

**Countryside and Rights of Way (CROW) Act 2000**

**REVIEW OF STATUTORY DIRECTION(S)**

**SUMMARY FOR PUBLIC CONSULTATION**

**Prepared by Natural England**

**1. INFORMATION ABOUT THE PUBLIC CONSULTATION**

**Access Authority:** Hampshire County Council  
**Relevant Authority:** Natural England  
**Local Access Forum:** Hampshire Countryside Access Forum

Natural England is about to review the following direction:

<b>Land Parcel Name:</b>	<b>Direction Reference:</b>
Marshalling Yard, East Dean	2006030177

This is in line with the relevant authority’s statutory duties (see Annex 1).

Your views on the current direction are sought to assist Natural England in deciding 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.

The relevant authority may decide that no change is necessary in which case a Consultation Outcome Report will be published on the [Consultation Pages](#) of the Government’s Website<sup>1</sup>.

If the relevant authority decides to vary or revoke the direction, a further round of public consultation may be necessary (see Annex 1) in which case a second Consultation Summary Report will be published.

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<sup>1</sup> [https://www.gov.uk/government/publications?publication\\_filter\\_option=consultations](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.

## 2. SUMMARY OF EXISTING DIRECTION(S)

Land Parcel Name:	Direction Ref.	Dates of restriction on existing direction:	Reason for Exclusion
Marshalling Yard, East Dean	2006030177	15 June 2017 – 14 June 2023	Public Safety – due to contamination by lead and hydrocarbons

Natural England made this long term direction on 15<sup>th</sup> June 2017.

A short summary is provided below giving the background to the direction. This should be read in conjunction with the other associated documents sent as part of this consultation. Further information is available from Kathryn Gregory at the contact details below.

The relevant authority, Natural England, have excluded access rights year round, to the extent specified, under section 25 (1)(b) of the Countryside and Rights of Way (CROW) Act 2000. This is necessary for the purpose of preventing danger to the public due to contamination by lead and hydrocarbons.

The Relevant Authority Guidance v4 states in Criteria 6:

- *If contaminated land or water puts public health at risk, it will be necessary to take steps to minimise the danger. Safety signs may be used to warn visitors and advise them on sensible precautions.*
- *Where land is contaminated and there are significant risks to the health of people visiting it, it will usually be necessary to exclude the public from the affected area until the land can be made safe for recreational use. The relevant authority should have due regard to the advice of appropriate local bodies and statutory agencies.*

For a site to be classified as 'Contaminated Land' it needs to have **sources** of contamination, **pathways** of contamination and **receptors** of that contamination.

The 2005 Enviro Consulting Land Quality Assessment identified two **sources** of contamination at the site:-

- 1) Metals associated with shallow made ground in the former burning area within the Eastern Burning Ground
- 2) Localised metals within the shallow made ground in the former railway lines, within the Eastern Burning Ground and former sidings within the Eastern Marshalling Yard.

The report found Polycyclic Aromatic Hydrocarbon (PAH) contamination associated with made ground within the former eastern marshalling yard as well as "arsenic, lead, cadmium, nickel, copper and zinc contamination associated with made ground within the former eastern burning ground".

**Pathways** of exposure were identified in the report as inhalation, ingestion, or direct contact with contaminated soil by humans.

**Receptors** of the contamination would be humans using the site under CROW legislation.

Page 33 of the Land Quality Assessment report states that risks to public access users of the Eastern Burning Ground are assessed as "HIGH" and of the Eastern Marshalling Yard are assessed as "MODERATE" due to the presence of surface or near surface contamination.

No work has been done to remove this contamination since 2005 and in fact it is probable that many more tonnes of contaminated ballast have been added to the site, (though we do not have any scientific evidence to determine whether this material is also contaminated).

The Scientific Officer from TVBC concluded that "Based on the information currently available I would suggest that the CROW land on the Dean Hill Park site would not currently meet the formal definition of 'Contaminated Land' [defined at section 78A(2) of Part 2A of the EP Act 1990], although it is clear that some soils on the CROW land do contain elevated levels of lead and a significant concentration of PAH". However if public access to the site was allowed **source, pathway and receptor** would all be present and the site would be classified as 'Contaminated Land'. The Scientific Officer stated that under no circumstances would TVBC be able to recommend public access and allow this 'high' and 'moderate' risk to the public to occur.

It is highly unlikely any of the above information relating to the land has changed, and Natural England will likely vary the direction to extend for a further period of 6 years.

### **3. SUBMITTING COMMENTS ON THE REVIEW**

If you wish to comment on the review of this direction then you must do so before 31<sup>st</sup> March 2023 directly to

Rob Morris  
Open Access Case Officer  
Natural England  
Third Floor, Horizon House  
Deanery Road  
Bristol  
BS1 5AH

Email; [robert.morris@naturalengland.org.uk](mailto:robert.morris@naturalengland.org.uk)

A map accompanies this notice and is attached or can be seen on the [Consultation Pages](#) of the Government's Website<sup>2</sup>.

### **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.

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<sup>2</sup> [https://www.gov.uk/government/publications?publication\\_filter\\_option=consultations](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 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, we will record the date that the decision was made.

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.