

Countryside and Rights of Way (CROW) Act 2000

REVIEW OF STATUTORY DIRECTION – PROPOSED CHANGE TO EXISTING DIRECTION

SUMMARY FOR PUBLIC CONSULTATION

Prepared by Natural England

1. INFORMATION ABOUT THE PUBLIC CONSULTATION:

Access Authority: Wiltshire Council
Relevant Authority: Natural England
Local Access Forum: Wiltshire and Swindon Countryside Access Forum

Original direction reference: 2004070068

Current Case Reference: 2009050212

| Land Parcel Name: | Details of restriction on original direction |
|--------------------------|---|
| Garden View Church Dean | Dog Exclusion 23/10/2009 until 23/10/2015 |

Natural England has begun a review of the above long term direction in accordance with statutory guidance (see Annex One). A consultation has been held with the statutory consultees and the general public between the 24th July 2015 and the 21st August 2015, that sought views on the existing direction.

We received feedback from the Ramblers, who said that if the stocking situation on the land has not changed since the last review, with around 150 cattle and year-round calving, then they would agree to a continuation of the current direction. This would be the lowest level of restriction necessary and in line with the relevant authority guidance. They also request up to date information concerning the use of the land and levels of stocking to confirm a dog exclusion is still the least restrictive option.

We also received a letter from the applicant informing Natural England that they still keeps cows and calves on the land with a bull running with the cows and the cows calving throughout the year. They also keep their ewes on the land either in-lamb or with lambs at foot. They also confirmed that the details of the stock are still the same as at the time of the last review in 2009, and that they have been using framed and mounted restriction signage since 2009.

Therefore after due consideration, Natural England now proposes to extend the direction for a further six years.

As we have decided to VARY by extending the direction (and are still proposing to make a long term direction) we are 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 | Reason for proposed direction |
|---|---|--|
| Dog Exclusion 23/10/2009 until 23/10/2015 | Dog Exclusion 23/10/2015 until 23/10/2021 | Dog Exclusion Public safety s25, cows and calves |

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

i) Summary of proposal

At the time of the original application the applicant had a wide range of livestock at Bilbury Farm, and some of these were kept on the Open Access parcels of Church Dean and Garden View. The applicant was concerned about public safety from the suckler cows and calves on the land, a dairy bull, a stallion, and land management concerns about the sheep when lambing occurs.

Whilst determining the review of this case in 2009 it was established that the stocking situation was unchanged from the time of the original decision. The landowner still had about 150 cattle using the parcel (and other land), with year-round calving. At the time of the original restriction it was observed that there was no legal right of way to the parcel, however as the wider countryside is well used, and the applicant's farm track leads very close to the parcel from the main road, it was determined that there was still a small chance that people might inadvertently enter the land. However during the 2009 review it came to light that there could soon be Public Right of Way called The Hindon Road giving access to the parcel, though at the time of the review this was still being worked on by the Wiltshire Council Rights of Way Department.

In 2015 a letter from the applicant has confirmed that they still keep the same numbers of livestock with cows in year round calving running with a bull on the parcel and ewes in-lamb or with lambs at foot. A further conversation with the

applicant has updated some details. Bilbury Farm keeps currently 93 cows plus followers on their 89 hectare farm, and these stock make use of the 23 hectares of Open Access land along with their sheep and a horse. The cows are kept outside on the land all year, calve all year and are run with their Welsh Black beef bull. The cattle are a mixed herd of Simmental and Welsh Black crosses with some Aberdeen Angus bought in recently to improve herd hardiness.

Wiltshire Council has also confirmed that the possible Byway The Hindon Road does not legally connect to or cross the Open Access land.

When determining restriction cases, Natural England uses its '**Relevant Authority Guidance**', and 'Criteria Set 10: Other cattle kept on access land', says:

Cattle normally tolerate people well, particularly when they have become used to encountering them. However because of their size they can present a significant threat of injury or even death if they feel threatened or, in particular, if they are protecting their young.

On access land, this latter threat only normally applies to suckler cows, which may calve on extensive pasture and have their young at foot for a period after birth¹. The risks are significantly greater for visitors with dogs.

Steers² and heifers³ (which are naturally boisterous) may sometimes appear aggressive to visitors, but this rarely results in injury.

Employers and the self-employed are required under Health and Safety legislation to assess such risks and take such steps as are reasonably practicable to reduce them to an acceptable level. There is also a relevant duty of care under the Animals Act 1971.

Heavily pregnant cattle may abort or give birth prematurely if chased by dogs. It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock. CROW does not entitle visitors to take a dog into the vicinity of livestock unless on a short lead [Schedule 2, paragraph 5] (though in relation to safety considerations, keeping hold of a dog's lead when attacked by cattle may increase the risk of serious injury or even death).

- Intervention is only likely to be necessary when cattle are calving or have calves at foot in fields on access land.*
- To prevent cattle and visitors from coming into close proximity, the relevant authority should consider informal management techniques. Depending on*

¹ Suckler cows are normally part of beef enterprises. The young of dairy cows are normally separated from the mother at birth and housed, or kept on land near the dairy that is unlikely to be access land.

² a young castrated male, usually raised for beef.

³ A young cow, especially one that has not yet given birth to a calf.

local circumstances this might be to:

- 1. Relocate cattle watering or feeding stations away from routes or areas frequented by the public, provided this can be achieved without unreasonable cost or inconvenience to the applicant.*
- 2. Position signs and access points to steer visitors away from areas favoured by cattle.*

Where cattle are present on CROW access land, signs may be placed at entry points to remind visitors of the requirements to keep their dogs on leads in the vicinity of livestock. Visitors should be advised for their own safety and that of their dogs to steer clear of the animals and to unclip their dogs' leads if they are chased by cattle.

Therefore it can be seen that some intervention will continue to be required going forward especially to protect people with dogs.

i) Why is a statutory restriction necessary?

The 'Relevant Authority Guidance' states:

- *Cattle will naturally avoid visitors when calving, and it is reasonable to expect visitors to avoid cattle provided steps have been taken to alert them to the risks. Restrictions are therefore unlikely to be necessary on large open areas of access land.*
- *The national requirement for people to keep their dogs on leads in the vicinity of livestock may not be an adequate precaution in small enclosures where suckler cows are calving or have calves at foot, particularly if the stocking density is high. In these circumstances the relevant authority may consider complete exclusion of dogs from the enclosure if necessary.*
- *It may be necessary to exclude dogs from an area where cattle are calving or have calves at foot, where local circumstances make it difficult for visitors and cattle to maintain a safe distance from one another. Such circumstances will include:*
 1. *Small enclosures where close proximity is unavoidable;*
 2. *Areas where the topography or vegetation makes it difficult for people or cattle to be aware of each other's presence and so keep at a safe distance;*
 3. *Areas where the established or predicted patterns of access coincide with places favoured by the cattle, such as watering or feeding stations and the relocation of such places to less sensitive areas is not practical.*
- *Restrictions may occasionally be necessary on the basis of a herd's temperament, or on the basis of an individual animal's temperament. Quite often there is more temperament variation within breeds than between them, so it is not possible to specify whether a restriction is necessary on the basis of breed alone. The relevant authority should therefore question the handler in order to build up a profile of each individual animal's temperament, comparing the handler's subjective assessment with the other factors above to arrive at a balanced overall assessment of the likely risk to visitors. The relevant authority should ask the handler:*
 - *What their assessment of the degree of danger posed by the cattle to the public is;*
 - *Whether the animal(s) have a history of aggression towards the public or the handler and if so under what circumstances those attacks occurred;*
 - *Whether it is the herd or the individual that has aggressive tendencies;*
 - *Whether members of the public are likely to find themselves in similar*

- *circumstances to the situation that led to previous attacks;*
- *Whether the cattle are handled frequently or are used to the presence of other people in their enclosure;*
- *Whether the handler would consider splitting the animals from the main herd and housing them elsewhere;*
- *Whether the handler culls aggressive animals.*

At Bilbury Farm there are large numbers of cows using these parcels, Church Dean is 21ha and Garden View is 2ha. The cattle are free to wander round different areas of the farm so there is the potential that large numbers of cattle, around 150, could be on the open access land at any one time.

The temperament of the herd is generally not docile; they know the farmer but are suspicious of other humans, generally moving away if people do come within their vicinity. The farmer said they never take their dogs into the fields with the cows as they will go for any dogs, even their own. It doesn't seem possible in this case for the farmer to split aggressive animals away from the herd and he doesn't single out particular animals as aggressive for culling.

Therefore a restriction is proposed both due to the potential for encountering large numbers of cattle on the Open Access Land, and due to the herd temperament.

ii) What is lowest level of restriction required?

The 'Relevant Authority Guidance' states:

- *Where restriction is justified, this will usually be to exclude people with dogs while cattle are calving or have calves at foot. The maternal instinct in cattle decreases over time, so it is unlikely that a restriction of over three months will be necessary. However the relevant authority may consider granting a longer restriction if it receives compelling justification from the applicant.*
- *The relevant authority should only exclude dogs where it is satisfied that this will reduce danger to visitors significantly in the context of any residual access afforded by public rights of way. It should also consider the extent to which the herd is used to the presence of other people and dogs within its enclosure, and whether it is preferable and practical to restrict people with dogs to routes that avoid areas frequented by cattle.*
- *Restrictions are unlikely to be necessary where the cattle are pregnant but not yet calving, as they are generally more docile during pregnancy. It is the maternal instinct that occurs at calving that could cause the cattle to become more aggressive.*
- *Cattle are usually provoked by aggressive or boisterous behaviour in dogs, but relevant authorities should not rule out the possibility that the presence of a dog may provoke them, even if it is under close control. It is therefore*

unlikely to be appropriate to exempt people with assistance dogs from directions for this purpose.

An exclusion of people with dogs is therefore proposed as essential for public safety, and this will need to be year round as the cattle are out on the open access land all year. Given the current herd size of 93 cows it is highly likely that there will be a number of calves less than three months old at any one time in the herd.

iv. Restriction Signage

Signage on the ground is always the most important form of access management, and can be backed up by a statutory restriction where necessary. The farmer is aware that restriction signage is required and has committed to continuing to erect it at potential access points.

3. SUBMITTING COMMENTS ON THE REVIEW:

If you wish to comment on the review of this direction then you must do so before 20th October 2015 directly to:

Richard Thomas
Lead Adviser Open Access
Mail Hub Block B,
Whittington Road,
Worcester
WR5 2LQ
Richard.thomas@naturalengland.org.uk

A map accompanies this notice and is attached and can be seen on the [Consultation Pages](#) of the Government's Website⁴.

⁴ 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.

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.

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 relevant 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, it 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), it 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, it 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.