

Countryside and Rights of Way (CRoW) Act 2000

NOTICE OF RELEVANT AUTHORITY DECISION FOLLOWING REVIEW OF DIRECTIONS RESTRICTING CROW ACCESS

Prepared by Natural England

Access Authority: Durham County Council
Relevant Authority: Natural England
Local Access Forum: Durham

Land Parcel Name	Original Direction Ref.	Details of restriction on original direction	Reason for Exclusion
Widdybank Fell	2005090267	Public Exclusion all year (until 2016)	CRoW s26: Nature Conservation
Guy's Moss and Hole Head	2005090326	Public Exclusion all year (until 2016)	CRoW s26: Nature Conservation

Natural England has now decided how to proceed following its review of the above mentioned directions to restrict CRoW access on this land. Two separate consultations have been held with statutory consultees and the general public during this process.

The first consultation ended on January 30th 2015. We received feedback from:

- Durham County Council;
- Durham Local Access Forum; and
- The Ramblers

Comments from all these organisations were considered and changes to the original directions were then proposed.

A second consultation was held between April 20th and May 15th 2015. We received feedback from:

- Mr Ian Brodie (Member of the Public)
- Durham County Council;
- The Ramblers; and
- Durham Local Access Forum.

Outcome of the Review

Durham County Council and Durham Local Access Forum both had no further comments to make and were supportive to the varying of the current directions as Natural England proposed.

The Ramblers agreed that some form of direction is required due to the combination of the sugar limestone habitat and use of the site by Black Grouse, but were disappointed that a marked route to the high point on Widdybank Fell cannot be accommodated. They considered such a route would share the same characteristics as many other public rights of way and paths in the area, would bring recreational benefit and should not be difficult to facilitate. The Ramblers therefore felt that the inclusion of a marked route would be both manageable and in line with the relevant authority guidance.

Mr Brodie objected to the proposal and felt it was inappropriate and that the new proposals may be ultra vires with respect to CROW, 2000. The CRoW Act is clear in stating that in deciding whether a CRoW restriction is necessary, the Relevant Authority may give a direction if it is satisfied that the exclusion / restriction is necessary. In this case Natural England is the “Relevant Authority” and therefore has the authority to make an access restriction under the relevant section of the CROW Act, in this case section 26.

Mr Brodie considered the public were being disadvantaged by the restriction especially as the fell is still accessible by both the National Nature Reserve (NNR) staff and the landowners. Although the CRoW Act allows for the provision of restrictions on public access to a specific area of open access land, it does not restrict any rights of access given by permission or granted through other legal agreements or by the landowner itself. However, due to the nature of the ecological interests in this area the landowners works with Natural England to ensure private access is controlled and kept to a minimum. This includes minimal use of vehicles in undertaking any access.

Widdybank Fell, Guys Moss and Hole Head – Site Context.

Widdybank Fell is 502ha in size, representing approximately 7% of the total area of Moor House – Upper Teesdale National Nature Reserve and constitutes about 0.4% of the total Open Country and Registered Common Land in the North Pennines AONB.

There are existing Public Rights of Way that circle the fell on two sides, and these routes are unaffected by the restrictions.

Guys Moss and Hole Head are in close proximity to Widdybank Fell and consequently share the same nature conservation concerns as Widdybank Fell.

There are no Public Rights of Way across these two sites, however a Public Footpath, which also serves as the access road to Widdybank Farm and the National Nature Reserve Office, passes close to Hole Head and the access road to Cow Green Reservoir abuts Guy’s Moss to the south.

Sensitive and Vulnerable Features of Interest.

Sugar Limestone

In 2005, the English Nature / Countryside Agency’s detailed assessment of the potential effects of new access under CROW concluded that the most important plant communities in this area are very vulnerable to the physical damage which might be occasioned by an increase in access on foot. These habitats comprise lime-rich flushes and limestone grassland.

The lime-rich flushes on Widdybank Fell are of a more fragile character than similar flushes elsewhere on account of the terrain they occupy. A very large number of rare and threatened plant and animal species occur within them. Flushes are vulnerable to trampling because:

- shallow, permanently-wet, loosely-attached and patchy peat soils are especially susceptible to erosion and removal;
- the small or shallowly-rooted species characteristic of the habitat are particularly susceptible to physical dislodging;
- mosses, often cushion-forming, dominate the ground flora of this vegetation. They may be important regeneration niches for seed and their prominent cushions are readily detached;
- where undisturbed, certain upwellings of water deposit lime (calcium carbonate) on associated mosses to form distinct mounds of tufa; these are slowly growing and ‘long-

lived' physical features of interest in their own right and form a principal locus for some of the rare species of concern.

Limestone grassland occurs in close conjunction with the lime-rich flushes. Like the flushes, the limestone grassland has a particular characteristic which renders it especially vulnerable when compared to limestone grasslands elsewhere. This is the famous 'Sugar Limestone', created by baking and crystallisation after contact with the hot rocks that formed the neighbouring Whin Sill. Like the flushes, a large number of rare species are present. Sugar Limestone grassland is vulnerable to trampling because:

- the crumbly nature of the underlying rock is naturally unstable (it resembles coarse sand), and is thus very prone to erosion; and
- whilst a mat of vegetation stabilises the sugar limestone, 'breaks' in the vegetation - caused, for example, by trampling - expose the limestone-sand to the erosive power of water and wind; once exposed erosion proceeds rapidly.

Both habitats, but the limestone grassland in particular, are more attractive to walkers than much of the vegetation which surrounds them. It is likely that visitors to the fell would preferentially use these habitats as they form 'corridors' amongst the taller heather vegetation. These form far easier walking ground, on account of their short vegetation and often firmer and (in the case of the limestone grassland) drier nature; they are also more varied than the surrounding bog vegetation and are, perhaps, more attractive, sited alongside small sikes. These corridors of fragile vegetation are narrow and would naturally concentrate linear access.

In his consultation response, Mr Brodie correctly pointed out that there are similar habitats across the North Pennines and on the NNR, which occur on un restricted Open Access land. In his response he considered that the restriction was in place due to the ownership of the land. This is not the case; the current restriction has been put in place as a result of a detailed nature conservation assessment process, as outlined above. This looked at a number of sensitive sites across the North Pennines. The outcome of the assessment felt that the Widdybank area would be, and is, subject to significant usage from the primary access point at Cow Green Car Park (immediately adjacent) and therefore some form of intervention / management was required. Across the North Pennines; other access points of this scale are scarce so impact on other areas of sugar limestone were deemed to be significantly lower, for instance, Cronkley Fell is remote from both public roads and similar access points and pressures arising from public access are reduced accordingly.

It is in part this extraordinary richness of rare species that makes Upper Teesdale, and Widdybank Fell in particular, one of the country's most celebrated botanical localities. The concern for this "destination" area is access by walkers causing detachment of vegetation, erosion and disturbance to the fragile plant communities.

Black Grouse

In 2005, the English Nature / Countryside Agency's detailed assessment identified this particular site as having breeding and wintering black grouse present which are prone to human disturbance and particularly disturbance from dogs.

Black grouse can flush at variable distances which during the breeding season can have a significant impact on breeding success. Disturbance is potentially critical at times of prospecting; incubation, chick rearing and feeding and can lead to exposure to the elements and possible chick death.

Current levels and patterns of use.

Prior to the introduction of CROW the fell had no public access rights. At this time the landowning estate regarded the land as private and would allow access for specific requests by permission (or not, subject to nature of request/time of year). Prior to CROW there were no powers to restrict access available, so English Nature (and predecessor bodies) sought to keep public to the existing right of way by means of posting signs along the footpath and by wardening (requesting & explaining reasons why) this was the case since the 1960's.

Other areas of the NNR, mainly within Cumbria, are registered common land which had an uninterrupted right of access upon them prior to the introduction of CROW, and this is still the case today.

A nature trail has been developed specifically to inform, educate and illustrate the natural history of the area to visitors, and many of the rare and characteristic plants of Widdybank Fell are readily visible from this route.

The Local Access Forum is of the opinion that most use in this area is taking place on Public Rights of Ways and other tracks. This view is supported by Durham County Council, the NNR staff and North Pennines AONB.

This reflects people's behaviour identified as part of the monitoring¹ undertaken between 2006 and 2008 at Cow Green Reservoir. The monitoring reported a high tendency towards visitors to the Cow Green Reservoir staying on Public Rights of Ways.

However, the monitoring confirmed that, even with restrictions, there are small numbers of walkers potentially disturbing the interests on the restricted areas. Whilst overall visitor usage across the restricted areas is relatively low, research² indicates it only takes a small number of people to cause damage to the sugar limestone, calcareous mires and flushes that support an assemblage of particularly rare and fragile plants.

In response to the consultation, the Ramblers asked if the access authority and relevant authority could investigate the possibility of a marked route to the high point on Widdybank Fell. This was identified as an attractor for visitors as part of the detailed assessment in 2005. This was mainly due to the high botanical interest of the limestone grassland and flush areas, composing of short vegetation allowing easy walking, in contrast with the more difficult walking of the longer surrounding vegetation. The provision of creating the marked route was considered at the time but felt difficult to manage, with a strong chance that users would wander of the route, causing a likely significant effect on the vulnerable feature and to adversely affect the integrity of the site. This was a view shared by Durham County Council, as the Access Authority.

In addition, on speaking to the Senior Reserve Manager it was considered that a marked route to the highest point of the fell, at 527m, would not have any public benefit. Current access patterns are indicating that visitors to the area are venturing north of the car park at Cow Green to the local high point at Touting Hill, at 580m, which offers better views of the area and is outside of the current restricted area.

¹ **Natural England.** 2009. *Three Year Monitoring Research Programme to Monitor and Obtain Market Information on the Public Use of Open Access Land, Mapped Under the Countryside and Rights of Way Act 2000, Site Report: North Pennines Area of Outstanding Natural Beauty*

² **Abernethy, V.** 1990. *A study of factors influencing vegetation along Birkdale Track, Upper Teesdale*

Restriction History

Original Restriction

In light of the findings of the detailed assessment in 2005, the Countryside Agency (now Natural England) made a direction to exclude people on the three sites all year round until 2099, to prevent damage to the sugar limestone habitat mosaic.

The total exclusion for the sugar limestone habitat also served to protect Black Grouse from disturbance during the breeding season (1st April to 31st August) and the wintering season (1st October to 31st March).

Current Restriction

Following the 2010 review, Natural England, as relevant authority, decided that the original restriction should remain but the end date should be varied from 2099 to 2016. Therefore a new direction was put in place to exclude the public, all year across all three areas - to protect the integrity of the vulnerable features of these sites, until 2016.

What is the lowest level of restriction necessary?

The CRoW Act is clear in stating that in deciding whether a CRoW restriction is necessary, the Relevant Authority may give a direction if it is satisfied that the exclusion / restriction is necessary.

In relation to the Sugar Limestone habitat, discussions with specialists within Natural England indicate that there have been no material changes since the original vulnerability assessment was produced and therefore the original direction to exclude access should remain.

Following further discussion with the Game and Wildlife Conservation Trust, it is apparent that the three sites still have breeding and wintering black grouse present which are prone to human disturbance and particularly disturbance from dogs.

Conclusion following Consultation

Having considered the information gathered, Natural England, as the Relevant Authority, has concluded that the current directions are still required based on the following information:

- The limestone grassland and lime rich flushes form far easier walking ground, on account of their short vegetation and often firmer and drier nature; compared to the surrounding taller heather and bog vegetation;
- Research would indicate it only takes a small number of people to cause damage to the sugar limestone;
- Cow Green and the surrounding area constitutes a 'destination' for many visitors to the area; and
- The total exclusion for the sugar limestone habitat also serves to protect Black Grouse from disturbance during the breeding season (1st April to 31st August) and the wintering season (1st October to 31st March).

Natural England's decision is to vary the end date of the current direction to exclude the public, all year as it proposed.

Summary of changes made to the existing directions:

Land Parcel Name	Details of restriction on original direction	New details of restriction
Widdybank Fell	Public Exclusion all year (until 2016)	Public Exclusion all year (until 2065)
Guy's Moss and Hole Head	Public Exclusion all year (until 2016)	Public Exclusion all year (until 2065)

We would not 'normally' give a direction for longer than 6 years. However, in this instance the reason for the exclusion is geological and therefore unlikely to change so we consider an appropriate lifespan for the directions to be 50 years. Therefore the new directions will have an end date of 50 years from the date of issue.

Details of the restriction will appear on the relevant map of access land on the Open Access website - www.openaccess.naturalengland.org.uk.

Date review completed: July 1st 2015.