

Countryside and Rights of Way (CROW) Act 2000

NOTICE OF RELEVANT AUTHORITY DECISION FOLLOWING REVIEW OF DIRECTION RESTRICTING CROW ACCESS RIGHTS

Prepared by Natural England

Access Authority: Dorset
Relevant Authority: Natural England
Local Access Forum: Dorset Local Access Forum

Direction reference: 2007050190

Land Parcel Name	Direction Reference	Details of restriction on original direction
Fontmell Down	2007050190	Dogs excluded annually between 1 st September and 31 st October until 2021.

Natural England has now decided how to proceed following its review of the long-term direction to restrict open access rights. A consultation was held between 17 June and 17 July 2020 with statutory consultees and the general public. We received feedback from a number of consultees: The Ramblers, the Kennel Club and a member of the public.

The Kennel Club were complimentary of the overall approach to manage access at Fontmell Down, with the combination of the least restrictive option being used in this case, and the relaxation of the general restriction to create a dogs off leads circular walk for dog walkers all year.

They didn't object to the continuation of the direction, as cows with young calves at foot are a well-documented public safety issue, however they would have liked to see the land to help guide this response, but were unable too due to the COVID 19 pandemic.

They also referred to the HSE guidance sheet '*17EW(rev1) Cattle and public access in England and Wales*' <https://www.hse.gov.uk/pubns/ais17ew.pdf> and noted that the direction from Natural England should be only part of the complete package of measures that should be taken at the site, that include risk assessment and mitigation measures as described in the HSE guidance note.

They also questioned that as there were some less docile animals still in the herd, why was the direction not a complete exclusion rather than the current dog exclusion.

The Ramblers were concerned that signage with ample information provision was being used.

The consultee comment from the member of the public was supportive of the restriction continuing to protect both users and the owners of the cattle.

Outcome of the review:

Natural England's decision is to vary the extent or nature of the direction in a different way from that originally proposed.

The direction is to be varied from a full to an outline direction. This is changing the extent of the restriction and may have required a second consultation. However in the Relevant Authority Guidance, Annex M.6, it asks whether the restriction will restrict access for more than six months. If it does not, as will be the case here, then Natural England only needs to consult with the applicant, which we have done as part of the review process. Therefore we have moved directly to the consultation outcome and decision stage of the review.

When determining restriction cases, Natural England uses its 'Relevant Authority Guidance' (RAG), 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.'

also

'Restrictions may occasionally be necessary on the basis of a herd's temperament, or on the basis of an individual animal's temperament.'

and

'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.'

Fontmell Down is a popular location for walkers and walkers with dogs, owned and managed by the National Trust. A local grazier provides a herd of Aubrac Cattle (Aubrac Cattle are a hardy beef breed from the Aubrac Mountains, in south central France) to graze the downland in the summer and autumn. They provide the correct grazing for the SSSI chalk downland grassland. These Aubrac cattle have in past years been moved onto Fontmell Down West in September and October every year, with the cows having calves at foot.

The parcels of Open Access land are relatively small and the likelihood of coming into close proximity with the herd by someone entering these parcels is quite high.

The herd has generally been de-horned with polled animals being selected, and the stockman has been selecting better temperament animals over the last few years. However these are still large animals from a herd with a generally less docile temperament than might often be encountered from more domesticated breeds.

Therefore due to the size of the open access parcels and the presence of large, less domesticated cows and calves, Natural England has found it will be necessary to exclude people with dogs again as guided by the RAG.

However this year the grazier was looking at making changes to their grazing system. This resulted in not grazing Fontmell Down with the Aubrac cattle in the autumn of 2020, though they expect they might graze it with the Aubrac cattle in some of the following few years. Therefore Natural England has decided that the dog exclusion should be extended for a further six years but agreed that an outline direction would suit the situation better. The land will then remain open unless a representative of the farm contacts Natural England to inform us they will be grazing the land that autumn and the outline direction will be enacted. The grazier will then put the restriction signs up and remove them at the end of the restriction period.

The Kennel Club questioned whether a total exclusion should be given due to the herd temperament. Natural England is guided to always find the 'least restrictive option' and The Relevant Authority Guidance does state in Criteria Set 10, step 7 *'Where restriction is justified, this will usually be to **exclude people with dogs** while cattle are calving or have calves at foot.'*

Natural England has in other situations occasionally given a total exclusion of access for cows and calves, but this tends to be when many factors add up to amplify the danger, such as small enclosures with access near feeding/ watering stations, or aggressive herd temperament, combined with topography or vegetation making it difficult to keep a safe distance. In this case not all those factors were present, there are open views across the downland, and the grazier has been improving the herd for public access land by culling and dehorning.

The Kennel Club also noted the HSE guidance and asked whether the restriction and signage complied with the wider health and safety requirements in respect of managing cattle on Open Access land. Natural England has brought this document to the applicant's attention to revisit.

The Ramblers asked about signage and in discussions with the National Trust Warden as part of this review, he stated that he felt the signage at Fontmell Down was working well. They have worked hard on access management and signage at this site over the years and he felt the management was widely accepted now.

Natural England’s policy for long-term directions is that they should not be given for a period of more than six years. Therefore the original direction will be extended to an end date of 24 October 2026.

Summary of changes made to the existing directions:

Land Parcel Name:	Details of restriction on original direction:	New details of restriction
Fontmell Down	Dogs excluded annually between 1 st September and 31 st October until 2021.	Outline Direction Dogs excluded for up to 61 days per year between 1 st September and 31 st October until 2026.

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

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 originally submitted to us. Only the applicant can appeal against this decision. Details of any appeal will appear on the Planning Inspectorate’s website at www.planningportal.gov.uk/planning/countryside/countryside.

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 have a statutory duty to review it within five years of the date of its issue.

Date review completed: 24 October 2020