which are located throughout the woodland and 3 adjacent to the southwest edge of the wood. The topography and wooded nature of the site make it difficult for shooters to be able to see the whole area where their shot could fall.

If there was no access restriction, there would be a significant risk that the pheasants would abandon the wood due to frequent disturbance. Some form of management will be required when shooting activities are taking place to ensure public safety.

Why is a statutory restriction necessary?

For released game bird management the RAG states:

It may be necessary to restrict dogs to leads around pens, drives, and other roosting or feeding areas to prevent disturbance during sensitive periods.

Further restrictions are unlikely to be necessary in areas visited only occasionally by the public (except in connection with shooting), but may be necessary where:

- *informal measures to manage disturbance are inadequate or unavailable; and*
- *the public visit regularly - for example on estates used by local dog walkers - or at particular times when people are known to visit more often; and*
- *one or more of the following factors is present:*

- *Visitors are likely to pass close to the pens during the first four to six weeks following release;*
- *Routes favoured by visitors bring them into close proximity with the game;*
- *The direction of any disturbance is likely to cause birds to move off the estate;*
- *Neighbouring land outside the control of the gamekeeper provides alternative suitable habitat that is likely to attract significant numbers of birds if they are disturbed;*
- *Cover is sparse and the birds are more likely to seek alternative habitat in response to regular disturbance;*
- *A small estate has fewer drives and is so less able to absorb regular disturbance.*

And for danger to the public from shooting live quarry the RAG states:
Restrictions to prevent danger to the public will only be necessary where shooter's views over the area of risk are obstructed. The area of risk will depend on sightlines in the direction(s) of fire, and the gun and ammunition used.

The gamekeeper at Cheriton Wood is part time, and the wood is relatively small making it impractical to isolate birds away from members of the public. A good network of public rights of way pass around perimeter of the wood and offer links to nearby settlements. The wood is used by commercial dog walkers at times when access is unrestricted. Disturbance is likely to cause birds to fly to alternative suitable habitat situated nearby. It is not possible to ensure clear sightlines for shooting, and it would be impossible to prevent people accessing danger zones without a large number of banksmen.

For these reasons it is thought that a statutory restriction will be required to prevent damage to the shooting interest from disturbance causing birds to abandon the wood, and to prevent risk to the public from shooting.

What is the lowest level of restriction required?

For released game bird management the RAG states:

- *Restrictions may be necessary for this purpose from the time of release until the end of the shooting season, but not at other times.*
- *It will often be sufficient to restrict dogs to leads for this purpose.*
- *Exclude people from sensitive areas only, leave residual routes or areas unrestricted wherever practicable.*
- *Have regard to the fact that public rights of way will not be affected.*

And for danger to the public from shooting live quarry the RAG states:

- *Exclude people from the affected area while driving or shooting are in progress or earlier, where necessary to ensure that visitors are not present when the shoot begins.*
- *Leave residual routes or areas open to the public where it is safe and practical to do so. Remember that rights of way are unaffected.*
- *Relate the timing and number of any restrictions to what is actually planned or likely, given the legal and practical constraints.*

In this case a restriction is considered necessary from the time of release until the end of the last day of shooting. The direction allows the landowner to notify the dates between which the access restriction is in effect.

The public rights of way for the most part pass around the outside of Cheriton Wood, with a bridleway crossing just one small area at the eastern edge of the wood. The existence of the rights of way have little to no material effect on the access restriction.

The size and nature of the wood make it problematic to leave any areas or routes through the site open. A total exclusion will be required while shooting is taking place.

The SDNPA intends to engage with the landowner to investigate whether it is possible to reduce the duration and/or area of the access restriction for the purpose of game bird management without incurring an undue burden in terms of practicality or cost. The SDNPA may then reassess the need for any direction it has given. The Authority has the power to vary or revoke any direction it has made at any time, therefore it would not be necessary to wait until the 5-year review before proposing any amendment to the access restrictions.

3. SUBMITTING COMMENTS ON THE REVIEW:

If you wish to comment on the review of this direction then you must do so before 17 October 2016 directly to:

Allison Thorpe
Strategy Lead Access and Recreation
South Downs National Park Authority
South Downs Centre, North Street, Midhurst, GU29 9DH

access@southdowns.gov.uk

A map accompanies this notice and can be seen on the open access consultation pages of the government's website¹.

¹ www.gov.uk/government/consultations. To access the consultation enter "open access" into the free text box titled "Contains"

Using and sharing your consultation responses

In line with SDNPA's Privacy Policy, 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 Natural England.

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 SDNPA.

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.