

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 Natural England**

1. INFORMATION ABOUT THE PUBLIC CONSULTATION:

Access Authority: Borough of Poole
Relevant Authority: Natural England
Local Access Forum: Dorset Local Access Forum

Original direction reference:

| Land Parcel Name: | Details of restriction on original direction |
|-----------------------------------|---|
| Ham Fuel Depot, Ham Common | 2006050235 |

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 statutory consultees and the general public that sought views on the existing direction.

We received feedback from four consultees: The Amphibian and Reptile Conservation Trust (ARC Trust), the Access Authority (Borough of Poole), The Dorset, Poole & Bournemouth Local Access Forum (LAF) and The Ramblers.

1. SUMMARY OF CONSULTEE COMMENTS:

The ARC Trust has advised that all structures deemed as potentially hazardous at the time of the original direction remain on site with no reduction in the risk to public safety.

The Access Authority support the ongoing restriction noting that all the hazards which were part of original direction and later review remain and it is likely that there has been more deterioration of roofs of the various underground structures and entrance tunnels, probably making the site even more hazardous to the public.

Whilst raising no objection to the continuation of the restriction, the Dorset, Poole and Bournemouth LAF requested that exclusion notices make it clear that the public are at liberty to use the remainder of the site without constraint with specific reference to advising the public that there is adequate room between the

south side of the restricted area and the north side of the lake to allow it's circumnavigation.

The Ramblers, while supporting the continuation of the direction if conditions on site remain unchanged, advised that a survey and reassessment of the site should take place to ensure the review is based on current information

After due consideration, Natural England now proposes to vary the direction to extend it for another 6 years.

As we have decided to vary 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 |
|--|---|--------------------------------------|
| No Access 24/11/2011 to 23/11/2017 | No Access 11/04/2016 to 10/04/2022 | Public Safety |

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

The site was purchased in 1994 by the Amphibian and Reptile Conservation Trust (Arc-Trust). They are a national wildlife charity committed to conserving amphibians and reptiles and saving the disappearing habitats on which they depend (www.arc-trust.org). They own, lease or formally manage over 80 reserves in the UK, with 48 of those sites in the Dorset area.

This site a small area of heathland within a larger area of similar habitat at Ham Common, which is designated as a Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. As well as being lowland heathland, the site is important for sand lizards, smooth snake and other reptiles. A tall chain link fence currently encloses the area in question with two entrance gates kept locked except when the site is accessed by trust staff or other members possessing a key. As a result it is not possible for members of the public to access the site without climbing the fence. The site is adjacent to other publicly accessible areas of Ham Common and a caravan holiday park is situated nearby.

The site was formally a fuel depot up to the end of the second world war and many of the original features such as fuel tanks, buildings, bunkers and tunnels are still in situ but in a poor state and are judged to be a significant health and safety risk to anyone accessing the site without a guide who is very familiar with the locations of the dangerous features, many of which are not obvious due to natural colonisation over the past 60 years.

The site was purchased by the Trust from the Ministry of Defence prior to the existence of CRow Act 2000 legislation in order that the reptile community present on site could be conserved through appropriate habitat management and the exclusion of the public except for specific guided visits.

It was not intended that the site should become generally accessible to the public partly due to the sensitivity of the habitat but mainly because of the obvious man-made hazards.

The Hazards

A risk assessment and two contamination reports from 1994 at the time of purchase by the Trust were submitted with the restriction application. The assessment identifies several significant risks to the public: -

1. The roof of the air raid shelter and entrance tunnels are at risk of collapse
2. People may fall into empty fuel tanks that do not have roofs
3. Underground fuel tanks containing fuel remnants are not sealed securely
4. The old pump house has now flooded presenting a risk of drowning.

The report identified traces of high-octane aviation fuel within currently sealed fuel compartments which currently present a lower risk although - as the entrance covers deteriorate - could become accessible particularly if interfered with by anyone accessing the site.

The Trust have previously had to secure some of the bunker entrances with concrete as people were illegally accessing the site and breaking into the bunkers as part of an extreme sport known as 'Bunker Busting'.

A promoted route was considered at the time of the original restriction through the site with individual warning signs in the vicinity of each feature to steer people away. It was however concluded that this was not practical due to the close proximity of the features to each other, and the fact that some of the features are immediately below the surface but nonetheless pose a hazard.

The Relevant Authority Guidance v4 in Criteria Set 3 states:

- *Where the hazard is visible and its nature will be obvious to anyone approaching it, no action is necessary. Where the hazard is not visible to a person approaching it, but its nature is nonetheless in keeping with other, natural landscape features that might be encountered – as, for example, a ditch in a boggy or marshy area – it is reasonable to expect visitors to be prepared for it and no action is necessary to manage the risk.*
- *Other man-made features, such as derelict buildings, can present significant risks that may not be readily apparent to visitors. Often warning signs will be sufficient. In some areas path management or physical barriers may also be necessary to steer visitors away from such hazards or prevent them from entering.*

ii) Why is a statutory restriction necessary?

The Relevant Authority Guidance v4 in Criteria Set 3 states:

Restrictions will not normally be necessary unless:

- *the danger is significant and not readily apparent to the visitor; **and***
- *access management measures are not being taken to reduce the risk, or prove insufficient to reduce it to an acceptable level; **and***
- *repairing or physically securing the feature that gives rise to the risk would place a significant cost on the occupier, or have an unacceptable effect on the landscape or on features of heritage or nature conservation value.*

In response to the Ramblers concern that any decision should be made in light of up to date information regarding the current state of the site, both the applicant (Arc Trust) and Access Authority (Borough of Poole) have confirmed that significant hazards are still there and in fact have been deteriorating since the original decision probably making the site even more hazardous. The hazards are not readily visible, with bramble and gorse cover increasing since the original decision to make dangerous holes and unstable roofs and surfaces even more obscured. Furthermore the cost of any remedial work would place a significant cost on the occupier and would in effect be impossible as it would mean the complete loss of the SSSI habitat. Therefore it is proposed that the total exclusion is extended for another 6 years.

iii) What is lowest level of restriction required?

The Relevant Authority Guidance v4 in Criteria Set 3 states:

Any restrictions will normally be limited to the immediate area of risk, with use of the remaining access land unaffected. Remember that public rights of way will be unaffected.

In this case the site is well delineated by the chain link fence, and secured by two locked gates. These features provide a secure boundary to the site and therefore the lowest level of restriction possible is to restrict access to the whole site. As there is good access to the rest of Ham Common this isn't too large a loss of public access.

Discretionary rights would not be adequate in this instance, and neither would signage alone as the hazards are well hidden around the site and far too numerous to allow any public access.

3. SUBMITTING COMMENTS ON THE REVIEW:

If you wish to comment on the review of this direction then you must do so before 1st April 2016 directly to Richard Thomas by e-mail (richard.thomas@naturalengland.org.uk) or in writing to: Mail Hub, Worcester County Hall, Spetchley Road, Worcester, WR5 2NP.

A map accompanies this notice and is attached and can be seen on the [Consultation Pages](#) of the Government's Website¹.

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.

¹ 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.

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.