



REPORT PREPARED BY THE CHAIRMAN OF DARTMOOR COMMONERS' COUNCIL

FOR MEETING ON 4 DECEMBER 2024

1. BACKGROUND

- 1.1. On 28 August 2024, Wild Justice (**WJ**) commenced judicial review proceedings against Dartmoor Commoners' Council (**DCC**) in the High Court of Justice, King's Bench Division, Administrative Court under claim number AC-2024-LON-002896 (**the Claim**).
- 1.2. In essence, the Claim relates to WJ's allegations that DCC has breached various statutory duties by failing to issue limitation notices pursuant to Regulation 9 of the Regulations Prepared Under Section 5 of the Dartmoor Commons Act 1985 (**the DCC Regulations 1990**) to limit stocking levels on Dartmoor.
- 1.3. DCC is defending the Claim.

2. PURPOSE OF THIS REPORT AND ENCLOSURES

- 2.1. On 4 December 2024, DCC will hold a Council meeting to consider and vote upon whether to issue any limitation notices pursuant to Regulation 9 of the DCC Regulations 1990 in light of the issues raised by the Claim (**the Meeting**). At the Meeting, the following resolution will be put to Council members to be voted upon:

"The Council has considered its power to issue limitation notices to limit the number of livestock depastured on any unit of the commons pursuant to Regulation 9 of the Regulations Prepared Under Section 5 of the Dartmoor Commons Act 1985 and its duties pursuant to sections 4(1) and 5(1) of the Dartmoor Commons Act 1985, sections 28G(1) and 28G(2) of the Wildlife and Countryside Act 1981 and Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 and has **RESOLVED** to not issue any limitation notices for the reasons contained in the Report prepared by the Chairman of Dartmoor Commoners' Council dated 28 November 2024."
- 2.2. The purpose of this Report is to assist Council members with considering DCC's legal duties and the nature of the Claim being advanced by WJ so that members can make an informed decision at the Meeting as to whether or not to vote to issue any limitation notices. Although the Report ultimately recommends the resolution above, the Report is intended to facilitate open debate between members at the Meeting as to whether to issue limitation notices, and members are therefore expected to carefully consider the Council's duties and the contents of the Claim before making a decision.
- 2.3. Enclosed with this Report is an Appendix of documents relevant to the Claim. The page numbers of the Appendix appear in the top right corner of each page in red text.
- 2.4. All Council members will be provided with a copy of this Report and the documents enclosed in the Appendix in advance of the Meeting and are strongly encouraged to read these documents in full.
- 2.5. This Report is prepared by the Chairman with assistance from DCC's legal representatives instructed in relation to the Claim. It is provided to Council members and the Meeting will take place without prejudice to DCC's position in defending the Claim, which is set out in DCC's Acknowledgment of Service and Summary Grounds of Resistance dated 23 September 2024.



3. DCC'S RIGHTS AND DUTIES RELATING TO LIMITATION NOTICES

- 3.1. This section sets out the relevant legal rights and duties that apply to DCC when deciding whether or not to issue limitation notices.

Dartmoor Commons Act 1985

- 3.2. Section 4(1) of the Dartmoor Commons Act 1985 (**the DCA 1985**) states as follows:

"Subject to this Act, it shall be the duty of the Commoners' Council to take such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons and the promotion of proper standards of livestock husbandry thereon (including the assessment of the number of animals which can properly be depastured on the commons from time to time); and in discharging that duty the Commoners' Council shall have regard to the conservation and enhancement of the natural beauty of the commons and its use as a place of resort and recreation for enjoyment by the public."

- 3.3. Section 5(1) of the DCA 1985 states as follows:

"For the purpose of fulfilling their functions under section 4 of this Act, the Commoners Council—

(a) shall make regulations for the following purposes: —

... (ii) to ensure that the commons are not overstocked and, for that purpose, may fix or provide for the fixing of the number of animals or animals of any description which from time to time may be depastured on the commons by virtue of a right of common or of any other right or privilege".

- 3.4. Copies of the relevant provisions of the DCA 1985 are enclosed at pages 255-264 of the Appendix.

DCC Regulations 1990

- 3.5. Regulation 9 of the DCC Regulations 1990 states as follows:

"No person shall depasture on any unit of the commons animals in excess of the number contained in a limitation Notice under Section 5(2)(a) of the Act [(the DCA 1985)]. Whenever the Council shall consider it expedient to prescribe the maximum number of any description of animal that any person may from time to time depasture on any unit of the commons (whether by reason of the quality of the pasturage or otherwise) the Secretary of the Council shall send a Limitation Notice in accordance with Section 5(2)(a) of the Act to the owner or tenant of that land and to each person registered in accordance with Section 7 of the Act as having rights to depasture on that unit of the commons specifying the common land so restricted, the period of the limitation and the maximum number and description of animals that an owner, tenant or other person may depasture on that unit of the commons for that duration and shall send a copy of each such notice to the Secretary of the Commoners' Association to whose area the restriction applies."

- 3.6. A full copy of the DCC Regulations 1990 is enclosed at pages 265-268 of the Appendix.



Wildlife and Countryside Act 1981

3.7. Section 28G(1) of the Wildlife and Countryside Act 1981 (**the WCA 1981**) states as follows:

"An authority to which this section applies (referred to... as "a section 28G authority") shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest."

3.8. For the purposes of considering this Report and when attending the Meeting, Council members should assume that DCC is a section 28G authority for the purposes of the WCA 1981.

3.9. Section 28G(2) of the WCA 1981 states as follows:

"The duty is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest."

3.10. A copy of section 28G the WCA 1981 is enclosed at pages 253-254 of the Appendix.

Conservation of Habitats and Species Regulations 2017

3.11. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (**the CHS Regulations 2017**) states as follows:

"[A] competent authority, in exercising any of its functions, must have regard to the requirements of [the Habitats Directive 1992 and the Birds Directive 2009] so far as they may be affected by the exercise of those functions."

3.12. For the purposes of this Report and when attending the Meeting, Council members should assume that DCC is a competent authority for the purposes of Regulation 9(3) of the CHS Regulations 2017.

3.13. Article 6(2) of the Habitats Directive 1992 (**the HD 1992**) states as follows:

"Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive".

3.14. Copies of relevant provisions of the CHS Regulations 2017 and the HD 1992 are enclosed at pages 269-274 of the Appendix. Council members are invited to read paragraphs 9-42 of DCC's Summary Grounds of Resistance for a fuller account of the relevant legal framework, a copy of which is enclosed at pages 362-370 of the Appendix.

4. THE CLAIM

4.1. On 28 August 2024, WJ commenced judicial review proceedings against DCC. The documents filed by WJ and which form the basis of its claim are set out in the Core Claim Bundle at pages 1-274 of the Appendix and the Supplementary Claim Bundle at pages 275-350 of the Appendix. The key documents to draw Council members' particular attention to are as follows:



- (a) WJ's Claim Form and Statement of Facts and Grounds, which are at pages 4-47 of the Appendix.
 - (b) The First Witness Statement of Mark Avery, which is at pages 48-73 of the Appendix.
 - (c) Email from Tony Whitehead to DCC dated 3 June 2024, which is at pages 248-250 of the Appendix.
 - (d) DCC's letter to Tony Whitehead and Guy Shrubsole dated 24 June 2024, which is at pages 251-252 of the Appendix.
 - (e) The Independent Review of Protected Site Management on Dartmoor (**the Fursdon Report**) which is at pages 144-179 of the Appendix.
- 4.2. On 23 September 2024, DCC filed an Acknowledgement of Service and Summary Grounds of Resistance which summarises its grounds for defending the Claim. These documents, and DCC's supporting evidence (as set out in the First Witness Statement of Danielle Marie Spalding and Exhibit DMS1) are at pages 351-431 of the Appendix.
- 4.3. On 30 September 2024, WJ filed a Reply which sets out its response to DCC's Summary Grounds of Resistance. A copy of this Reply is enclosed at pages 432-438 of the Appendix.
- 4.4. On 2 October 2024, the Court issued an Order adding both Natural England (**NE**) and the Department for Environment, Food and Rural Affairs (**DEFRA**) to the Claim as interested parties, which means that they are entitled to comment on and become involved in the Claim.
- 4.5. On 23 October 2024, NE filed an Acknowledgement of Service and Summary Grounds, in which it says it is taking a "neutral position" in the Claim. Copies of these documents are enclosed at pages 441-485 of the Appendix.
- 4.6. On 19 November 2024, DEFRA filed an Acknowledgement of Service and Summary Grounds, in which it says it is taking a "neutral position" in the Claim. Copies of these documents are enclosed at pages 488-503 of the Appendix.
- 4.7. As at the date of this Report, the Claim remains at the preliminary 'permission' stage of judicial review proceedings. It is likely that the Court will shortly decide on whether or not to grant WJ permission to proceed to the 'substantive' stage of judicial review proceedings.

5. CHAIRMAN'S VIEW ON THE ISSUE OF LIMITATION NOTICES

- 5.1. The Chairman recognises and accepts that DCC is subject to the legal duties set out at section 3 of this Report, but is nonetheless of the view that it is not appropriate, necessary, reasonably practicable or expedient to issue any limitation notices in respect of any part of the commons at the present time. The Chairman's rationale for taking this view is summarised in this section.
- 5.2. As a preliminary point, the role of DCC in managing livestock levels on Dartmoor must be considered in its wider regulatory context. DCC is but one public body which exercises statutory powers and is subject to statutory duties in relation to the commons of Dartmoor. NE is of course a key public body which actively regulates stocking levels on Dartmoor primarily through two regulatory frameworks: Higher Level Stewardship (**HLS**) agreements and the Site of Special Scientific Interest (**SSSI**) regime. The Chairman notes the following key points about this wider regulatory context:



- (a) Approximately 62% of the Dartmoor commons falls directly within a SSSI designation, although indirectly the proportion of commons affected by SSSI designation is greater than this, as there is usually no physical barrier between common land that does fall within SSSI designation and common land that does not. As livestock is able to freely move to and from SSSI-designated land, the Fursdon Report concludes that "the influence of the protected site designation extends significantly beyond the area of the [SSSI] sites themselves" (see paragraph 9.2 of the Fursdon Report, which can be found at page 160 of the Appendix). The six major SSSIs which apply to Dartmoor are North Dartmoor, South Dartmoor, East Dartmoor, Dendles Wood, Tor Royal Bog and Wistman's Wood. The North Dartmoor, South Dartmoor and East Dartmoor SSSIs include common land and all six of these SSSIs include "grazing and changes to the grazing regime" in their lists of "operations likely to damage the special interest". This means that any changes to the grazing regime on land falling within these SSSIs – including any change brought about by a limitation notice issued by DCC – would be unlawful without NE's prior consent. Consequently, if a commoner took steps to reduce stocking levels on common land falling within a SSSI designation in order to comply with a limitation notice which had been issued by DCC without NE's prior consent, there is a significant risk that the commoner would be committing a criminal offence.
- (b) Many of the commoners who have rights to depasture livestock on the commons are or have historically been subject to HLS agreements which restrict the number of livestock that can be depastured. HLS agreements have historically been administered by the Rural Payments Agency (RPA) on advice taken from NE. A key difference between limitation notices and HLS agreements is that HLS agreements effectively provide financial compensation for commoners to reduce stocking numbers, whereas limitation notices do not provide any form of compensation.
- (c) From an operational perspective, the human and financial resources available to NE to exercise its regulatory functions are vastly greater than those available to DCC. That is plainly evident given that NE's published "action plan 2023 to 2024" states that NE's "total planned funding for 2023 to 2024 is £332.1 million... [which] equates to a 27% increase compared to total planned funding for 2022 to 2023" and its "agreed [human] resource for 2023 to 2024 is 3,073 full time equivalents". In comparison, DCC does not even have one full time equivalent employee (as the secretary is employed on a part-time basis and the role of Council member is of course voluntary) and its accounts for the year ended 30 June 2024 show that its total reserves on that date were £187,491. What this means is that DCC cannot possibly presume to have the information-gathering, data analysis or enforcement capacity of NE, and when making decisions about whether or not to issue limitation notices, DCC must be conscious of its limited resources in being able to scientifically assess whether the condition of common land is improving or not and whether this is impacted by over- or understocking and/or other factors, or being able to take steps to effectively enforce limitation notices.
- 5.3. In light of the points set out at paragraph 5.2 above, DCC must accept that the regulation of livestock levels on the commons can usually be more effectively and appropriately achieved through a combination of HLS agreements and the SSSI regime rather than by issuing limitation notices. If DCC were to issue limitation notices then this risks acting as a 'blunt tool' to limit stocking numbers given that (unlike with HLS agreements) those commoners affected by limitation notices are not provided with any form of compensation for the consequent loss of expected income. In addition, the issue of limitation notices without NE's prior consent risks both DCC and affected commoners breaching SSSI restrictions in relation to SSSI-designated common land and exposing commoners and Council members to potential criminal liability. Furthermore, given that NE takes active steps to assess what it considers to be the correct stocking levels on SSSI-designated commons land, it seems unlikely that NE would consent to



the issue of limitation notices which alter these approved stocking levels. Consequently, the Chairman's view is that it would be impractical and inappropriate for DCC to seek to issue limitation notices in relation to any part of the commons which falls directly or indirectly into any SSSI designation.

- 5.4. The timing of the Claim is also relevant. WJ is seeking to argue that DCC ought to issue limitation notices *now*. As a consequence of the Fursdon Report (the conclusions and recommendations of which are supported by both NE and DEFRA, as confirmed in their respective Summary Grounds), a Land Use Management Group (**LUMG**) is in the process of being established and is expected to be operational by the end of 2024. The Fursdon Report recommended the formation of the LUMG to review land use governance (including agricultural activity and stocking levels) on Dartmoor. DCC is rightly committed to supporting the LUMG alongside NE and DEFRA, as it recognises that land use on Dartmoor is a complicated issue that necessarily requires carefully considered planning that takes into account the interests of various stakeholders (including DCC, NE, landowners, commoners, and the more than 5,000,000 people who visit Dartmoor each year), which is precisely what the LUMG is being established to achieve. Given that the LUMG is due to begin operating within weeks of the Meeting, it would clearly be premature for DCC to take unilateral, direct and uncollaborative enforcement action now by issuing limitation notices before the LUMG has had the opportunity to consider and implement what it considers to be appropriate steps to control grazing levels on Dartmoor.
- 5.5. In addition, the Government has accepted the recommendation in the Fursdon Report to offer a "2 plus 3-year" extension arrangement for existing HLS agreement members. DEFRA's response to the Fursdon Report, which is at pages 180-202 of the Appendix, indicates that they "have created an improved [Environmental Land Management] offer which gives the tools to implement the recommendations of the [Fursdon Report] and allows ELM agreements to work for all parties. New Agreements will take time to agree. For that reason, we agree with the [Fursdon Report] that HLS extensions should move to a 2 plus 3-year extension arrangement". DEFRA have also stated that "negotiations between parties will be conducted sensitively, to support sustainable land management alongside traditional farming practices and uphold the overall condition of protected sites. We have written to agreement holders to set up proposals for agreeing further annual extensions to HLS agreements going up to 2025. We will work closely with agreement holders over the next period to help them prepare to apply for a new CS / SFI agreement, when the time is right for them to do so. We also want to work with agreement holders who want to agree further HLS extensions, with a plan of action and trajectory for further improvement of SSSI site condition". What is clear from this is that over the coming years there will be collaborative negotiations, firstly pursuant to HLS extensions and then ELM agreements, to achieve stocking levels that support sustainable outcomes. The Chairman's view is that this is a more appropriate course of action than DCC issuing limitation notices.
- 5.6. DCC should of course only issue limitation notices if it concludes that a specific part of common land is overstocked, given that limitation notices can only be used to lower (rather than raise) a specific commoner's stocking numbers. WJ claims that parts of the commons are overstocked (without precisely referring to any particular areas of common land that it says are overstocked) and relies on evidence produced by NE to support this argument. The Fursdon Review is critical of NE's evidence base for assessing stocking levels on Dartmoor and notes that both over- and undergrazing is having a negative impact on Dartmoor's natural environment. The fact that *undergrazing* is having a negative impact on the natural environment of various parts of the commons is supported by the firsthand experience of Council members, many of whom have worked the commons of Dartmoor on a daily basis for much of their lives and continue to do so. The Chairman's view is that, in light of the Fursdon Report's criticisms of the reliability of NE's evidence base, there is no clear evidence to



conclude that any specific part of the commons is presently overstocked to the point that DCC's legal duties to take steps to reduce stocking numbers through the issue of limitation notices against specific commoners have been triggered.

- 5.7. DEFRA's response to the Fursdon Report indicates that NE "is carrying out a programme of SSSI monitoring and resurveying on Dartmoor, which will be completed by the end of 2024". It is said that those findings will help guide negotiations for future HLS extensions and ELM agreements. The Chairman's view is that it would not be expedient to issue limitation notices now whilst NE's monitoring and resurveying is ongoing. Even once this is completed, it is more appropriate for that programme to then aid the process of HLS and ELM agreement negotiations, rather than using this to issue limitation notices. That said, if NE completes its review and identifies to DCC that there is overgrazing on any common land which cannot be addressed through the ongoing HLS and future ELM negotiations or the SSSI regime, then DCC will consider such information on a case-by-case basis.
- 5.8. As set out above, section 4 of the 1985 Act places a duty on DCC to "take such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons and the promotion of proper standards of livestock husbandry thereon". This is to include an "assessment of the number of animals which can properly be depastured on the commons from time to time". In discharging that duty, DCC "shall have regard to the conservation and enhancement of the natural beauty of the commons and its use as a place of resort and recreation for enjoyment by the public". The other duties set out at section 3 above apply as well and must be considered carefully by members. Members will be invited to bring their own experience and assessment of stocking numbers on the commons to the Meeting. The Chairman's own assessment, based on his own knowledge and experience of Dartmoor, is that there are not too many livestock being depastured on the commons. DCC can only carry out such an assessment that is consistent with its very limited resources, and it must rely on interested persons to bring any relevant evidence concerning individual parcels of common land to DCC for consideration. The question of whether or not to issue limitation notices should properly be undertaken on a site-by-site basis. The current programme of monitoring and resurveying by NE (referred to above) will be useful information to DCC for its own periodic assessment under section 4 of the DCA 1985. However, as explained above, even if that further work by NE reveals specific evidence concerning particular areas of common land where there is overgrazing, the Chairman's view is that the solution to any such problem lies in HLS negotiations and the future of ELM agreements, together with any further work undertaken or outcomes recommended by the LUMG. It would not lie in the issue of limitation notices.
- 5.9. The Chairman supports and endorses all of the arguments made in DCC's Summary Grounds of Resistance, which can be found at pages 360-389 of the Appendix, and for the reasons set out in this Report, commends the proposed resolution set out at paragraph 2.1 of this Report to Council members.

Layland Branfield

Chairman, Dartmoor Commoners' Council

28 November 2024



APPENDIX

Tab	Document	Date	Pages
1.	Core Claim Bundle	28.08.2024	1 - 274
2.	Supplementary Claim Bundle	28.08.2024	275 - 350
3.	DCC's Acknowledgement of Service	23.09.2024	351 - 359
4.	DCC's Summary Grounds of Resistance	23.09.2024	360 - 389
5.	First Witness Statement of Danielle Marie Spalding	23.09.2024	390 - 391
6.	Exhibit DMS1	23.09.2024	392 - 431
7.	WJ's Reply	30.09.2024	432 - 438
8.	Court Order	02.10.2024	439 - 440
9.	NE's Acknowledgement of Service	23.10.2024	441 - 449
10.	NE's Summary Grounds	23.10.2024	450 - 485
11.	Court Order	04.11.2024	486 - 487
12.	DEFRA's Acknowledgement of Service	19.11.2024	488 - 496
13.	DEFRA's Summary Grounds	19.11.2024	497 - 503