



## DARTMOOR COMMONERS' COUNCIL

### Code of Guidance for Prevention of Winter Damage to the Commons of Dartmoor

1. Carrying of foodstuffs on to the commons should be reduced to a minimum.
2. Silage should **NOT** be carried on to the commons nor anything conserved in plastic. If any damage is caused by winter feeding of stock on the commons then such stock will be required to be removed from the commons.
3. Feeding sites should be varied throughout the winter and no site should be used more than one day in any week.
4. Access points and routes should be similarly varied.
5. Feeding should **NOT** take place near moor gates, rights of way nor at places popular with the public.
6. Stock should be fed in as small groups as possible.
7. Feeding should avoid wetland and bog.
8. Feeding should avoid heather.
9. Feed delivery should be in the smallest, highest vehicles, and wide tyres used where larger vehicles have to be used.
10. Concentrates should **NOT** be fed alone and in any area where there is evidence of damage or overgrazing the feeding of concentrates may be banned periodically at the discretion of the Council.

The amended Code was approved by the Commoners' Council on 5 April 1995 and is commended to all Local Associations and individual commoners with stock out wintering on their commons

#### DARTMOOR COMMONERS' COUNCIL – REGULATION 15

**The Council may require the removal of stock from the commons or from a particular part of the commons where stock is being grazed or fed in contravention of any Code of Guidance approved by the Council or in order to prevent or limit damage to the commons.**



## DARTMOOR COMMONERS' COUNCIL

### SHEEP CLEARANCE DAYS PROHIBITION NOTICE

IN ACCORDANCE WITH THE DARTMOOR COMMONS ACT  
1985 & REGULATION 8

**ALL SHEEP ARE PROHIBITED FROM THE COMMONS OF  
DARTMOOR DURING THE FOLLOWING DATES**

#### **1ST PROHIBITION PERIOD**

##### **SOUTHERN HALF OF THE MOOR**

Roborough Down, Dunnabridge common and all common land which lies to the south of the Yelverton/Princetown/Two Bridges Road (B3312) line along the River Dart to Buckfastleigh, must be cleared of sheep **before midnight on 11 November to midnight on 25 November inclusive.**

#### **2ND PROHIBITION PERIOD**

##### **NORTHERN HALF OF THE MOOR**

All common land to north of the above stated dividing line must be cleared of sheep **before midnight on 18 November to midnight on 2 December inclusive.**

Each Prohibition Period runs for **14 days** and all commoners grazing sheep on Dartmoor are legally required to remove their sheep from the commons before the stated period in each section of the moor for the benefit of good animal husbandry. Commoners **NOT** clearing their sheep will be guilty of an offence and upon conviction may be fined.

For further information contact: Dartmoor Commoners' Council, 1 Canal Road, Tavistock, PL19 8AR Tel: 01822 618892

Date: September 2023

16 September 2024

Our ref: LP2024/08246

Your ref: RGA/MAT/01199569/1



Natural England  
Kings Pool  
1-2 Peasholme Green  
York  
YO1 7PX

**By email only to:**

[Rgama@leighday.co.uk](mailto:Rgama@leighday.co.uk)

[Cday@leighday.co.uk](mailto:Cday@leighday.co.uk)

**Copy to:**

[Ds6@footanstey.com](mailto:Ds6@footanstey.com)

[Arron.jolliffe@footanstey.com](mailto:Arron.jolliffe@footanstey.com)

Dear Leigh Day

**Proposed Claim for Judicial Review against Dartmoor Commoners Council (DCC).**

Thank you for your correspondence dated 15 August 2024, the content of which has been noted.

We believe that it would be useful at this stage to set out Natural England's multi-faceted role in relation to the Dartmoor Commons. Natural England has various statutory powers and duties. However, for the purpose of your letter, the principal functions of Natural England in this area are to administer the consenting regime under s.28E of the Wildlife and Countryside Act 1981 (WCA), to provide advice to the Rural Payments Agency (RPA) in their administration of agri-environment schemes, taking into account our duty as a s.28G WCA body and the requirements of the Conservation of Habitats and Species Regulation 2017 (the Habitats Regulations).

Firstly, we will address Natural England's responsibility for administering and making decisions upon consent applications relating to Sites of Special Scientific Interest (SSSIs) pursuant to s.28E WCA. Section 28E of the WCA states as follows:

*Section 28E*

*(1) The owner or occupier of any land included in a site of special scientific interest shall not while the notification under section 28(1)(b) remains in force carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless*

*(a) one of them has, after service of the notification, given [Natural England] notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and*

*(b) one of the conditions specified in subsection (3) is fulfilled.*

*(2) Subsection (1) does not apply to an owner or occupier being an authority to which section 28G applies acting in the exercise of its functions.*

*(3) The conditions are—*

*(a) that the operation is carried out with [Natural England's] written consent;*

*(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act, section 15 of the 1968 Act or [section 7](#) of the Natural Environment and Rural Communities Act 2006] [, [section 7](#) of the Natural Environment and Rural Communities Act 2006 or section 16 of the [Environment \(Wales\) Act 2016](#)];*

*c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K*

In the circumstances set out in s.28E above, Natural England acts as the regulator of the consenting regime, making evidence-based decisions on the appropriateness of the carrying out of activities that appear on the List of Operations Requiring Natural England's Consent, also known as the ORNEC list. There is an ORNEC list for every SSSI and the particular ORNECs that appear on the list can vary from site to site, depending on the notified features of each site.

It therefore follows that the activities that require Natural England's consent may vary from site to site, potentially across sites that are geographically very close to one another. Consequently, Natural England may not be able to apply controls on the activities undertaken on SSSIs in a uniform manner.

A second function that Natural England undertakes in relation to SSSIs, such as the notified areas of the Dartmoor Commons, is to provide regulatory advice to the RPA in relation to the agri-environment schemes that the RPA administers. It is important to recognise the distinction here, namely that the RPA administers these schemes and Natural England's role is to provide advice.

The assertion made by the solicitors for the DCC in their response to your Pre Action Protocol letter dated 9 August 2024, namely that '*NE has entered into numerous Agri-environment agreements, such as Higher-Level Stewardship Agreements (HLS) agreements with commoners which set the number of livestock that may be grazed*' is, therefore, not a correct reflection of Natural England's role. Natural England provides advice to the agreement holder and the RPA on the appropriate management regime to achieve

favourable condition. Stock numbers form part of this advice alongside other management measures.

When carrying out its consenting and advisory roles on Dartmoor, Natural England recognises that it is a s.28G authority and therefore subject to the duty in s.28G(2) WCA:

Section 28G:

- (1) An authority to which this section applies (referred to in this section and in sections 28H and 28I 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.*
- (2) 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.*

In making consent decisions in relation to its function to administer the s.28E consenting regime, or when providing advice to the RPA, (or indeed in relation to the carrying out of any other applicable function), NE must, subject to the proper exercise of its functions, take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is a SSSI.

It is Natural England’s view that the DCC has a broader role in relation to the management of the Dartmoor Commons than the specific role held by Natural England, which is to ensure the protection of those features for which the site is designated a Special Area of Conservation (SAC) and SSSI.

Most of the Dartmoor Commons fall within a SAC. Where Natural England considers that a notice of a proposal under s.28E is likely to have a significant effect on the SAC, it carries out an appropriate assessment of the implications on the site’s conservation objectives, pursuant to reg. 24 of the Habitats Regulations. Natural England may give consent where it has ascertained that there is no adverse effect on site integrity. Natural England provides advice to the RPA under reg. 63(3) of the Habitats Regulations. It also has general duties under reg. 9 of the Habitats Regulations.

In light of its duties described above, Natural England is of the view that it would not be the appropriate defendant in relation to the proposed judicial review claim. It is also Natural England’s view that it is not necessary for it to be an interested party in those proposed proceedings.

Natural England remains committed to working very closely with its partners to secure the restoration of nature on Dartmoor.

I trust that the above is of assistance in clarifying Natural England's position and duties on the matter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M. Robinson', followed by a long horizontal line extending to the right.

Principal Barrister  
For and on behalf of Natural England

Email: [Mark.Robinson@naturalengland.org.uk](mailto:Mark.Robinson@naturalengland.org.uk); [NE.LegalServices@naturalengland.org.uk](mailto:NE.LegalServices@naturalengland.org.uk)



Dartmoor Commoners' Council  
1 Canal Road, Tavistock,  
PL19 8AR

Office Hours: Monday to Friday  
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Tel: 01822 618892  
Email: [office@dartmoorcommoners.org.uk](mailto:office@dartmoorcommoners.org.uk)

Letter by email: Natural England  
Enforcement & Appeals Team  
[enforcement@naturalengland.org.uk](mailto:enforcement@naturalengland.org.uk)

22 September 2023

Dear Sir or Madam

**Willingswall & Hentor Warren Common (unit 61 of South Dartmoor SSSI)  
Wildlife & Countryside Act 1981 as amended**

We write further to your letter dated 31 July 2023 setting out your intentions going forward in relation to the management of this common and the SSSI.

Dartmoor Commoners' Council has serious concerns regarding the Stop Notice that you intend to place on Unit 61 of South Dartmoor SSSI that you class as just Willingswall & Hentor Warren, which will prohibit grazing for the period 1 November to 30 April. We also note that Unit 61 covers some of the "Trowlesworthy" part of CL190 (referred to as Area C). The full details of these areas can be obtained from the Land Charges Department at Devon County Council, the Commons Registrations Authority.

We understand that the Stop Notice has not been served on all of those who have rights to graze this area. As the statutory body, established under the Dartmoor Commons Act 1985, Dartmoor Commoners' Council was constituted primarily to maintain and promote the proper standards of livestock husbandry and management of the commons. We therefore ask that you provide us with details of those you have served with the Stop Notice and on what dates Notice was sent.

Council considers the grazing parameters set out in your draft management recommendations that accompanied your letter of 28<sup>th</sup> July 2022 to be irrational. The area in question is 1330 hectares. Grazing just 80 units of livestock, within the period 1 May to 31 October, will cause a huge change in the vegetation and nature of the common. We contest that it certainly would not serve your claimed purpose, but will instead lead to a huge increase in uneaten vegetation and attendant fire risks. It would be reckless to condone such low levels of grazing.

Moreover, this area of land is wholly open to, and unfenced against a number of other commons, as well as other areas of the same common. This is not like an unfenced area that occupiers have voluntarily agreed to stock at very low levels for financial reward. Removing livestock between 1 November and 30 April will create an unnatural vacuum and livestock

from the other areas will stray onto the area in question: A situation forced by you issuing a Stop Notice. As such, Council will hold the view that Natural England will be liable for the straying of livestock and the damage to accustomed leas that it is likely to precipitate. Furthermore, we would question how you intend to 'police' the issue of straying stock? Driving off pregnant livestock that stray onto the area within the Stop Notice during the winter months may cause injury to the animals or cause them to spontaneously abort. This is a very serious matter and we urge you to give careful consideration to the fallout that may occur.

We understand that you are aware of an independent ecology assessment recently undertaken on a large proportion of this common by a professional ecologist who you often use. Interestingly, their report does not call for destocking in the manner you recommend.

Given the above, we ask that you withdraw this unworkable and unrealistic Stop Notice with immediate effect.

The Council remains open to engaging with you and the RPA at the highest level to endeavour to find a workable and sensible solution to this situation.

Yours sincerely

Mr Philip French  
Chairman  
Dartmoor Commoners' Council



**Dartmoor Commoners Council**

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**From:** SM-NE-enforcement (NE) <enforcement@naturalengland.org.uk>  
**Sent:** 06 October 2023 11:19  
**To:** Dartmoor Commoners  
**Cc:** Slater, David; Phillip French; Layland Branfield; Smyth, Wesley  
**Subject:** RE: Willingswall & Hentor Warren Common (unit 61 of South Dartmoor SSSI) Wildlife & Countryside Act 1981 as amended  
**Attachments:** Ltr to NE re Stop Notice over SSSI Unit 61 - 190923.docx

Dear Mr French

Thank you for your letter of 22nd September.

We note your concerns with the potential service of a Stop Notice and hope that the following information may allay some of your fears.

Natural England's use of Stop Notices is covered in our enforcement guidance which is publicly available here <https://www.gov.uk/guidance/enforcement-laws-advice-on-protecting-the-natural-environment-in-england> Annex 2 of the guidance provides details on what a Stop Notice is and when Natural England may use them <https://assets.publishing.service.gov.uk/media/5a7e2628e5274a2e8ab46279/annexes2-4-enforcement-guidance.pdf>.

We would like to clarify however, that to date, no Stop Notice has been issued. Our Advisory letter of 31 July 2023 seeks to inform those involved in the Common of our intention to issue a Stop Notice should stock not be removed over the winter period. If a Stop Notice is served, this will be on the basis that Natural England reasonably believe that the continuation of winter grazing would cause, or present a significant risk of causing, serious harm to the SSSI interests.

We note your view on our management recommendations in relation to grazing levels and impact on the Common. However we have recent and detailed evidence which shows that the special interest features within Unit 61 are in unfavourable declining condition and that a reduction in winter grazing pressure is required to avoid further damage.

If issued, a Stop Notice would only be served on those parties who are actively exercising their commons grazing rights or grazing under a tenancy with the landlord during the period 1 November until 30 April. We do understand that Unit 61 of the SSSI is unfenced from adjoining commons and thank you for raising welfare issues in relation to compliance monitoring in the event a Stop Notice is served. We will take note of these in our compliance strategy that will accompany any Notice served.

We note with interest your reference to an independent ecological assessment of this common. We would be very interested in seeing a copy of this report should you be in a position to share this.

We are pleased that you wish to work with Natural England on this matter. Wesley has said he would be happy to talk through our approach here with you further if that would be of assistance.

If you have any remaining questions please do not hesitate to contact me.

## **INDEPENDENT REVIEW OF PROTECTED SITE MANAGEMENT ON DARTMOOR**

### **Council's Response to Review Recommendations**

Dartmoor Commoners Council acknowledges the time and effort put into compiling this review by David Fursdon and his colleagues and appreciates having the opportunity to respond.

Council supports the findings of the Review and looks forward to enabling a better working environment for all parties across Dartmoor.

There is a strong desire to create a Land Use Management Group (LUMG) to reinforce Dartmoor's governance. This would be independently chaired with commoners taking the lead working with specific stakeholders; Natural England (NE) and Dartmoor National Park Authority (DNPA) and such others as the group needs to consult with from time to time. The LUMG needs to be small and tightly focused. The group would work transparently and effectively making best use of the expert knowledge held by the commoners in partnership with stakeholders.

Dartmoor Commoners Council will continue to work tirelessly to support the role of the grazing commoner and continue to endorse the value of grazing livestock. In doing so, Council will work with commoners and stakeholders to ensure the commoning and grazing livestock are well represented, offering the expertise and knowledge from their perspective. Council anticipates their role as consultees with stakeholders on matters relating to the commons. Whilst the Review failed to raise the concerning issue of rewilding on Dartmoor, the Council will continue to voice their concerns.

Council requests that the LUMG provides a safe space to enable active discussions between all parties; where issues can be discussed openly, and solutions found with problems being positively resolved. Furthermore, as a measure to improve communications, Local Commoners Associations should be informed of surveys and given the opportunity to attend to learn from the findings.

Council supports a holistic grazing strategy, utilising cattle, sheep and ponies to deliver better vegetation management that ensures stakeholders recognise the implicit value of grazing livestock as an integral part of Dartmoor common's environmental schemes. It is accepted that NE has a statutory duty regarding SSSIs. However, Council has concerns that poor condition of SSSIs is not necessarily as a result of commoners' actions. Council would therefore welcome opportunities to

explore alternative methodologies, including the work done with the Dartmoor Test and Trial. It would be constructive if NE were obliged to consult with Dartmoor Commoners' Council on matters relating to commons management as in the past.

Council requests a balanced approach to design a multi-functional landscape. All aspects need consideration. However, wild fire risk must be addressed immediately, with the size of areas permitted for swaling increased, and environmental scheme liabilities reconsidered, so commoners can organise managed burns effectively and without penalties. This would allow stock to return to unpalatable areas, reduce grazing pressure on the heather and dwarf shrub heath and lessen fuel load and risk of catastrophic wildfire.

Council welcomes the Review's acknowledgement that Dartmoor Commoners' Council plays an invaluable role and must continue to do so. Council will conduct its own internal review of its structure and operation to identify ways of reinforcing its effectiveness.

Adopted by Dartmoor Commoners' Council

13 March 2024

## Reinforcing Council's effectiveness

The Independent (Fursdon) Review acknowledged that Dartmoor Commoners' Council plays an invaluable role in the management of Dartmoor and must continue to do so. It recommended that the current structure and operation of Council should be reviewed to identify ways of reinforcing its effectiveness and gave 2 options:

1. Retain the present council to give strategic oversight and provide a forum in which commoners can debate issues of concern.
2. Delegate its enforcement and operational activities to a smaller group with strengthened independent input.

In its response to the Review, Council committed to conducting its own internal review to identify ways of reinforcing its effectiveness.

For Council to increase its effectiveness, it cannot continue in its current format.

### **Steps already taken:**

1. At Council's December 2023 meeting, it was reported, that having sought legal advice, the Dartmoor Commons Act 1985 tasks solely the secretary with the maintenance of Council's Register. There is nothing in the Act to allow Council Members to be involved in any initial additions, amendments or deletions that the secretary makes to the Register.
2. The secretary wrote to Devon County Council in April 2024 seeking clarification on how to interpret certain entries within the Register of Common Land ('65 Register) and how this Register is to be maintained in accordance with the Commons Act 2006, which has now been implemented in Devon. A response has been received which indicates that Devon County Council agree that as the Commons Registration Authority, if mistakes are identified, they will make proposals under Section 19 of the Commons Act 2006 to correct the mistake.
3. Council's Standing Orders have been reviewed and these, together with a draft Code of Conduct to include Member's Declaration of Interest, will be presented to Council for ratification.
4. The creation of a Local Commoners' Association (LCA) Secretary Support Group to provide an opportunity for LCA Secretaries to be in touch with each other and to share issues, best practice & knowledge with guidance and support from Council has been agreed by Council. It is hoped that an initial meeting will be held before autumn.

It is considered that Council is too large a body to be a debating forum; smaller subsidiary units such as sub committees and working groups could be used to inform decisions to be made by Council and reduce the time spent in reaching a decision.

Furthermore, since Council's formation in 1986, the role and duties expected from the Chairman have evolved and developed. To expect anyone to take on this role, as it currently stands is not practicable. The workload needs to be spread out amongst other Council Members.

**For consideration:**

1. The current job description for Council Members to be reviewed and Council Members take on an increased workload attributed to their role. To improve the relationship with the Dartmoor community and give commoners a clear path to engage with Council and its representatives, there needs to be better collaboration between Local Commoners' Associations and Quartermen.
2. Each Quarter to form its own 'Quartermen' Group and nominate a lead. This Group will be asked to deal with local issues within their area.
3. Specific sub committees and working groups be set up to ensure the duties and functions of Council, as set out in the Act, are carried out efficiently and effectively. Every Council Member must be a member of a group. Each group to engage with Commoners, Local Associations and 3<sup>rd</sup> parties as deemed necessary to deal with matters assigned to that group e.g.:
  - livestock: husbandry/management/TB/ponies/issues (including illegal grazing)
  - commons issues: e.g., fencing
  - landscape & conservation: peat restoration/swaling/engagement with LUMG
  - policy & procedures

Consultations to be dealt with by the appropriate group.

Each group to nominate an appropriate lead person to be responsible for the delivery of a task within the timescale requested.

Each group to nominate one of its members to attend and represent Council at meetings with outside organisations applicable to their group.

4. Consider introducing a 'recognition payment' for those Council Members that lead on certain tasks.

5. Council to reduce its formal Council meetings to 4 per year including the AGM. Intermediate, say 3 or 4 informal round-table discussion meetings per year could then be held for members to discuss specific issues in-depth & set the direction of travel. This to include an opportunity for Council Members to input on matters for representatives to take to outside working groups e.g., DNPA Partnership Plan, Dartmoor Fire Partnership and Dartmoor Land Use Management Group (if & when established).

**THIS DOCUMENT WILL BE REVIEWED PERIODICALLY BUT AT LEAST 12 MONTHLY**

Adopted by Dartmoor Commoners' Council 19 June 2024

Environmental Land Management: Policy Discussion Consultation

Your Dartmoor: DNPA Management Plan Consultation

Financial Assistance Statutory Instrument Consultation

Public Space Protection Order (PSPO) Consultation

Changes to the measurement (metric) used to report on the condition of SSSIs in England

Improvements to Animal Welfare in Transport

Bovine Tuberculosis Proposals to help eradicate the disease in England

Public Space Protection Order (PSPO) Consultation – Dogs

National Food Strategy for England

Animal Welfare Committee: Castration & Tail Docking of Lambs - Call for Views

Landscape Review – call for evidence

Government Response to the Landscapes Review

Nature Recovery Green Paper: Protected Sites & Species

Improvements to Equine Identification & Traceability in England

Environment Act 2021: environmental targets

Dartmoor National Park Authority Byelaws

Changes to Bovine Identification, Registration & Movement – Consultation



## **Dartmoor Commoners' Council**

### **Landscape & Conservation Sub Committee**

#### **Terms of Reference**

##### Introduction

In accordance with Dartmoor Commons Act 1985, Schedule 2, Sections 6-10 and Dartmoor Commoners' Council Standing Order 7, this document sets out the role and responsibilities of the Landscape & Conservation Sub Committee (Committee).

##### Role & Purpose

To report and respond to matters directed to the group from the Dartmoor Commoners Council relating to landscape and conservation.

The Committee has been established to consider:

- Peat restoration and Natural Flood Management works across the Dartmoor Commons.
- Dartmoor wide fire plan and liaise with Natural England and the DSFS about fuel load and swaling best practice in conjunction with local commons association
- Local Association works and management plans
- SSSI on Dartmoor Commons and habitat assessments by external organisations and Natural England and produce an annual report.

##### Powers

The remit of the Group is to

Liaise with various organisations and where appropriate to discuss matters concerning the Dartmoor commons with regards to landscape, conservation, peat restoration and swaling issues, having due regard to relevant Acts relating to the duties of the Council.

The Group will gather facts, give advice and guidance. No powers of the Council are delegated to the Group and all recommendations will be referred to full Council for a decision.

##### Members



Mrs M Alford, Mr S Lee (DNPA), Ms T May, Mrs P Warren, Ms A Webber, Mrs A Willcocks

Lead Person is ----- who will be responsible for the delivery of a task within the timescale requested

### Meetings

Meetings will be called as and when required (either in person or virtually) and will be conducted in an informal way.

### Reporting

Council Members will be updated as appropriate.

### Review

The Group and its Members will be reviewed annually, at the AGM.

The terms of reference & any delegated powers may be amended and/or revoked at any time by the Council.

Mary Alford -

[REDACTED]

Simon Lee (DNPA) -

[REDACTED]

Tracy May -

[REDACTED]

Penny Warren -

[REDACTED]

Ali Webber -

[REDACTED]

Ann Willcocks -

[REDACTED]

# Common Land Report

57 Lustleigh Cleave  
Name Address

Address

Attached Land

Entry No	Livestock				Grazier Type	Notes
	Units	S	C	P		
73	22	112	22	22	G	
15	18	90	15	15	G	
Pt 18	5	27	4	4	G	
53	35	154	27	35	G	
Pt 45	23	100	23		G	
Pt 45	11	47	11		G	
55	10	48	10	10	G	
56	5	26	4	4	G	
57	1	5	1	1	G	
71	1	5	1	1	G	
[REDACTED]	3	33	90		15G	
29	29	104	26	26	N	
68	2	12	2	2	N	
69	0	0	0	0	N	
66	15	35	8	0	N	
[REDACTED]	8			2	2N	
[REDACTED]	12	3	15	3	3N	
58	1	2			N	
4	1	3	1	1	N	
61	1	5	1	1	N	
74	0	6	1	0	N	
[REDACTED]			18	45	22738	38 N
24	1			1	N	

57 Lustleigh Cleave

Name	Address	Attached Land			Entry No	Livestock Units			Grazier Type	Notes
		Sheep	Cows	Ponies		North	South	East		
<b>Totals</b>										
Graziers	11	164	704	133	92			11		
Non-Graziers	12	100	409	80	74			12		
								23		

31 July 2023



Dartmoor Commons Council  
1 Canal Rd  
Tavistock  
Devon  
PL19 8AR

Natural England Mail Hub  
Natural England  
Worcester County Hall  
Spetchley Road  
Worcester WR5 2NP

Dear Ms Sara Sloman,

**WILLINGSWALL AND HENTOR WARREN COMMON (UNIT 61 OF SOUTH DARTMOOR SITE OF SPECIAL SCIENTIFIC INTEREST, DEVON)  
WILDLIFE AND COUNTRYSIDE ACT 1981 (the Act) as amended**

We are writing to you in relation to the condition of Willingswall and Hentor Warren Common as we understand that you are a representative of Dartmoor Commons Council and we want to set out our intentions going forward in relation to the management of this common and the SSSI.

As you will know Natural England is concerned about the decline of the protected habitats on the common. We are also concerned that continued grazing in the winter will prevent the long term recovery of those habitats, affecting all those with rights to graze. We are writing to give you advance warning that we intend to place a Stop Notice on Unit 61 of South Dartmoor SSSI (Willingswall and Hentor Warren) which will prohibit grazing for the period 1<sup>st</sup> November to 30<sup>th</sup> April.

We will of course continue to work in cooperation with all managers of this SSSI land but unfortunately, we have now found ourselves in a position where we are taking this action to prevent further damage to the SSSI features.

In our letter of 28<sup>th</sup> July 2022 (emailed to you on 8<sup>th</sup> September 2022), we set out our advice on management necessary to achieve favourable condition of the SSSI features within Willingswall and Hentor Warren Common (Unit 61 of the SSSI). In 2023 we conducted a further and more in-depth condition assessment of the Willingswall and Hentor Warren Common and this has confirmed that the SSSI features remain in unfavourable declining condition and this supports our management recommendations. I attach a copy again for your ease of reference.

These management recommendations set out our view that grazing should not take place outside the period 1<sup>st</sup> May and 31<sup>st</sup> October and any Stop Notice (if required), will reflect these management recommendations.

Natural England will serve on those responsible for carrying out winter grazing a Stop Notice pursuant to section 46 of the Regulatory Enforcement and Sanctions Act 2008 and schedule 3 of the Environmental Civil Sanctions (England) Order 2010. A Stop Notice is a written notice that prohibits a person from continuing an activity. It can also prohibit an activity from continuing until specific steps have been taken. Non-compliance with a Stop Notice is a criminal offence.

We look forward to working with you to initiate management that will move Willingswall and Hentor Warren (Unit 61 of the SSSI) towards favourable condition. If you have specific questions about the content of this letter or the Stop Notice please send your queries to this mailbox ([enforcement@naturalengland.org.uk](mailto:enforcement@naturalengland.org.uk)). As usual, please do contact the area team for any other queries through your usual contacts.

More information can be found using the link below:

[Enforcement laws: advice on protecting the natural environment in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/natural-environment)

Yours sincerely



Greg Hayward  
Enforcement and Appeals Team  
Natural England

Enc. Dartmoor Commons Management Recommendations

## Annex 1 – Draft Management Recommendations

These recommendations set out what management Natural England, as the statutory nature conservation body, believes should be carried out on unit 61 South Dartmoor in order to further the conservation and enhancement of the SSSI features on this unit. This document is specific to the unit and complements the existing [Views About Management](#) (VAM).

**These recommendations are a draft and do not provide SSSI permission or consent.**

Draft recommendations may subject to change over time due to environmental changes, consideration of new evidence etc.

### 1. Land affected

South Dartmoor, Site of Special Scientific Interest, Devon, Unit 61 (as shown edged and coloured yellow on the plan in Appendix 1) (the "Unit").

### 2. Objectives for the Unit

To achieve favourable condition for the interest features on the Unit. This will be achieved when the following targets for the SSSI notified features present on the Unit are met. Section 3 outlines the management required to achieve these targets.

The SSSI notified features present on the Unit are:

- Blanket bog
- Wet Heath
- Acid Grassland
- Dry Heath

Details of how the targets below are assessed can be found in the monitoring specification for the site and [Common Standards Monitoring guidance](#).

#### 2.1 Blanket Bog

- There should be no reduction in extent or fragmentation of the interest feature on the Unit as cololured cyan/blue on the maps included at Appendix 2 and Appendix 3
- At least 4 indicator species should be present: Positive indicator species are: *Calluna vulgaris* (ling heather), *Drosera* spp. (sundews), *Erica* spp. (heaths), *Eriophorum angustifolium* (broad-leaved cotton-grass), *Eriophorum vaginatum* (hare's-tail cotton-grass), *Menyanthes trifoliata* (bog bean), *Narthecium ossifragum* (bog asphodel), non-crustose lichens, pleurocarpous mosses, *Racomitrium lanuginosum* (woolly fringe-moss), *Rhynchospora alba* (white-beaked sedge), *Sphagnum* spp. (bog-mosses), *Trichophorum cespitosum* (deer-grass), *Vaccinium* spp.
- At least 50% of vegetation cover across the Unit should consist of at least 3 of the listed positive indicator species above.
- Less than 1% of vegetation cover should be made up of non-native species.
- Less than 10% of vegetation cover should be made up of a scattered native trees and scrub.
- Less than 33% of the last complete growing season's shoots of dwarf-shrub species (collectively), should shows signs of browsing.
- In pioneer stage regrowth, less than 66% of the shoots of the last complete growing season's shoots of the dwarf-shrubs (collectively) should show signs of browsing.
- There should be no observable signs of burning into the moss, liverwort or lichen layer or exposure of peat surface due to burning.
- There should be no signs of burning or other disturbance in the following sensitive areas:
  - a) Slopes greater than 1 in 3 (18°), and all the sides of gullies.
  - b) Ground with abundant and/or an almost continuous carpet of *Sphagnum*, other mosses, liverworts and/or lichens.
  - c) Pools, wet hollows, hags and erosion gullies, and within 5–10 metres of the edge of watercourses.
  - d) Areas with noticeably uneven structure, at a spatial scale of around 1 m<sup>2</sup> or less. The unevenness (e.g. more commonly found in very old heather stands) will relate to distinct, often large, spreading dwarf-shrub bushes. The dwarf-shrub canopy will not be completely continuous, and some of its upper surface may be twice as high as other parts. Layering is

likely to be present and may be common.

- The extent of eroding peat should be less than the extent of stable re-deposited peat and new growth of bog vegetation within the feature.
- Less than 10% of the *Sphagnum* cover should be crushed, broken, and/or pulled-up.

## 2.2 Wet Heath

- There should be no reduction in extent or fragmentation of the interest feature on the Unit as colourer cyan/blue (with blue hatching) on the maps included at Appendix 2 and Appendix 3.
- *Erica tetralix* (cross-leaved heath) should be present within a 20m radius of the centre of the quadrat.
- Less than 33% of the last complete growing season's shoots of dwarf-shrub species collectively, should show signs of browsing.
- In pioneer stage regrowth, less than 66% of the last complete growing season's shoots of the dwarf-shrubs (collectively) should show signs of browsing.
- None of the following should make up more than 75% of vegetation cover: (a) dwarf-shrubs; or (b) graminoids.
- At least 50% of vegetation cover should consist of the following species: *Carex* spp. (sedges), *Erica* spp. (heaths), *Eriophorum* spp. (cotton-grasses), *Calluna vulgaris* (ling heather), pleurocarpus mosses, *Trichophorum cespitosus* (deer-grass), *Vaccinium* spp, *Sphagnum* spp. (bog mosses) and at least 20% of the vegetation cover should consist of *Erica* spp. (heaths) and *Calluna vulgaris* (ling heather).
- Less than 10% of vegetation cover should be made up of *Pteridium aquilinum* (bracken).
- Less than 10% of vegetation cover should be made up of scattered native trees and scrub.
- Less than 1% of vegetation cover should be made up of non-native species.
- Less than 10% of the vegetation cover should consist of *Juncus effusus* (soft rush).
- There should be no observable signs of burning into the moss, liverwort or lichen layer or exposure of peat surface due to burning.
- There should be no signs of burning and other disturbance inside the boundaries of the following sensitive areas:
  - a) Vegetation severely wind-clipped, mostly forming a mat less than 10 cm thick.
  - b) Areas where soils are thin and less than 5 cm deep.
  - c) Slopes greater than 1 in 3 (18°), and all the sides of gullies.
  - d) Ground with abundant, and/or an almost continuous carpet of *Sphagnum*, liverworts and/or lichens.
  - e) Areas with noticeably uneven structure, at a spatial scale of around 1 m<sup>2</sup> or less. The unevenness (e.g. more commonly found in very old heather stands) will relate to distinct, often large, spreading dwarf-shrub bushes. The dwarf-shrub canopy will not be completely continuous, and some of its upper surface may be twice as high as other parts. Layering is likely to be present and may be common.
  - f) Pools, wet hollows, hags and erosion gullies, and within 5 – 10 metres of the edge of watercourses.
- Less than 10% of the *Sphagnum* cover should be crushed, broken, and/or pulled-up.
- Less than 10% of the ground should be disturbed bare ground.
- Less than 10% of the total feature area, should show signs of active drainage, resulting from ditches or heavy trampling or tracking.
- The extent of eroding peat and/or mineral soil should be less than the extent of re-deposited peat and/or mineral soil and new growth of wet heath and/or bog vegetation within the feature.

## 2.3 Acid Grassland

- There should be no reduction in extent or fragmentation of the interest feature on the Unit coloured yellow or orange (with and without hatching) on the maps included at Appendix 2 and Appendix 3.
- The percentage of the ground cover for which dead plant litter forms a "thatch" or "felt", in patches more than 2 cm across, should be less than 10%.
- Less than 10% of the ground cover should be disturbed bare ground.
- Less than 10% of vegetation cover should consist of *Juncus effusus* (soft rush).
- At least 4 positive indicator species from the following list should be present: *Galium saxatile* (heath

bedstraw), *Potentilla erecta* (tormentil), *Rumex acetosella* (sheep's sorrel), *Anthoxatum odoratum* (sweet vernal-grass), *Festuca ovina* (sheep's fescue), *Agrostis capillaris* (common bent), *Pluerozium schreberi*, *Agrostis curtisii* (bristle bent), *Nardus stricta* (mat-grass).

- More than 10% of the vegetation cover should consist of forbs.
- Less than 1% of vegetation cover should be made up of non-native species.
- Less than 10% of vegetation cover should be made up of bracken and/or scattered native trees and scrub.
- The percentage of vegetation cover made up of *Juncus squarrosus* (heath rush) and/or *Rhytidiadelphus squarrosus* should be less than 33%.
- At least 25% of the live leaves and/or flowering shoots of vascular plants should be more than 5 cm above the ground surface, and at least 25% should be less than 5 cm above the ground surface.

## 2.4 Dry Heath

- There should be no reduction in extent or fragmentation of the interest feature on the Unit coloured purple on the maps included at Appendix 2 and Appendix 3.
- Less than 33% of the last complete growing season's shoots of dwarf-shrub species collectively, should show signs of browsing.
- In pioneer stage regrowth, less than 66% of the last complete growing season's shoots of the dwarf-shrubs (collectively) should show signs of browsing.
- At least 1 species of moss or liverwort or non-crustose lichen should be present.
- At least 50% of vegetation cover should be made up of *Calluna vulgaris*, *Erica* spp. *Vaccinium* spp. *Ulex gallii*, *Agrostis curtisii*.
- At least 25% of dwarf-shrub cover should be made up of: *Calluna vulgaris*, *Erica* spp. *Racomitrium lanuginosum*, *Vaccinium* spp.
- Less than 75% of dwarf shrub cover should be made up of *Ulex gallii*.
- At least two indicator species should be present from *Calluna vulgaris*, *Erica* spp., *Racomitrium lanuginosum*, *Vaccinium* spp. *Agrostis curtisii*.
- Less than 1% of vegetation cover should be made up of non-native species.
- Less than 10% of the vegetation cover should be made up of bracken.
- Less than 20% of the vegetation cover should be made up of scattered native trees and scrub.
- Less than 10% of the vegetation cover should consist of *Juncus effusus*.
- There should be no signs of burning and other disturbance inside the boundaries of the following sensitive areas:
  - a) Vegetation severely wind-clipped, mostly forming a mat less than 10 cm thick.
  - b) Areas where soils are thin and less than 5 cm deep.
  - c) Slopes greater than 1 in 3 (18°), and all the sides of gullies
  - d) Ground with abundant, and/or an almost continuous carpet of *Sphagnum*, liverworts and/or lichens.
  - e) Areas with noticeably uneven structure, at a spatial scale of around 1 m<sup>2</sup> or less. The unevenness (e.g. more commonly found in very old heather stands) will relate to distinct, often large, spreading dwarf-shrub bushes. The dwarf-shrub canopy will not be completely continuous, and some of its upper surface may be twice as high as other parts. Layering is likely to be present and may be common.
  - f) Pools, wet hollows, hags and erosion gullies, and within 5 – 10 metres of the edge of watercourses.
- Outside areas identified above, all growth phases of heather should occur throughout the area. At least 10% of the heather should be in the late-mature/degenerate growth phases.
- Less than 10% of the ground cover should be made up of disturbed bare ground.

## 3. Management Recommendations

### 3.1 Restoring hydrological integrity and functioning of mire habitats

Ensure management actions are sympathetic to and compatible with reinstating full hydrological function of the peatland where this is currently not present on the Unit. More specifically, permit the establishment of a more natural hydrology, with active peat growth, reduced erosion, and increased habitat quality. Where works are required to restore the hydrological function of the peatland (i.e. grip or drain blocking,



bare peat restoration etc.) this will be agreed separately with Natural England and consent may be required.

### 3.2 Grazing

The grazing parameters set out in the bullet points below apply to grazing by all parties with rights to graze the Unit. Natural England considers that this represents the overall grazing required to achieve favourable condition of the SSSI features on the Unit.

- Grazing between 1st May & 31st October inclusive only. No grazing of any livestock outside of this period.
- Graze up to a maximum of 80 Livestock Units\* (LUs) during this period. At least 50% of total LUs must comprise of cattle and/or equines (ponies) over the grazing period.
- Graze a minimum of 40 LUs, all comprised of cattle+ over the period 15<sup>th</sup> May to 15<sup>th</sup> July.

+cattle grazing is important in managing growth of Purple Moor-grass (*Molinia caerulea*)

\*Livestock Unit definitions:-

Cattle >2 years 1 Livestock Unit (LU)

Cattle 6 months to 2 years 0.6 LU

Sheep 0.15 LU

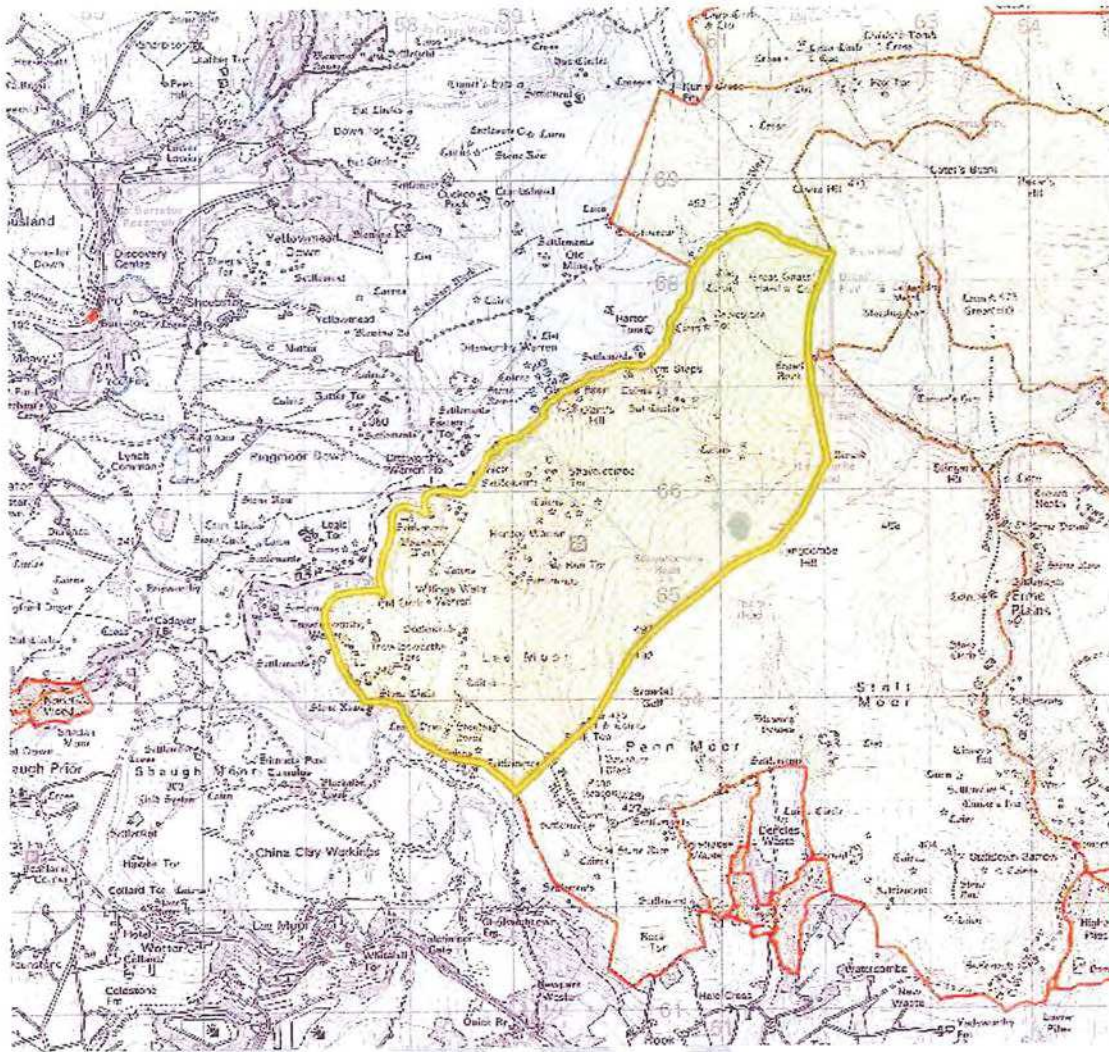
Equines 1 LU

### 3.3 Burning (Swaling)

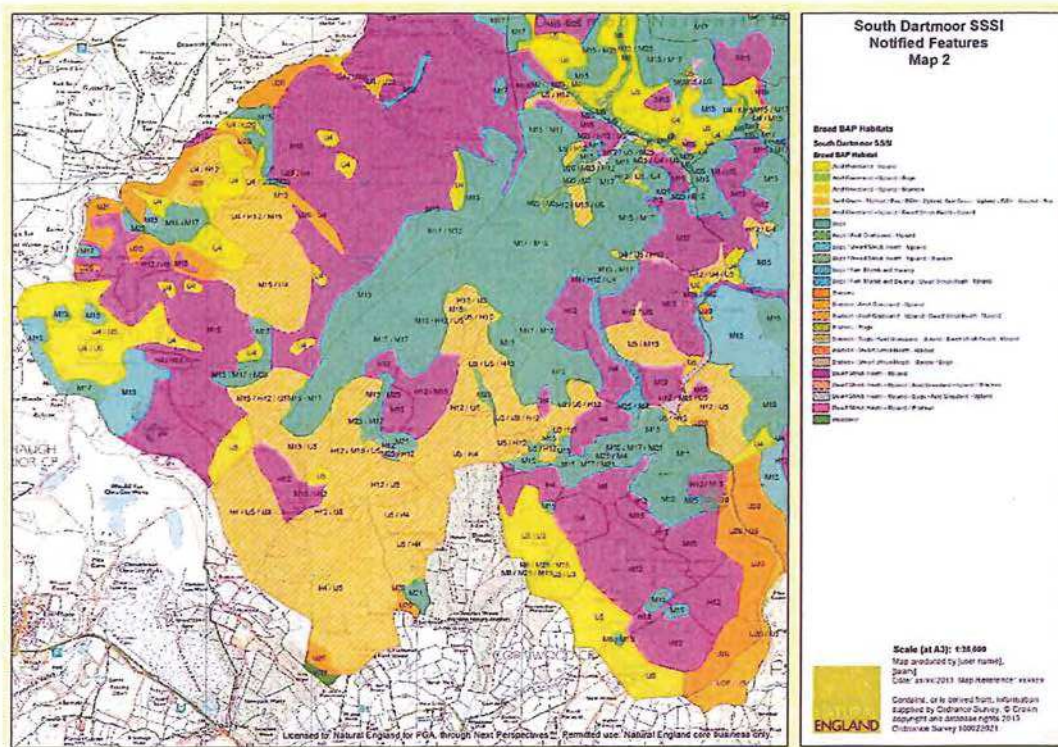
- There should be no burning on the Unit without prior and separate consent from Natural England and any other necessary permissions and/or licences.
- Natural England is open to discussion about possible approaches to help control any potential uncontrolled fires or wildfires.
- Any burning requires SSSI consent from Natural England. This includes burning on shallow peat (<40cm) or mineral soils which is proposed by an owner or occupier of the SSSI for restoration purposes (e.g. to draw stock into areas where more grazing is required and away from areas where less grazing is sought -refer to section on shepherding above).

**[Note: all operations that an owner/occupier wishes to undertake, and that appears on the ORNEC list for this site, requires consent from Natural England before the operation is undertaken. Failure to request, and receive, consent before commencing such operations is an offence]**

Appendix 1 – South Dartmoor SSSI unit 61 boundary in yellow

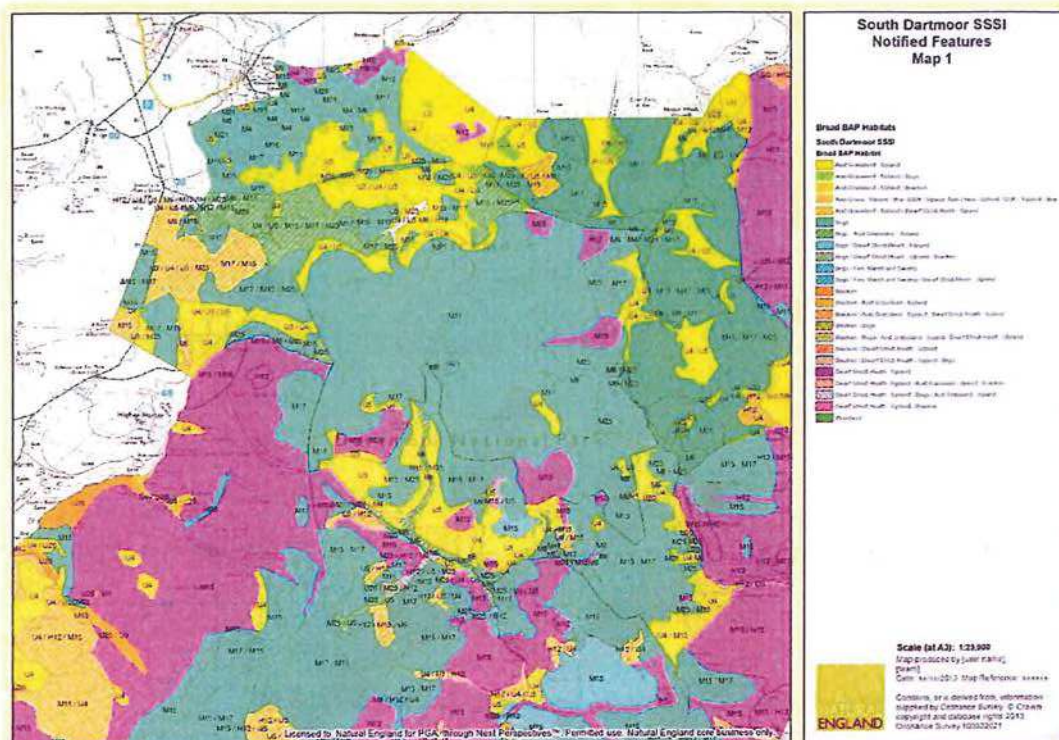


Appendix 2 – NVC Map 1 – SW Part of Unit 61



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Appendix 3 – NVC Map 2 – NE Part Unit 61



DRAFT

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Dartmoor Commoners' Council  
1 Canal Road, Tavistock,  
PL19 8AR

Office Hours: Monday to Friday  
9:00 am to 1:00 pm  
Tel: 01822 618892

Email: [office@dartmoorcommoners.org.uk](mailto:office@dartmoorcommoners.org.uk)

Letter by email: Natural England  
Enforcement & Appeals Team  
[enforcement@naturalengland.org.uk](mailto:enforcement@naturalengland.org.uk)

22 September 2023

Dear Sir or Madam

**Willingswall & Hentor Warren Common (unit 61 of South Dartmoor SSSI)  
Wildlife & Countryside Act 1981 as amended**

We write further to your letter dated 31 July 2023 setting out your intentions going forward in relation to the management of this common and the SSSI.

Dartmoor Commoners' Council has serious concerns regarding the Stop Notice that you intend to place on Unit 61 of South Dartmoor SSSI that you class as just Willingswall & Hentor Warren, which will prohibit grazing for the period 1 November to 30 April. We also note that Unit 61 covers some of the "Trowlesworthy" part of CL190 (referred to as Area C). The full details of these areas can be obtained from the Land Charges Department at Devon County Council, the Commons Registrations Authority.

We understand that the Stop Notice has not been served on all of those who have rights to graze this area. As the statutory body, established under the Dartmoor Commons Act 1985, Dartmoor Commoners' Council was constituted primarily to maintain and promote the proper standards of livestock husbandry and management of the commons. We therefore ask that you provide us with details of those you have served with the Stop Notice and on what dates Notice was sent.

Council considers the grazing parameters set out in your draft management recommendations that accompanied your letter of 28<sup>th</sup> July 2022 to be irrational. The area in question is 1330 hectares. Grazing just 80 units of livestock, within the period 1 May to 31 October, will cause a huge change in the vegetation and nature of the common. We contest that it certainly would not serve your claimed purpose, but will instead lead to a huge increase in uneaten vegetation and attendant fire risks. It would be reckless to condone such low levels of grazing.

Moreover, this area of land is wholly open to, and unfenced against a number of other commons, as well as other areas of the same common. This is not like an unfenced area that occupiers have voluntarily agreed to stock at very low levels for financial reward.

Removing livestock between 1 November and 30 April will create an unnatural vacuum and livestock from the other areas will stray onto the area in question: A situation forced by you issuing a Stop Notice. As such, Council will hold the view that Natural England will be liable for the straying of livestock and the damage to accustomed lears that it is likely to

precipitate. Furthermore, we would question how you intend to 'police' the issue of straying stock? Driving off pregnant livestock that stray onto the area within the Stop Notice during the winter months may cause injury to the animals or cause them to spontaneously abort. This is a very serious matter and we urge you to give careful consideration to the fallout that may occur.

We understand that you are aware of an independent ecology assessment recently undertaken on a large proportion of this common by a professional ecologist who you often use. Interestingly, their report does not call for destocking in the manner you recommend.

Given the above, we ask that you withdraw this unworkable and unrealistic Stop Notice with immediate effect.

The Council remains open to engaging with you and the RPA at the highest level to endeavour to find a workable and sensible solution to this situation.

Yours sincerely

Mr Philip French  
Chairman  
Dartmoor Commoners' Council

COPY

**Dartmoor Commoners Council**

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**From:** SM-NE-enforcement (NE) <enforcement@naturalengland.org.uk>  
**Sent:** 06 October 2023 11:19  
**To:** Dartmoor Commoners  
**Cc:** Slater, David; Phillip French; Layland Branfield; Smyth, Wesley  
**Subject:** RE: Willingswall & Hentor Warren Common (unit 61 of South Dartmoor SSSI) Wildlife & Countryside Act 1981 as amended  
**Attachments:** Ltr to NE re Stop Notice over SSSI Unit 61 - 190923.docx

Dear Mr French

Thank you for your letter of 22nd September.

We note your concerns with the potential service of a Stop Notice and hope that the following information may allay some of your fears.

Natural England's use of Stop Notices is covered in our enforcement guidance which is publicly available here <https://www.gov.uk/guidance/enforcement-laws-advice-on-protecting-the-natural-environment-in-england> Annex 2 of the guidance provides details on what a Stop Notice is and when Natural England may use them <https://assets.publishing.service.gov.uk/media/5a7e2628e5274a2e8ab46279/annexes2-4-enforcement-guidance.pdf>.

We would like to clarify however, that to date, no Stop Notice has been issued. Our Advisory letter of 31 July 2023 seeks to inform those involved in the Common of our intention to issue a Stop Notice should stock not be removed over the winter period. If a Stop Notice is served, this will be on the basis that Natural England reasonably believe that the continuation of winter grazing would cause, or present a significant risk of causing, serious harm to the SSSI interests.

We note your view on our management recommendations in relation to grazing levels and impact on the Common. However we have recent and detailed evidence which shows that the special interest features within Unit 61 are in unfavourable declining condition and that a reduction in winter grazing pressure is required to avoid further damage.

If issued, a Stop Notice would only be served on those parties who are actively exercising their commons grazing rights or grazing under a tenancy with the landlord during the period 1 November until 30 April. We do understand that Unit 61 of the SSSI is unfenced from adjoining commons and thank you for raising welfare issues in relation to compliance monitoring in the event a Stop Notice is served. We will take note of these in our compliance strategy that will accompany any Notice served.

We note with interest your reference to an independent ecological assessment of this common. We would be very interested in seeing a copy of this report should you be in a position to share this.

We are pleased that you wish to work with Natural England on this matter. Wesley has said he would be happy to talk through our approach here with you further if that would be of assistance.

If you have any remaining questions please do not hesitate to contact me.

IN THE HIGH COURT OF JUSTICE  
 KING'S BENCH DIVISION  
 ADMINISTRATIVE COURT  
 IN AN APPLICATION FOR JUDICIAL REVIEW  
 BETWEEN

Claim No: AC-2024-LON-002896

THE KING  
 (on the application of WILD JUSTICE)

Claimant

-and-

DARTMOOR COMMONERS' COUNCIL

Defendant

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CLAIMANT'S REPLY

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*References: [CB/x]: Core Claim Bundle, page x; [SB/x]: Supplementary Bundle, page x; [DCC/x]: Exhibits to the Witness Statement of Danielle Spalding, page x; [SGD/x]: Defendant's Summary Grounds of Defence, paragraph x; [SFG/x]: Claimant's Statement of Facts and Grounds, paragraph x. 'x' is the page / paragraph number.*

**Recommended reading (see also SFG recommended reading):**

- Letter from Natural England to Claimant's solicitors, dated 16 September 2024 [DCC/12-15].

**GENERAL POINTS**

1. The Defendant's Summary Grounds largely consist of criticisms of the Claimant rather than engagement with the legal arguments. The Claimant therefore first responds to these points before addressing the actual legal matters in issue.
2. First, the Defendant alleges the claim is a "fundamental disagreement with", and undermines, the Fursdon Report [SGD/4, 67-68]. That is wrong. The Fursdon Report has not changed the Defendant's duties in the Dartmoor Commons Act 1985 ("**DCA 1985**"), the Wildlife and Countryside Act 1981 ("**WCA 1981**") and the Conservation of Habitats and Species Regulations 2017 ("**Habitats Regulations**"). The Fursdon Report cannot justify non-compliance with the law.



3. Nor can the Defendant rely on its involvement in the Fursdon Review as demonstrating it has complied with its statutory duties [SGD/74, 82, 88(4)]. The legislation places specific responsibilities upon the Defendant which plainly were not discharged simply by making submissions to a wide-ranging review.
4. Second, the Defendant says this claim ought to have been brought against the Department for Environment, Food and Rural Affairs (“Defra”) and/or Natural England (“NE”) [SGD/4, 70-3, 93]. That other public bodies have potentially overlapping functions does not absolve the Defendant from compliance with its own statutory obligations. The Defendant’s failure to do so is in issue here, not the actions of others. Indeed, the Defendant’s effort to shift focus elsewhere is an example of the “finger-pointing” it claims to deprecate [SGD/68].
5. Moreover, the Defendant’s powers extend beyond NE’s limited remit (including geographically). This was explained by NE in its letter dated 16 September 2024, in which NE concluded that “DCC has a broader role in relation to the management of the Dartmoor Commons than the specific role held by Natural England, which is to ensure the protection of those features for which the site is designated a Special Area of Conservation (SAC) and SSSI” [DCC/14]. The fact that, in relation to SSSI land, decreasing stocking numbers may require NE’s consent (see [SGD/71]) is nothing to the point; DCC plainly could work with NE to avoid a commoner being caught between the two regulatory regimes. The Defendant’s suggestion that it is prohibited from exercising its powers to control overstocking on SSSI land itself constitutes a concerning fettering of discretion.
6. Third, the Defendant appears to be labouring under the false impression that it is for the Claimant to demonstrate that overgrazing is the cause of Dartmoor’s poor condition [SGD/69, 81]. The Defendant’s statutory duties require taking steps for “the maintenance of the commons”, which includes “assessment of the number of animals which can properly be depastured on the commons from time to time”. Given NE’s consistent position that Dartmoor has been overgrazed<sup>1</sup> it was incumbent upon the Defendant to carry out such

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<sup>1</sup> The Claimant points, for example, to NE’s submission to the Fursdon Report which included a document entitled “Summary of Ecological Evidence for the Dartmoor Independent Evidence Review” which stated that the “main reasons” for Dartmoor’s habitats and ecosystems being in “a significantly degraded condition”

assessment to inform its decision as to whether to take action to reduce livestock numbers on the commons. It has not done so.

### **REPLY ON GROUNDS OF CHALLENGE**

7. As explained below, the Defendant's response offers no knockout blows. The grounds are all plainly arguable and need full consideration by the court at a substantive hearing.

#### **Ground 1: Breach of section 5 (alone and in conjunction with section 4) DCA 1985**

8. The Defendant has erected a straw man by incorrectly characterising ground 1 as an irrationality challenge. Ground 1 alleges, as its title shows, that the Defendant has breached section 5(1) of the DCA 1985 because – due to its failure to *ever* issue limitation notices under regulation 9 in at least the last ten years – it has effectively failed to enact regulations which achieve the statutorily specified outcome of “ensur[ing] that the commons are not overstocked” (see [SFG/33]). That is distinct from a decision by DCC as to whether to issue a limitation notice in any *individual* circumstance, a challenge to which would (barring other public law error) indeed be subject to the irrationality threshold. The Defendant simply hasn't made – nor apparently even considered making – any decisions of this nature.
9. The Defendant's only answer to the alternative formulation of ground 1 – that it has breached the DCA 1985 through a failure to even consider issuing limitation notices – is to point to the Fursdon Review [SGD/82]. DCC's participation in the review does not constitute consideration of whether to exercise its power to issue limitation notices. Moreover, recommendations arising from the Fursdon Report cannot change the legal duties on the Defendant.
10. Finally, the Defendant's contention that its DCA 1985 duties do not encompass the “ecological condition of Dartmoor” is simply wrong (and no answer anyway to this ground) given its functions include “maintenance of the commons” (DCA 1985, section 4(1)).

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included “overgrazing”, with the solutions including “significant changes and reductions in grazing”. This document was only recently disclosed to the Claimant and is appended to this Reply.

**Ground 2: Failure to assess appropriate stocking levels in breach of section 4(1) DCA 1985 and/or frustration of the DCA 1985's statutory purpose**

11. The Defendant's response to ground 2 neither: (a) disputes that it is under a duty to carry out assessment of appropriate stocking levels on the Dartmoor commons; nor (b) identifies any specific assessment it has carried out since 2003. It follows that ground 2 must succeed.
12. The Defendant's attempted reliance on *The State of the Commons on Dartmoor* is entirely undermined by its pre-action protocol response, which stated in terms that that document "is not a document which has been produced by [the Defendant]". In any event, the pages cited (pp14-24 [CB/216-226]) are no more than general discussion of some of the issues encountered on Dartmoor; they are not an "assessment" in any sense.
13. Finally, the Defendant's contention that "it is part of their inherent day-to-day operations to assess the state of the commons and consider livestock levels" is vague, unevicenced and in any event clearly inadequate to discharge the specific statutory duty of assessment required by section 4(1) of the DCA 1985.

**Ground 3: Breach of section 4(1) of the DCA 1985 through failure to have regard to the conservation and enhancement of the natural beauty of the commons**

14. The Defendant has failed to identify any matters showing compliance with its duty to have regard to the conservation and enhancement of the natural beauty of the commons. The fact that the Defendant's website refers to the DCA 1985 and the DCC Regulations is no answer, as is the fact that the Defendant has previously made (entirely unspecified) responses to various consultations.

**Ground 4: Breach of section 28G WCA 1981**

**Ground 5: Breach of regulation 9(3) of the Habitats Regulations**

15. The Claimant replies on these grounds together for convenience, although they are separate grounds of challenge. The Defendant has entirely failed to address the central point made in these two grounds, namely that the Defendant has not produced any evidence whatsoever to demonstrate that it has even considered its duties under section 28G WCA 1981 or regulation 9(3) of the Habitats Regulations. Relying on its responses to grounds 1 and 3 (see

[SGD/92]) is not sufficient to address grounds based on duties under entirely separate legislative regimes. Neither is reliance on what its “newly formed Landscape and Conservation Sub Committee” *may* do in future [SGD/94].

**Ground 6: DCC has acted *ultra vires* the DCA 1985 and/or has acted with an improper purpose**

16. The fact that the Defendant may, pursuant to section 4(2)(a), “render assistance to any commoner in the maintenance of his rights of common” (a very specific and narrow activity) evidently does not empower it to act as a general representative body for commoners. The Defendant is simply wrong to say it is exercising its functions as provided for by the DCA 1985 [SGD/97].
17. The Defendant’s misunderstanding of its statutory role is exemplified by its submission to the Fursdon Review, in which it stated that “Dartmoor Commoners Council will continue to work tirelessly to support the role of the grazing commoner and continue to endorse the value of grazing livestock”, without making any reference to its core specific statutory duties under the DCA 1985, and for which purpose it was established [DCC/19]. The Defendant’s active opposition to efforts made by NE to address overgrazing on Dartmoor’s commons further serves to demonstrate the manner in which the Defendant has departed from its statutory functions (see, for example, [DCC/29-40]), where the Defendant actively resisted NE’s proposed use of a Stop Notice to address overgrazing on Willingswall & Hentor Common SSSI.
18. Finally, the fact that the Fursdon Review did not expressly raise this concern is irrelevant.<sup>2</sup> It was not the function of the Fursdon Review to consider whether the Defendant was acting within the parameters of its statutory remit.

**Dated 30 September 2024**

**DAVID WOLFE KC**  
Matrix

**JAKE THOROLD**  
39 Essex Chambers

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<sup>2</sup> It is, however, notable that the Fursdon Review did explicitly recognise the “inherent tension from the council being both a democratic discussion forum and a statutory enforcement body” [CB/170].

## Summary of Ecological Evidence for the Dartmoor Independent Evidence Review presented on 3<sup>rd</sup> November 2023 by Andy Nisbet

### Key points.

- The habitats and ecosystems on Dartmoor are in a significantly degraded condition.
- This affects biodiversity and the ecosystem services they provide. These are ecosystem services that provide benefits to society beyond Dartmoor.
- The ecosystems have been in poor condition and declining for a long time but there is also evidence of more recent declines in some places.
- The main reasons for this are land management practices – draining, burning and overgrazing.
- The solutions are hydrological restoration on peatland and significant changes and reductions in grazing.

In making these general statements we are aware that there is variation across the moor in terms of vegetation, past and current management. The best management will also vary and needs to be tailored in agri-environment agreements or similar. However, if we look at the moor as a whole these key points are true and have sound evidence bases.

### Importance

Dartmoor has nationally and internationally important habitats and ecosystems. SSSIs are designated for nationally important habitats and species features. Some of these are important at a European level. The UK has a significant proportion of the world's blanket bog which includes the resource on Dartmoor.

These ecosystems are important for biodiversity itself and the inherent value that people give to that as well as the ecosystem services and resulting societal benefits.

The government's Environmental Improvement Plan commits us to leaving the environment in a better condition for the next generation and takes a natural capital approach to doing this. This builds on the work of the National Ecosystem Assessment, Natural Capital Committee and the Dasgupta report.

The issue on Dartmoor is not a binary wildlife vs farming question. We need to look at this in terms of natural capital – provisioning services (food and water), regulating services (pollination, carbon sequestration and climate regulation, water quality) and cultural services (recreation, landscape character).

### Ecosystem condition

These habitats and ecosystems are in poor and degraded condition. There is evidence that they are continuing to decline.

We have evidence from 30 years of agri-environment monitoring, 20 years of SSSI condition assessments and intensive overgrazing surveys from 1998 to 2010. These consistently show:

- Poor and unfavourable habitat condition.
- Heavy grazing pressure on vegetation, particularly dwarf shrubs affecting vegetation structure, dwarf shrub structure and cover.

- Declining condition in many places. On some sites this has happened relatively recently.

Despite being in agri-environment monitoring evidence has not shown recovery of degraded vegetation on many sites/commons.

Although the cover of dwarf shrubs is low and has declined, they are still frequent, ie not much but well scattered through the grassy vegetation. This indicates good potential for recovery but continued heavy grazing could lead to their loss.

There is a risk that they may deteriorate beyond the point at which they can be restored, and this is what we mean by tipping point.

There is little evidence of significant increases in bracken or European gorse cover.

### **Reasons for unfavourable condition**

Natural England undertook large and systematic uplands evidence reviews just under 10 years ago and these provide excellent and still relevant collations of the science and evidence. Combined with evidence from vegetation monitoring and case studies these support our view that changes have been primarily driven by land management practices.

- Drainage affecting blanket bog and other mires, drying peat and resulting loss of diverse flora and peat forming Sphagna.
- Agricultural burning with high frequency (annual, biennial) degrading blanket bog and wet heath habitats and favouring the overabundance of Molinia.
- High grazing pressure leading to degradation of the heathland and loss of dwarf shrub cover.

During the 1980s, 90s and early 2000s there were high numbers of cattle overwintered on the moor and high sheep numbers. There were significant reductions during 2000s because of cross compliance and agri-environment agreements. These halted or reduced decline in many areas but did not result in recovery.

Other factors (climate change or air pollution such as nitrogen deposition) will be affecting the moor, but we believe that land management is the most significant.

### **Ecosystem restoration**

If we want habitats and ecosystems to be resilient to climate change and deliver key ecosystem services, then we need to restore them to favourable condition. A naturally functioning blanket bog will be more resilient than the degraded habitats we currently have.

Again our evidence comes from our uplands evidence reviews, research on grazing and burning including the body of research that was used to develop the sustainable stocking rates for agri-environment schemes. Recovery requires:

- Peatland restoration particularly the restoration of more naturally functioning hydrology.
- Significant changes to grazing management including reductions in stock on some sites and at particular times of year.

To restore these habitats the evidence indicates that that we need late spring and early summer cattle grazing and very low levels or removal of sheep grazing in the winter.



**In the High Court of Justice  
King's Bench Division  
Planning Court**

AC-2024-LON-002896



AC-2024-LON-002896

**In the matter of an application for judicial review**

**THE KING**

**on the application of**

**WILD JUSTICE**

**-and-**

**DARTMOOR COMMONERS' COUNCIL**

**Claimant**

**Defendant**

**On the Court's own initiative;**

Following consideration of the documents lodged by the parties;

**Order by the Honourable Mrs Justice Lang DBE**

1. The Department for Environment, Food and Rural Affairs ('DEFRA') is to be joined as the First Interested Party.
2. Natural England is to be joined as the Second Interested Party.
3. The Claimant must serve DEFRA and Natural England with the Claim Form, Reply and supporting documents, no later than 7 days from the date of this order.
4. The Defendant must serve DEFRA and Natural England with its Acknowledgment of Service and supporting documents, no later than 7 days from the date of this order.
5. DEFRA and Natural England must each file and serve an Acknowledgment of Service and Summary Grounds of Resistance, not more than 21 days after service of the documents by the Claimant and the Defendant, referred to at paragraphs 3 and 4 above (time to run from the latest date of service).
6. Costs in the case.

**Reasons:**

1. The Defendant relies upon the actions and functions of DEFRA and Natural England, and the Fursdon Review. In my view, it is not appropriate for the Court to determine the permission application without the benefit of submissions from DEFRA and Natural England.

Signed: *Mrs Justice Lang*

Dated: 2 October 2024

**The date of service of this order is calculated from the date in the section below**

---

**For completion by the Administrative Court Office**

Sent / Handed to

**either** the Claimant, and the Defendant [and the Interested Party]

**or** the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date: 02/10/2024



# Judicial Review

## Acknowledgment of Service

Name of court

High Court of Justice  
Administrative Court

Claim number

AC-2024-LON-002896

Name of claimant (including any reference)

WILD JUSTICE

Name of defendant

DARTMOOR COMMONERS' COUNCIL

Interested parties

(1) SECRETARY OF STATE FOR  
ENVIRONMENT, FOOD AND RURAL  
AFFAIRS (2) NATURAL ENGLAND

### This Acknowledgment of Service is filed on behalf of

Name

NATURAL ENGLAND

who is the

- Defendant
- Interested party

### Name and address of person to be served

Name

Legal Services, Natural England

#### Address

Building and street

Kings Pool

Second line of address

1-2 Peasholme Green

Town or city

York

County (optional)

Postcode

Y O 1 7 P X

## Section 1

Tick the appropriate box

- I intend to contest all of the claim  
– **complete sections 2, 3, 4 and 6**
- I intend to contest part of the claim  
– **complete sections 2, 3, 4 and 6**
- I do not intend to contest the claim  
– **complete section 6**
- The defendant (interested party) is a court or tribunal and intends to make a submission  
– **complete sections 2, 3 and 6**
- The defendant (interested party) is a court or tribunal and does not intend to make a submission  
– **complete sections 2 and 6**
- The applicant has indicated that this is a claim to which the Aarhus Convention applies  
– **complete sections 5 and 6**
- The Defendant asks the Court to consider whether the outcome for the claimant would have been substantially different if the conduct complained of had not occurred (see s.31(3C) of the Senior Courts Act 1981)  
– **A summary of the grounds for that request must be set out in/accompany this Acknowledgment of Service**

**Note:** If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

## Section 2

- 2.1** Insert the name and address of any person you consider should be added as an interested party.

**Note 2.1:** If you consider there is more than one interested party, set out their details on a separate sheet, marking that sheet so that it is clear it relates to this part of the Acknowledgment of Service.

Name

Organisation

### Address

Building and street

Second line of address

Town or city

County (optional)

Postcode

--	--	--	--	--	--	--	--

Phone number

Email (if you have one)

Reference, if known

### Section 3

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

**Note 3:** See Practice Direction 54A at paragraphs 6.1 – 6.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the Acknowledgment of Service.

Natural England takes a neutral stance on the Claim and neither contests nor supports the Claim. Please see attached Summary Grounds and appendices.

## Section 4

4.1. Give details of any directions you want the court to make.

**Note 4:** If you wish to make any interlocutory application now, set out the application and the reasons and/or evidence relied on in support of it in this Section. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the Acknowledgment of Service.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties form **N464** with this acknowledgment of service.

If, after this Acknowledgment of Service has been filed, you wish to make an interlocutory application, use form **N244**.

## Section 5

Response to the claimant's contention that the claim is an Aarhus claim

5.1 Do you dispute that the claim is an Aarhus Convention claim?

Yes. Set out your reasons in the box below.

No

5.2 Do you wish the court to vary or remove the costs limits under CPR45.43(2)?

Yes. Set out your reasons in the box below.

No

## Section 6

### Statement of truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- I believe** that the facts stated in this form are true.
- The defendant** believes that the facts stated in this form are true. **I am authorised** by the defendant to sign this statement.
- The interested party** believes the facts stated in this form are true. **I am authorised** by the interested party to sign this statement.

### Signature



- Defendant
- Defendant's legal representative (as defined by CPR 2.3(1))
- Interested party
- Interested party's legal representative (as defined by CPR 2.3(1))
- Litigation friend

### Date

Day	Month	Year
2 3	1 0	2 0 2 4

Full name

Alice Appleton

If legal representative, state name and firm

Natural England Legal Services

If signing on behalf of firm or company give position or office held

Solicitor, Deputy Director of Legal Services

Give an address to which notices about this case can be sent to you

Name

Legal Services

Organisation

Natural England

### Address

Building and street

Kings Pool

Second line of address

1-2 Peasholme Green

Town or city

York

County (optional)

Postcode

Y O 1 7 P X

If applicable

Phone number

DX number

Email

NE.Legalservices@naturalengland.org.uk

Reference number

LP2024/09939

If you have instructed counsel, please give their name address and contact details below.

Name

Ned Westaway

**Address**

Building and street

Francis Taylor Building

Second line of address

Inner Temple

Town or city

London

County (optional)

Postcode

E C 4 Y 7 B Y

If applicable

Phone number

020 7353 8415

DX number

Your reference

LP2024/09939

Email

Ned.Westaway@ftbchambers.co.uk



**Completed forms**, together with a copy, should be filed at the Administrative Court Office (court address, listed below), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of filing with the Court. See CPR 54.8.

### **Administrative Court addresses**

#### **Administrative Court in London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

#### **Administrative Court in Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

#### **Administrative Court in Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

#### **Administrative Court in Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

#### **Administrative Court in Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

AC-2024-LON-002896

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT

B E T W E E N:

R (on the application of WILD JUSTICE)

Claimant

and

DARTMOOR COMMONERS' COUNCIL

Defendant

and

(1) SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS  
(2) NATURAL ENGLAND

Interested Parties

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**SECOND INTERESTED PARTY'S SUMMARY GROUNDS**

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*References: [CB/#] is the Claim Bundle; [DCC/#] is the Defendant's documents; SFG/§ is the Claimant's statement of facts and grounds; SGR/§ is the Defendant's summary grounds of resistance where # is a page number and § is a paragraph number*

*Extracts from the Countryside Stewardship: Higher Tier Manual and the terms of reference of the Fursdon review are provided with these summary grounds, with the reference [NE/#]*

**Introduction**

1. These grounds are prepared on behalf of the Second Interested Party ("NE") pursuant to §5 of the Order of Lang J dated 2 October 2024. NE adopts a neutral position on the claim.
2. The claim alleges various breaches of duties by the Defendant under provisions of the Dartmoor Commons Act 1985 ("DCA 1985") (grounds 1-3) and/or frustration of the statutory purpose of the DCA 1985/acting *ultra vires* that Act (grounds 2 and 6). It also alleges breaches of the duty in s.28G(2) of the Wildlife and Countryside Act 1981 ("WCA 1981") (ground 4) and Reg.9(3) of the Conservation of Species and Habitats Regulations

2017 (“**the Habitats Regulations**”) (ground 5) to the extent that in exercising its functions under the DCA 1985 the Defendant did not “*take reasonable steps ... to further the conservation and enhancement*” of the protected features of sites of special scientific interest (“**SSSIs**”) and/or did not “*have regard*” to the requirements of the Habitats Directive.

3. The relief sought is (i) declarations of unlawfulness, (ii) a mandatory order that the Defendant carry out an assessment of the number of animals that can be depastured on the Dartmoor commons under s.4(1) of the DCA 1981 and (iii) a mandatory order that the Defendant comply with s.28G of the WCA 1981 and Reg.9(3) of the Habitats Regulations (SFG/63).
4. The grounds of challenge relate to the functions of the Defendant under the DCA 1985. NE has no role under the DCA 1985, save that the Defendant must notify NE in certain circumstances under s.4(5) (see below). However, NE’s “*view ... that overgrazing of livestock on Dartmoor is causing considerable ecological harm ...*” is relied upon by the Claimant in support of the claim (SFG/1). NE’s role as regards grazing on the Dartmoor commons was set out in its letter to the Claimant of 16 September 2024 [DCC/12-17]. It comprises two overlapping functions: (i) administering the SSSI regime, in particular under s.28E of the WCA 1981, and (ii) providing advice to the Rural Payments Agency as to ‘agri-environment’ schemes entered into with landowners – esp. (to date) Higher Level Stewardship (“**HLS**”) schemes. Both are potentially relevant to grazing pressures and opportunities, and are functions that NE among other things exercises (and must exercise) in support of the conservation objectives of protected sites (SSSIs and, where applicable, special areas of conservation (“**SACs**”)).
5. The claim does not relate to the exercise of NE’s functions. Nor does NE have any particular knowledge of the duties under the DCA 1985 or their exercise by the Defendant. NE therefore neither supports nor opposes the claim. However, given the reliance by the parties on NE’s position and role, these summary grounds set out as far as relevant to the claim: (1) NE’s position on grazing on Dartmoor, (2) NE’s administration of SSSIs (and SACs), (3) NE’s advice on agri-environment schemes and (4) NE’s position on the 'Independent

review of protected site management on Dartmoor<sup>1</sup> chaired by David Fursdon and published on 13 December 2023 (“**the Fursdon review**”). For the avoidance of doubt, NE does not agree that the claim should have been brought against NE, or against the Department for Environment, Food and Rural Affairs (cf. SGR/4, 72).

### **Grazing on Dartmoor and the Dartmoor commons**

6. NE’s position is that inappropriate grazing levels are impacting the ecological condition of protected features of SSSIs and SACs in Dartmoor. For that reason, NE’s view is that changes to grazing regimes are likely to be needed in certain parts of the Dartmoor commons at certain times of year to achieve favourable condition in the long term. At the same time, NE accepts that grazing is not the only reason for the decline in the condition of protected sites; climate change and air pollution are also factors although these need further investigation.
  
7. The impact that grazing may have on the protected features of SSSIs is recognised in Dartmoor by the inclusion among listed operations likely to damage protected features, and therefore requiring NE’s consent of “*[g]razing or changes in the grazing regime (including type of stock or intensity or seasonal pattern of grazing and cessation of grazing)*”.<sup>1</sup>
  
8. The nature and location of any changes in grazing in order to achieve favourable condition of sites is fraught with practical difficulty, and is contentious. In practical terms, the Dartmoor commons are large, generally unfenced, areas that require more or less grazing with appropriate stock depending on the area and the time of year. Achieving that, whether by agreement or regulation is challenging. As is noted in a NE post “*[w]e will need to work with graziers to agree how we can achieve the right animals in the right place*”

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<sup>1</sup> As regards East Dartmoor SSSI, Dendles Wood SSSI, North Dartmoor SSSI, South Dartmoor SSSI and Wistman’s Wood SSSI [CB/235, 236, 237, 238, 240]. The list of operations for Tor Royal Bog SSSI simply includes “*[c]hanges in the grazing regime (including type of stock or intensity or seasonal pattern of grazing and cessation of grazing)*” [CB/239].

*at the right time of year. This will take time and a partnership approach given the multiple demands that farm businesses on Dartmoor face” [CB/124].*

9. The contentious nature of proposals to reduce grazing in some areas is illustrated by the example of a threatened stop notice relating to Willingswall and Hentor Warren Common (Unit 61 of South Dartmoor SSSI) in 2023 [DCC/29-40]. NE wished to prohibit grazing from 1 November to 30 April. The Defendant responded making a number of points, including that the restriction was irrational, that not all commoners had been notified and that the land is open to and unfenced and is *“not like an unfenced area that occupiers have voluntarily agreed to stock at very low levels for financial reward”* – i.e. under an agri-environment scheme. The contentious nature of the issue, and its relevance to new Environmental Land Management Schemes, was the chief trigger for the Fursdon review (see §§3.1-3.5 [CB/149]).

### **Administration of SSSIs (and SACs)**

10. The legal background by which NE administers SSSIs set out at SGR/27-42 is broadly accurate. The key provision is s.28E(1) of the WCA 1981 which prohibits an owner or occupier from carrying out (etc.) operations listed in a SSSI notification without the prior notification and written consent of NE (s.28E(3)(a)) or pursuant to a management agreement or scheme. In practice, NE considers whether to grant parallel consents where agri-environment schemes (that are not management agreements or schemes) are entered into that might affect SSSIs.
11. Where there is no consent (etc.), breach of s.28E(1) is an offence (s.28P) that is enforceable by NE, whether by way of criminal prosecution<sup>2</sup> or civil sanctions.<sup>3</sup>
12. These may be wide powers of enforcement (SGR/31), but they are essentially reactive. NE is not in a position to monitor all activities on all SSSIs in Dartmoor (or elsewhere). SGR/38

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<sup>2</sup> Natural Environmental and Rural Communities Act 2006 s.12.

<sup>3</sup> Regulatory Enforcement and Sanctions Act 2008 and the Environmental Civil Sanctions (England) Order 2010. In addition to stop notices, NE may issue fixed mandatory penalties, discretionary requirements and enforcement undertakings.

states that NE is “*active in using its powers of enforcement*” referring to the threatened stop notice example noted above.<sup>4</sup> However, NE is only able to be as active as resources and information allow. That is to some extent inherent in the statutory scheme that requires owners or occupiers to give NE “*notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out*” (s.28E(1)(a)). Of marginal note here, there is separate and specific provision at s.4(5) of the DCA 1985 for notice by the Defendant to NE of operations which it intends to undertake (or gives permission to others to undertake) that may harm SSSI features (see SGR/29). NE is not aware of any such notice being given.

13. The Dartmoor SSSIs also overlap with the Dartmoor SAC. This has two implications. First, under Reg.24 of the Habitats Regulations where a proposed operation is likely to have a significant impact on the SAC, NE must undertake a habitats regulations assessment. NE may then only grant permission for the operation if it is satisfied that it will not adversely affect the integrity of the site. Second, NE also provides advice to the Rural Payments Agency (“**RPA**”) under Reg.63(3) of the Habitats Regulations when the RPA is negotiating agri-environment schemes.

### **Agri-environment schemes**

14. Agri-environment schemes are agreements between the RPA (on behalf of the Secretary of State) and agreement holders. In exchange for a financial grant, agreement holders enter into environmental stewardship agreements.<sup>5</sup> There are three types of stewardship agreements, the most relevant of which are Higher Land Stewardship (“**HLS**”) agreements. The way that the HLS scheme applies to common land is set out in the *Countryside Stewardship: Higher Tier Manual* (extracts appended) which explains at §3.2.7 that “[c]ommoners/graziers need to agree and name one person to sign the application. This person will then be responsible for maintaining the relevant agreement, if accepted, on behalf of all the commoners/graziers” [NE/11]. Annex 6 of the document [NE/15] explains that where there are five or more parties benefiting from or contributing to the delivery

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<sup>4</sup> The matter was resolved without the need for regulatory action.

<sup>5</sup> Environment Act 1995 s. 98; Environmental Stewardship (England) Regulations 2005.

of the agreement, a more formal Commons Association must be set up, with officers to manage the association. The aim is that as many relevant commoners are included in such agreements as possible.

15. NE is not a party to HLS agreements, but as noted above, does advise the RPA on the ecological aspects of such agreements, including – where relevant – considerations relating to protected sites (including SSSIs and SACs).

### **The Fursdon review**

16. NE participated in the Fursdon review and supports its conclusions. The terms of reference of the review (appended) included *“making recommendations as to the most effective grazing and management regime or regimes to deliver improvements on the protected sites across Dartmoor, so they can maintain or achieve favourable condition whilst also contributing to the long-term, sustainable delivery of other priorities, such as agricultural production, public access and the preservation of cultural and natural heritage”* [NE/25].

17. The conclusions cover a range of issues, but include recognition of the need for action on grazing, in particular by sheep (see §§23.4-23.6 [CB/177]). Generally, however, the Fursdon review concluded that more work was needed to understand the condition of Dartmoor’s SSSIs and the influences impacting upon them (§19.3 [CB/173]). On the future of agri-environment schemes, the review recommended a Dartmoor-wide scheme, greater collaboration and new ways of working (§§21.1-21.5 [CB/174-175]). These recommendations would be underpinned in governance terms by the recommendation at §8.3:

*“... that Dartmoor’s governance should be reinforced by the creation of a Land-Use Management Group, focusing particularly on protected areas (SAC and SSSIs) and surrounding land. This should be independently chaired and have both key stakeholder organisations and commoners’ representatives in membership. Relevant government*

*agencies and arm's length bodies (ALBs) (including NE) should also be represented and be fully committed to the success of the group."*

18. As is set out in the Government's response to the Fursdon review, the intention is that a Land-Use Management Group be set up no later than autumn 2024 to help inform the next steps for future agri-environment agreements in 2025. NE is committed to work with the group and agree next steps [CB/188-189].
  
19. On grazing, the Government's response noted the reviews findings, and that since the review was published details of *"the moorland offer"* were published in January 2024 as part of the update to the Agricultural Transition Plan 2021-2024 [CB/190]. It emphasises the need for control on Molinia (tussocky grass) overgrowth and grazing to tackle it, as well as payments for shepherding stock and *"the difficulties around removing stock in winter"* on which Defra *"is exploring potential options"* [CB/191]. Overall, the response supports further work to address the issues facing Dartmoor through updated agri-environment schemes and a more collaborative approach.
  
20. The points raised in the Fursdon review and the Government's response provide important context for the claim and the relief sought, but do not directly address the arguments made as to what might be required of the Defendant under the DCA 1985, which was not part of its remit.

**NED WESTAWAY**

**FRANCIS TAYLOR BUILDING**

**23 OCTOBER 2024**



AC-2024-LON-002896

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT

B E T W E E N :

R (on the application of WILD JUSTICE)

Claimant

and

DARTMOOR COMMONERS' COUNCIL

Defendant

and

(1) SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS  
(2) NATURAL ENGLAND

Interested Parties

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SECOND INTERESTED PARTY'S APPENDICES TO SUMMARY GROUNDS

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Fursdon Review Terms of Reference	22 - 29



Department  
for Environment  
Food & Rural Affairs



The European Agricultural  
Fund for Rural Development  
Europe investing in rural areas

# Countryside Stewardship: Higher Tier Manual



[www.gov.uk/rpa/cs](http://www.gov.uk/rpa/cs)

**Countryside  
Stewardship**

Protecting the natural  
environment for future  
generations

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# Introduction

## Countryside Stewardship

Protecting the natural environment for future generations

Countryside Stewardship is administered by the Rural Payments Agency (RPA) on behalf of the Department for Environment, Food and Rural Affairs (Defra). Natural England and the Forestry Commission provide technical advice in support of the scheme.

This manual explains what you need to do to apply for the Higher Tier elements of Countryside Stewardship and the additional requirements and processes which must be followed for Higher Tier.

## Countryside Stewardship Agreement

A Countryside Stewardship agreement comprises of:

1. the scheme Terms and Conditions at Annex 1
2. the Agreement Document (which sets out Agreement Holder specific details)
3. the supplementary documents referred to in the Agreement Document.

The Terms and Conditions at Annex 1 refer to the mandatory elements of this manual that Agreement Holders must comply with.

## Mandatory parts of the Higher Tier Agreement

The mandatory elements of the manual are:

- Section 3: Who can apply and what land is eligible
- Section 5: Scheme requirements and procedures
- Section 6: Agreement Management
- Annex 6: Common land (for common land and shared grazing applications only)
- Annex 8: Livestock record-keeping requirements on arable and grassland

For applications involving Woodland improvement and infrastructure (FY2): multi-year option (WD2) and capital items, Annex 5 sets out the procedure to follow when applying.

## More information

Read about the different elements of [Countryside Stewardship](#) and use [Countryside Stewardship forms](#) on GOV.UK to help with your application.

## 2 How it works

In this section you can read about the main elements of the Countryside Stewardship Higher Tier scheme.

### 2.1 Introducing the Higher Tier

The Higher Tier:

- offers grant payments to support our most environmentally significant sites and woodlands
- allows you access to a greater range of Countryside Stewardship grants
- offers some flexibility to tailor prescriptions to suit your local environment.

Grants are available as:

- management options – multi-year grants, most options last for 5 years, but some options can be 10 or 20 years long
- capital items – a range of grants for specific capital works or items – work must be completed within 2 years.

The Higher Tier is competitive so your application will be scored and ranked.

If your application is successful, we will make an agreement offer to you. If you accept the agreement offer, your Countryside Stewardship Agreement will start on 1 January 2020.

The payment amount you receive for your agreement will depend on the grants you choose and compliance with your agreement.

### 2.2 The Grants available in the Higher Tier

There are grants available to support habitat creation, restoration, and on-going management. The grants available vary by habitat. There are grants to support:

- species rich grasslands, wet grassland and water meadows
- heathland and moorland
- coastal sand dunes, vegetated shingle, saltmarsh, inter-tidal and saline habitats
- fens, reedbeds, ponds and ditches
- wood pastures and parklands, orchards, hedges and scrub
- woodland.

The Higher Tier also gives you access to a wider range of grants to:

- protect vulnerable or threatened species
- manage hedgerows, dry-stone walls, stock fencing and gates
- improve local water quality and manage flood risk in your local area
- convert and manage land to organic certification standards
- protect and enhance historic, archaeological and geo-diversity features
- support educational access.



## 2.2.1 Organic management and conversion options

You can apply for organic management and conversion options in combination with other grants.

We do not score the organic management and conversion options within your application. Read Section 5.4.3 for further information on applications that include organic options.

You should apply for the [Mid Tier](#) on GOV.UK if you want to choose only organic options.

## 2.2.2 Choose a Wild Pollinator and Farm Wildlife Package (WPFWP)

You may be able to improve your application's score by choosing WPFWP. The package groups management options together. This will help you to provide farmland wildlife with the essential resources they need to thrive and breed successfully.

If you meet the minimum criteria for the package your score will increase significantly. You can find full details in Annex 4.

## 2.3 Eligibility

You must meet the eligibility requirements for the scheme – you can find these in section 3.

You must also meet the eligibility requirements for grants (options and capital items) that you choose.

## 2.4 Scoring

The Higher Tier is competitive which means your application will be scored then ranked. Agreements will be offered to those with the highest scoring, eligible applications and will depend on the budget available.

- You can read how to improve your application score in section 4.7
- A guide to woodland scoring is included in Annex 5
- All other application scoring information is in Annex 3

## 2.5 Making an application and important dates

There are 2 stages in applying for the Higher Tier, an initial application stage and then the development of your final application.

### When to apply

You can apply for Higher Tier from 18 February to 3 May 2019. We will not accept any applications we receive after this date.

### Important dates for all Higher Tier applications:

Initial application stage	Deadline
Application period opens	18 February
Last date to request application pack	31 March
Last date to submit initial application	3 May
Customer notified of success or failure of initial application	by early June

Final application development	Deadline
Final application development with customer	June - August
Conclusion of Negotiations letter and Negotiated Schedule issued by RPA or Forestry Commission	by mid-September
Customer confirms if they wish to proceed to formal offer and supplies any required supporting information to RPA	30 September
Woodland only applications final scoring	October

## 2.6 Making an initial application

You will need to ask for an application pack. Sections 4.1 to 4.5 explain how to do this.

Once you have received your application pack, you will need to fill in your initial application. Sections 4.6 to 4.8 explain the initial application process.

In Section 4 you can also find tools and information that will help you to:

- understand which habitats and species are a priority in your local area
- review the best grants for your site and your local environment
- find out about the management commitments required by each grant
- improve your score
- understand whether you need consent or permission from Natural England, or other organisations
- identify what evidence you need to submit with your application.

Annex 2 includes a list of all grants with payment rates for each option.

Once we have received your initial application, we will score it and then rank it against other applications. The highest scoring applications will go to the next stage. We will tell you if your initial application has been successful.

## 2.7 Develop your final application

If your initial application is successful you then need to develop it into a complete final application. Natural England and/or Forestry Commission will help you to do this by providing recommendations.

At the end of this negotiation period you will be asked to confirm that you would like to proceed to a formal agreement offer.

Sections 4.10 to 4.14 explain this process.

## 2.8 Agreements and agreement duration

If you accept your agreement offer this will become your Countryside Stewardship Agreement. Agreements begin on 1 January 2020. To accept an agreement offer you must sign the declaration and return it to us.

### 2.8.1 Agreement duration

- Most Higher Tier agreements last 5 years from the agreement start date



- Higher Tier agreements may be longer if they contain long-lasting options or are on common land. You can find a full list of longer-lasting options in Section 4.7.9
- You must complete the capital works within a Higher Tier agreement in the first 2 years of your agreement (read section 6 for more information). Some capital items may have specific deadlines.

### **2.8.2 Changes to agreements**

You will be expected to meet all the requirements throughout the duration of your agreement.

It is important that there is consistent management during the period of the agreement to make sure that the environmental benefits are achieved.

You may, in limited circumstances, make changes to your agreement but we must approve these in writing in advance. Read Section 6 for more information.

### **2.8.3 Natural England / Forestry Commission support**

Once your agreement has started Natural England and/or the Forestry Commission will offer you after-care support. We will tell you if there are any changes in the support available.

## **2.9 Payments and Agreement claims**

You will need to complete and submit a claim form to receive payments. Read Section 6 for information about which options or capital items you can claim for, and the deadlines for making payment claims.





## 3 Who can apply and what land is eligible

You must read and meet the requirements detailed in this section as these are mandatory for all Higher Tier Agreement Holders.

The Higher Tier of Countryside Stewardship is open to land managers who are one of the following:

- an owner occupier
- a tenant
- a landlord
- a licensor.

### 3.1 Eligible land

#### 3.1.1 What land you can enter into the scheme

To be eligible for Higher Tier, land must be one of the following:

- within an agricultural area (defined as any area taken up by arable land, permanent grassland or permanent crops)
- a protected site, including:
  - Sites of Special Scientific Interest (SSSI) – read [Find protected areas of countryside on GOV.UK](#)
  - Special Areas of Conservation (SAC), including proposed SACs
  - Special Protection Areas (SPA) including proposed SPAs
  - Ramsar sites – read the [Ramsar Convention](#) on GOV.UK
- a terrestrial Priority Habitat – read [UK BAP Priority Habitats](#) on GOV.UK
- land that supports a Priority Species – read [UK BAP Priority Species](#) on GOV.UK
- woodland defined as an area of land that:
  - is at least 0.5 hectares
  - has an average width of at least 20 metres
  - is under groups/lines of trees that are, or will reach, at least 5 metres in height and with a crown cover of more than 20% of the ground area.

Land that meets the definition of woodland given above, must also meet the following requirements:

- open space in the woodland should:
  - be no more than 20% of the total woodland area – this may be increased to 30% in exceptional, fully justified cases
  - be no more than 0.5 hectares for any individual space –larger open areas will only be considered as woodland in exceptional circumstances
  - include forest tracks, rides, wayleaves and other permanent open areas.

If you have declared the land for grazing on the Basic Payment Scheme (BPS), it is not eligible for



Woodland Creation Maintenance (WD1) or Woodland Improvement (WD2) options.

There is no minimum area that you must enter into the scheme, although there are minimum areas for individual options and capital items.

If you want to apply for a Countryside Stewardship Higher Tier agreement on woodland, you must have a Forestry Commission approved Woodland Management Plan (WMP). Your WMP must be approved or approved in principle before you submit your Higher Tier initial application on or before 3 May. You must have an approved WMP throughout the 5 year period of your Higher Tier agreement. If you have a WMP that will expire before your Higher Tier agreement ends, you will need to get approval of a new WMP for the remaining time of your Higher Tier agreement. If your WMP is approved in principle when you make your initial application, the WMP must be fully approved with any associated felling licence in place by the final application deadline on 30 September.

### 3.1.2 Ineligible land

The following land is not eligible for the scheme:

- developed land and hard standing, including permanent caravan sites and areas used for permanent storage. Eligible exceptions include:
  - traditional farm buildings that are eligible for grants under Countryside Stewardship
  - yards, tracks and farm buildings proposed for management through Countryside Stewardship capital items
- land parcels that have solar panels for generating electricity for use off-farm – read Section 3.1.9
- areas (1 hectare or more) of permanent standing or running water
- land already entered into another scheme read Section 3.4
- land that is already subject to another obligation that is incompatible with Countryside Stewardship
- land parcels that are not entirely within England
- land where you do not have management control for the period of the agreement and you are not able to have your application countersigned by the landowner – read Section 3.2.

It is not possible to overlap certain Countryside Stewardship options with Ecological Focus Areas (EFAs) at any time during the Countryside Stewardship agreement. This is because we cannot pay twice for the same activity (known as double funding).

However, co-location within the same land parcel is allowed where the options do not overlap. Read Section 3.3.1 for more information.

### 3.1.3 Applications from land managers operating multiple farm businesses

A business will be treated as one farm business if any one of the following apply:

- a number of farms are managed as a single unit
- there is a single vendor number
- there is one Single Business Identifier (SBI) number.

In most cases the management or production unit will be the same farm or woodland area that is registered with the SBI and the beneficiary will submit a single application.

You can submit more than one application for a Higher Tier agreement in the same year. The



agencies, for example:

- Ministry of Defence
- Forestry Commission
- Royal Parks.

NDPBs are public bodies that have a role in the processes of national government but are not a government department, and are not part of one. These include:

- Environment Agency
- Natural England
- Historic England
- National Forest Company.

Parish councils and former college farms are not considered to be public bodies and so are eligible to apply for Countryside Stewardship.

For information on the eligibility of local authorities to claim for woodland creation and maintenance grants refer to the [Woodland Creation Grant manual](#) on GOV.UK.

The following table provides more detailed eligibility criteria for public bodies:

Body/Organisation	Eligibility	
Government departments, executive agencies and NDPBs (for example Ministry of Defence, Forestry Commission)	Ineligible	
Other public bodies (for example, local authorities, National Park authorities and public corporations)	Eligible	Provided the work does not form part of their obligations as a public body.
Parish Councils and former college farms	Eligible	
Tenants of eligible public bodies	Eligible	Ineligible where the work is already a requirement of the tenancy agreement. The public body must countersign the application if the tenant does not have security of tenure.
Tenants of ineligible public bodies	Eligible	Ineligible where the work is already a requirement of the tenancy agreement. Tenants must have security of tenure for the full term of the agreement, as the public body cannot countersign the application.

### 3.2.7 Common land and shared grazing

Common land and shared grazing is only eligible for the Higher Tier of Countryside Stewardship. Commoners/graziers need to agree and name one person to sign the application. This person will then be responsible for maintaining the relevant agreement, if accepted, on behalf of all the commoners/graziers.



Before applying, you must read Annex 6 which contains the important additional requirements relevant to a Higher Tier application that includes common land and shared grazing.

### 3.2.8 Business Viability Test

We will check all applicants against an insolvency register. If we assess your application as not financially viable, we may not offer you an agreement.

Applications involving capital expenditure over certain limits will require additional evidence and undergo additional checks. Read Section 4.12.2 for more information.

## 3.3 Relationship with the Basic Payment Scheme (BPS)

If you are using land to claim BPS, you may also enter that same land into a Countryside Stewardship Higher Tier agreement.

Some land that is ineligible for BPS may still be eligible for Countryside Stewardship. For example, features such as ponds and areas of scrub which are ineligible for BPS can be eligible for Countryside Stewardship options.

You must read the [BPS rules](#) on GOV.UK.

When you include land parcels in a Countryside Stewardship Higher Tier application that have been used to claim BPS in the same year, we will check that the Countryside Stewardship management option applied for is compatible with the BPS land use you have declared.

When including land parcels in your Countryside Stewardship Higher Tier application, you should note that:

- some Countryside Stewardship grassland options can only be located on land declared with a land use of permanent grassland on the BPS claim
- you can only locate Countryside Stewardship arable options on land declared with a land use of temporary grassland or other arable land use on the BPS claim.

You can find information on the compatible land use classes for each option in the Countryside Stewardship grant finder.

It is the BPS land use declared in the year you apply that we will check for your Countryside Stewardship Higher Tier application, even though the Countryside Stewardship agreement start date is 1 January 2020.

Where you use Countryside Stewardship Agreement Land to claim BPS, we will check to make sure that the land use code entered for each land parcel is compatible with the Countryside Stewardship management. This will be the land use declared in the same year that the Countryside Stewardship claim is submitted.

It is possible to have more than one Countryside Stewardship option in a single land parcel. If there is no permanent boundary between the options, you do not have to split the parcel into 2 separate land parcels in the Rural Payments service.

The soil and water options can only be used to provide a level of protection over and above that required by cross-compliance.

For more information about the BPS rules or for guidance on declaring land that is in both Countryside Stewardship and BPS read the relevant [BPS rules](#) or contact us on 03000 200 301.



# Annex 6: Common land and shared grazing additional requirements

**Countryside Stewardship**  
Protecting the natural environment for future generations



# Annex 6 Common land and shared grazing: additional requirements

## Introduction

This annex contains important additional requirements relevant to a Higher Tier Countryside Stewardship application on common land and shared grazing.

You must read and meet the requirements detailed in this section as these are mandatory for all Higher Tier Agreement Holders.

If you want to apply for Countryside Stewardship on common land or shared grazing you must read this annex along with the relevant sections of the Higher Tier Manual. Where the common land or shared grazing application process requires a different approach, you must follow the requirements set out in this annex.

## Definitions

In the context of this manual 'common land' means either:

- land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006, or
- land to which Part 1 of that Act does not apply and which is subject to rights of common within the meaning of that Act.

This is taken from the definition of 'common land' given in schedule 5 of the Commons Act 2006.

'Shared grazing' means communal pasture where graziers have a legal entitlement to graze (for example, a pasture used jointly by tenants) where the land is not registered as common land.

In the term 'commons association' the word 'association' is used to cover landowners, sporting tenants and graziers working together in an association or group unless otherwise stated.

## Main points

- Common land and shared grazing agreements are only available through Higher Tier Countryside Stewardship and for a term of 10 years.
- Agreements can only include land that is part of the common. Any non-common land parcels must be applied for as part of a separate Mid or Higher Tier application.
- Agreements may consist of one or more whole or part commons, provided they form a single grazing unit.
- An internal agreement must be set up, signed by all the parties to the Countryside Stewardship application, listing each person's responsibilities and the payments they may expect to receive (see below).
- The parties to the Countryside Stewardship application must appoint a representative to be the main business contact for the Countryside Stewardship application and subsequent Countryside Stewardship agreement. Throughout the remainder of this annex this person will be referred to as 'the applicant or you'. (see below)



- You must complete a [common land and shared grazing supplementary application form](#) on GOV.UK
- A Natural England adviser will work with you to build a suitable application.
- Organic maintenance and conversion options in Countryside Stewardship are not available for common land or shared grazing.

## Commons Association and/or Internal Agreement

Setting up an effective internal agreement between applicants is a requirement of a Countryside Stewardship agreement offer. You must have a signed copy of the agreement, including financial information, before the Countryside Stewardship agreement can begin. You must send a signed copy of the internal agreement to us before the Higher Tier agreement's start on 1 January 2020.

Natural England or RPA cannot be involved in drafting the document or in any dispute about its operation.

The internal agreement must be fit for purpose, fair and reflect the respective parties' contribution to the scheme. If it is not and parties cannot agree on amendments, then we may not offer a Countryside Stewardship agreement. During the agreement term, we may ask to see formal evidence that the internal agreement operates effectively, for example, minutes of recent meetings and distribution of funds.

In all cases where there are 5 or more parties benefiting from or contributing to the delivery of the Countryside Stewardship agreement, a more formal Commons Association must be set up with officers to manage the association. You must keep evidence that shows that this formal Commons Association has been set up. We may ask to see this evidence.

If there is already an association in place, it can continue as long as it meets the minimum requirements set out in this annex. If an existing commons association covers a number of commons, a separate group of members must be set up (under the umbrella of the association) to create an internal agreement for the common that is the subject of the Countryside Stewardship application.

## Requirements of an internal agreement or Commons Association

The association must effectively represent all those who have a legal and active interest in the management of the land:

- the landowner,
- all the active commoners or graziers, and
- other people who may have a legal or active interest in managing the common or shared grazing, for example the owner of the shooting rights.

You must consult with them when preparing the Countryside Stewardship application. Some landowners may not wish to be involved, but prefer to be represented by their agents or their tenants who are permitted to graze or utilise rights. You should always consider the landowners' surplus in any negotiations.

The internal agreement must involve all the active rights holders but you must also consider inactive rights holders, especially those who can use their rights, as they may wish to do so during the period of the agreement. You must also consider that some rights holders may lease their rights. Rights of common attached to land cannot be leased for a term longer than 2 years



(although the lease can be renewed at the end of each term). An RPA inspector or other inspector or auditor may ask to see evidence of any lease.

You must also contact anyone who does not want to participate in the Countryside Stewardship agreement or anyone who has a grievance. You must consider their existing management practices and proposals for changes in case they put the objectives and requirements of the internal agreement and Countryside Stewardship application at risk. It may be possible to address their concerns and make them a party to the internal agreement and Countryside Stewardship application. Or, as they can legally exercise their rights on the common, it may be necessary to negotiate ways to fulfil their aims without risking the internal agreement and Countryside Stewardship application. You must keep a record of any decisions so you can deal with any disputes that occur at a later date.

To make sure all potential participants, landowner, sporting rights holders and graziers in the Countryside Stewardship agreement are consulted and briefed, you can consult the potential participants in the Countryside Stewardship agreement individually, in small groups, or at a general meeting. A general meeting can also serve to brief individuals and organisations that have an interest in the land, for example Natural England (if the land or part of it is a Site of Special Scientific Interest (SSSI)), or members of the community. You can place notices in local newspapers and at access points to the common.

Where the group will have 5 or more members, you must appoint officers to manage the association – a chairman, secretary and a treasurer are essential. These must not all be from one family or enterprise (for example, they must have separate single business identifiers (SBIs)), and they must reflect the range of beneficiaries in the agreement. The written constitution must authorise these officers and the applicant to carry out certain specified business on behalf of the association, for example to open and operate a bank account.

You must agree a formula to allocate payments to members of the association or group. This formula can make payments according to their contribution and levels of responsibility.

You must have a written constitution. Whilst any bodies or individuals providing assistance may be able to provide a draft or template constitution, you must make sure that the constitution meets the needs of the particular circumstances of the group. The constitution must:

- describe membership requirements and list the members
- list responsibilities and officers
- set out governance for decision making and meetings
- identify group commitments
- set out how the Countryside Stewardship agreement payments will be paid
- describe how the multi-annual options and requirements for capital items will be complied (met) with on the common or shared grazing
- describe a management mechanism for decision making and the resolution of disputes, and
- set out how changes in membership will be dealt with.

The internal agreement must make provision for increases in grazing livestock numbers by those not involved in the Countryside Stewardship agreement. Where there is a maximum level of stocking set in the Countryside Stewardship agreement, you must add a clause in the internal agreement to state that the graziers already involved in the Countryside Stewardship agreement will, if necessary, reduce their stock numbers in order for the overall level of stocking to stay within this maximum. Negotiation of the internal agreement can provide the opportunity to agree husbandry practices that help participants work together to manage the common or shared





grazing.

You must keep full records of all the meetings at which the decisions set out above were agreed.

Compliance with the Countryside Stewardship agreement will be the shared responsibility of those who are party to the internal agreement, but day to day administration will be the particular responsibility of the applicant.

### No known landowner

Where there is no known landowner, and ownership is recorded as unknown on the commons register, you should contact us to discuss the circumstances. Where there is no known landowner, ownership will almost always be with the local authority.

In addition, responsibility for management of some commons is with the local authority under a scheme for the regulation and management of a common made under the Commons Act 1899, including in some cases where the common has no known owner. In these cases, you will need agreement for your application from the local authority.

Where the landowner cannot be identified or contacted, you will need to give us a full explanation for the application to progress.

### Part-commons

Part-common agreements are only allowed under exceptional circumstances, on a case-by-case basis, as agreed with us.

Normally commons coincide with habitat and management boundaries, but exceptionally parts of a single common may be managed in different ways. In such circumstances, it may be more appropriate to progress applications representing 'part-commons'.

Part-commons agreements must satisfy all the requirements for commons agreements:

- they must cover a defined area of land with its own Rural Payments service parcel number(s)
- the agreement area must either be visibly distinct or be bounded by a physical barrier to mark it out from the non-agreement area
- they must be subject to a separate and binding association and group internal agreement.

In addition, part-commons agreements must also:

- be managed as a separate and single grazing unit, where land management practices on the remaining part of the common will not put delivery of the agreement at risk
- have an audit trail justifying splitting the common, and a clear explanation as to how the Countryside Stewardship agreement works that also covers any non-participation by any rights holders.

Areas of common cannot be left out of a Countryside Stewardship agreement to create 'sacrifice places' for unsuitable supplementary feeding (which can be within the limits of cross compliance tolerances), or to provide grazing areas for non-signing commoners which may then not be compliant with the Countryside Stewardship agreement whilst the rest of the common is compliant.

We keep a central register of all part-common agreements.



## Before making an application

In addition to the requirements outlined elsewhere in this manual, to make an application in respect of common land or shared grazing you must carry out each of the steps set out below.

### Step 1: consult stakeholders

Where a common has not previously been subject to an agri-environment agreement, or where consultation is required to bring the land owner(s), rights-holders and other stakeholders together in support of the management proposals, activities to develop awareness, understanding and agreement across these interest groups will be required before you can make a Countryside Stewardship application. The extent of public engagement required will depend upon the level of management change which is being considered within the Countryside Stewardship agreement. You can find more guidance on this in Note A at the end of this annex.

### Step 2: select a representative or agreement signatory

Once potential applicants have read this guidance, and have decided to pursue a Countryside Stewardship application, they will need to agree on the person who will make the application on their behalf. We need a letter of authority signed by all potential participants in the Countryside Stewardship agreement: landowner, sporting rights holders and graziers. This person (who can be an agent) will be the main business contact for the Countryside Stewardship application and subsequent Countryside Stewardship agreement. This person will sign the Countryside Stewardship agreement on behalf of the group or association, act on behalf of the association and receive the payments.

### Step 3: start to establish a group with an internal agreement

Establish a Commons Association or internal agreement, in line with the requirements set out above. If there is already an association in place, you can continue with it, as long as it can fulfil the minimum requirements set out in this annex.

If help is needed to set up an association, this may be available from farmers' representative bodies, a federation of commoners, commons councils, a land or agricultural agent or surveyor, or a solicitor specialising in rural practice. Associations may be able to apply for the [Administration of group managed agreements supplement' \(SP10\)](#) on GOV.UK to cover some of these administrative costs in establishing and managing a Countryside Stewardship agreement where there are 2 or more parties involved.

### Step 4: open a bank account

Open a bank account on behalf of the association.

### Step 5: contact us and complete an application form

Either RPA and/or Natural England will contact you in good time to discuss your Countryside Stewardship application. If the common or shared grazing is in an existing agri-environment agreement, you will need to check this annex to make sure that you are able to meet the new agreement requirements.

If you are not an existing Higher Level Stewardship Agreement Holder, please contact us to discuss your proposed application. The application would then follow the same timetable as any other Higher Tier application.

Potential applicants should read the Higher Tier Countryside Stewardship Manual so that they can consider their options and begin discussions within their association at an early stage.



If you decide to proceed, you must submit an application form by 3 May 2019. If the application is successful and you subsequently accept an agreement offer your Countryside Stewardship agreement will start on 1 January 2020.

## Step 6: register a Single Business Identifier and check the Land Management System

There must be a separate Single Business Identifier (SBI) for the association (even if members of the association already have their own SBIs). The individual beneficiaries who are part of the association will also need to be registered with us in the [Rural Payments service](#).

You should make the application to register the commoners' or graziers' association with us.

You will need to check that the common is registered correctly in the Rural Payments service, liaising with the other participants to agree how to enter the land into a Countryside Stewardship agreement. You will have to resolve any boundary issues with neighbouring commons and farms before you apply.

## Step 7: negotiate an application with Natural England and RPA

We will work with you and Natural England to develop the details of the proposed agreement. In doing so, we will need to see the details of the internal agreement, as this may affect the options for inclusion in the agreement.

You must fill in the [Common land and shared grazing supplementary application form](#) from GOV.UK and send it with your final application. On this form you must be able to declare on the supplementary form that:

- the landowner of the common or shared grazing consents to the Countryside Stewardship agreement, and
- the RPA customer registration (SBI) for the common or shared grazing includes the names and SBIs of all people who will benefit from or contribute to the delivery of the Countryside Stewardship agreement.

You must send us this final application (and accompanying documentation) by 31 August. As with any successful Higher Tier application, we will issue an agreement offer, with a declaration for you to sign and return.

You must send a signed copy of the internal agreement to us before the Higher Tier agreement starts on 1 January 2020.

## Step 8: Site of Special Scientific Interest consent

Where the land includes an area of SSSI, the Countryside Stewardship agreement offer will be subject to a formal notice and consent process.

If new members wish to join the association during the Countryside Stewardship agreement period, to deliver management as part of the Countryside Stewardship agreement, the association must refer the matter to Natural England, since the changes may need to be covered by a consent.

Anyone carrying out activities on an SSSI without consent may be acting in breach of the Wildlife and Countryside Act 1981.



## Note A: public engagement

The extent of public engagement required will depend upon the management change which is being considered within the Countryside Stewardship agreement and the impacts that the changes may have on features of interest on the common and on local and national stakeholders. Almost all commons have features of public interest, these include but are not limited to:

- public access rights
- historic features
- landscape
- nature conservation

Guidance [Carrying out works on common land](#) is available on GOV.UK. This sets out the type of work that requires consent from the Planning Inspectorate, exemptions and how to apply.

Where work is proposed that needs consent from the Planning Inspectorate you must follow the principles set out in the guide called '[A common purpose: a guide to agreeing management on common land \(CP1\)](#)' on Historic Englands website.

Where management changes do not require consent from the Planning Inspectorate public consultation is still required. In these circumstances you do not need to follow the principles in 'A common purpose' but it may be helpful to do so, particularly where there is considerable public interest in your site, for example, if there are significant numbers of visitors.

You should identify relevant stakeholders, contact them, supply information about the proposed scheme, what the intended outcomes will be (for example for biodiversity), and give them the opportunity to give feedback, especially if the proposals would affect them. It may be helpful to prepare a summary of the scheme proposals, including maps and pictures that you can send to stakeholders, posted on relevant websites and handed out at public meetings.

You should consult:

- the owners of the land
- the commons council or association (if there is one)
- others with a legal interest, for example tenants, anyone who has easements or other rights and covenants over the land
- all known commoners (whether they're actively using their rights or not)
- any parish, district, city or county council in the same area as the land
- [Natural England](#)
- [Historic England](#)
- [National Park Authority](#) (if the area you want to work on is in a National Park)
- [Area of Outstanding Natural Beauty \(AONB\) Conservation Board Joint Advisory Committee](#) (if the area of land you want to work on is in an AONB)
- the [Open Spaces Society](#)
- the [Local Authority Historic Environment Record \(HER\)](#)



You may also need to talk to:

- [Wildlife Trusts](#)
- [Local Access Forums](#)
- [Campaign to Protect Rural England](#)
- [Ramblers' Association](#)
- local amenity societies if there are any in the area where the land is
- anyone living on the land or on neighbouring land who could be affected by your planned works.

You should hold public meetings in local venues and invite stakeholders to hear more about the proposals and comment upon them.

You should keep a record of feedback and comments received about the proposals. You should consider how concerns from stakeholders about the proposals could be addressed by alterations to the scheme and implement these if they do not significantly compromise the outcomes sought. You should be able to demonstrate how you have adapted the scheme proposals where this is appropriate.

These are some examples of changes to scheme proposals which could be made in response to feedback:

- agreement on limitation of use of existing tracks in bad weather to reduce potential damage to track surfaces so as not to inconvenience other users
- agreement to retain certain trees (for example on heathland) where these are of significance to the local community
- alteration of grazing calendar to reduce conflict with public recreation
- avoidance of operations on non-protected historic features
- provision of new/improved access points where a common is already fenced
- provision of seating at a viewpoint
- alteration of felling proposals to retain screening of buildings, roads or industry adjacent to the common
- alteration of the location of tree planting proposals to provide screening of buildings, roads or industry
- agreement to tie back gates when these are not required to secure livestock.





Department  
for Environment  
Food & Rural Affairs

Policy paper

# Independent Review of Protected Site Management on Dartmoor: terms of reference

Published 9 August 2023

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Conservative government**

**Applies to England**

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This paper sets out the terms of reference for the Independent Review of Protected Site Management on Dartmoor (the review).

## 1. Remit

The government is committed to supporting farmers and those living and working on Dartmoor to join together with the appropriate statutory bodies to safeguard and improve its long-term management, especially the areas with greatest environmental value.

The review will be led by an independent chair, David Fursdon, who will be responsible for producing the final report and recommendations with advice and input from a panel of expert advisers (the panel).

The panel will work with local farmers, statutory bodies and stakeholders and will draw on the best available evidence to provide an independent perspective on the management of the protected sites on the moor.

## 2. Scope

The outline scope of the review will include:

- considering recent trends in numbers and types of grazing animals on Dartmoor and the influence that this has had on its ecology
- reviewing the existing ecological evidence base to consider the current management of Sites of Special Scientific Interest (SSSIs) and Special Areas of Conservation (SACs) across Dartmoor to determine why some sites are seeing improvements and others are not, and how lessons might be applied across all sites on Dartmoor
- considering any lessons to be learned from previous approaches on Dartmoor or similar situations elsewhere in the UK by examining comparable case studies, considering the different contributing factors in each case
- making recommendations as to the most effective grazing and management regime or regimes to deliver improvements on the protected sites across Dartmoor, so they can maintain or achieve favourable condition whilst also contributing to the long-term, sustainable delivery of other priorities, such as agricultural production, public access and the preservation of cultural and natural heritage
- advising what's needed to support the delivery of an effective grazing regime, consistent with meeting existing legally binding targets and

statutory requirements

- proposing options focusing on those sites that are currently not recovering or in favourable condition

More specifically, the review may consider:

- establishing the parameters for a grazing and hydrological restoration regime that will deliver SSSI favourable condition.
- recognising the risk of undesirable grass species (*Molinia*) and scrub predominating if grazing is reduced too far and the attendant fire risk associated with this, the co-existence of over-grazed and under-grazed areas on Dartmoor and the need to maintain overall grazing at an appropriate level to manage these risks
- the appropriate mix and management of livestock required to graze Dartmoor, including the role that should be played by rare or traditional (or both) breeds and the minimum population requirements to secure the genetic diversity of the Dartmoor Hill pony population
- identifying the adaptations required to adjust successfully to climate change on Dartmoor and any associated implications for the achievement of favourable condition on particular sites
- recognising the important roles that hill farming plays on Dartmoor in contributing to community cohesion and food production
- presenting agro-economic models that would enable farm businesses to deliver SSSI favourable condition, identifying and proposing the investment, innovation or incentives, or all of these, needed to support farmers in doing so
- exploring how achieving SSSI favourable condition can be combined with the attainment of other desirable public outcomes – maintaining and improving biodiversity, managing appropriate public access, preserving Dartmoor's rich historical and cultural environment and protecting its archaeology

## **Out of scope**

The scope will not include:

- commissioning primary ecological data collection
- providing recommendations on the existing legal framework including, but not limited to, the Natural Environment and Rural Communities Act 2006, the Environment Act 2020 and Agriculture Act 2020
- considering any changes to existing Commons legislation
- commenting on landlord-tenant relationships on Dartmoor and those between Commons rights holders and Commons owners, which are a matter for negotiation between the parties

The review will engage with farmers, land managers and commoners in order to ensure those individuals' views and experience are understood in the review's work.

### **3. Governance and operation**

The independent chair of the review will be David Fursdon, an experienced industry figure based in Devon. The panel members will provide expert advice to the review.

The chair will seek advice from panel member to formulate his own impartial recommendations.

### **4. Timeline**

The first meeting of the panel will be held in early August 2023.

The review will:

- report in autumn 2023
- help inform the environmental schemes and protected site management across Dartmoor

### **5. Outputs**

The review will report to ministers and the government will publish the report.

### **6. Expertise required on the panel**

Advisory panel members will be drawn from experts including those with technical knowledge of:

- ecology of upland ecosystems

- the impact of different management and agricultural practices on upland ecosystems including social, economic or cultural factors (or all of these)

## 7. Recruitment

Due to time constraints and the urgent need to start the review, there will be direct recruitment of advisory panel members into the group based on relevant technical expertise and experience.

The panel members include:

- Cicely Hunt – land agent and agricultural grants specialist, and member of the Independent Agricultural Appeals Panel for the Rural Payments Agency (RPA)
- William Cockbain – Cumbrian hill farmer and former Chair of the National Farmers' Union (NFU) Uplands Panel
- Jeremy Moody – Secretary of the Central Association of Agricultural Valuers (CAAV), whose members engage in a wide variety of rural, agricultural and conservation work across the UK
- Professor Matt Lobley – Professor of Rural Resource Management and Director of the Centre for Rural Policy Research at the University of Exeter
- Professor Charles Tyler – Professor of Environmental Biology at the University of Exeter
- Professor Jane K Hill – Research Scientist for [Resilient Ecosystems](https://www.york.ac.uk/yes/research/resilient-ecosystems/) (<https://www.york.ac.uk/yes/research/resilient-ecosystems/>) at the University of York
- Sue Everett – highly experienced ecologist and land management adviser, Sue is chair of the Countryside Regeneration Trust and former chair of the British Association of Nature Conservationists
- Dr Lisa Norton – agro-ecologist at the UK Centre for Ecology and Hydrology, Lancaster Environment Centre

## 8. Conflicts of interest

Members will be asked to declare conflicts of interest before the meeting via email to the secretariat. If a conflict of interest becomes apparent during the meeting, members must inform the chair.

## 9. Conduct

Members must not disclose any information which is confidential in nature, or which is provided in confidence, without authority. This duty continues to apply after the group has stood down.

Unauthorised disclosure of any information gained could result in membership being terminated early or even criminal prosecution.

## 10. Remuneration

Claiming remuneration and travel expenses (when applicable) for work is optional for external members. Current remuneration rates along with the Department for Environment, Food and Rural Affairs (Defra) policy on claiming travel expenses will be shared with members in advance of their appointment.

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**In the High Court of Justice  
King's Bench Division  
Administrative Court  
Planning Court**

Ref: AC-2024-LON-002896



AC-2024-LON-002896

In the matter of an application for Judicial Review

The King on the application of

WILD JUSTICE [Claimant]

versus

DARTMOOR COMMONERS' COUNCIL [Defendant]

-and-

1. DEPARTMENT FOR ENVIRONMENT FOOD AND RURAL AFFAIRS
2. NATURAL ENGLAND

[Interested Parties]

**On the First Interested Party's application for an extension of time to file its Acknowledgement of Service and Summary Grounds of Resistance.**

Following consideration of the papers filed in the claim including the First Interested Party's Application Notice dated 29 October 2024 and the email responses from the other parties to that application.

Order by Maggie Silver, Planning Court lawyer, in the exercise of powers delegated by the President of the King's Bench Division pursuant to CPR Part 54.1A and section 67B of the Courts Act 2003.

**IT IS HEREBY ORDERED:**

1. The time for the First Interested Party to file and serve its Acknowledgement of Service and Summary Grounds of Resistance is extended to 4pm on 19 November 2024.

Reasons: The First Interested Party seeks a 21-day extension of time for filing an Acknowledgement of Service and Summary Grounds due to limitations on the availability of DEFRA's counsel and the requirement for the First Interested Party's position to be agreed at Ministerial level, noting limited Ministerial availability. I note that all parties have confirmed in writing their agreement to the extension of time sought and I am satisfied that the requested extension is not unreasonable.

Signed *Maggie Silver*

Date: 04 November 2024

---

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date):

**CPR Part 54.1A provides**

- A party may request any decision of a court officer to be reviewed by a judge of the High Court [Rule 54.1A(5)].
- At the request of a party, a hearing will be held to reconsider a decision of a court officer, made without a hearing [Rule 54.1A (6)].
- A request under paragraph (5) or (6) above must be filed within 7 days after the party is served with notice of the decision.

**BY THE COURT**

**04/11/2024**

# Judicial Review

## Acknowledgment of Service

### This Acknowledgment of Service is filed on behalf of

Name

The Department for Environment, Food and Rural Affairs ('DEFRA')

who is the

Defendant

Interested party

### Name and address of person to be served

Name

Ricardo Gama, Leigh Day

#### Address

Building and street

Panagram

Second line of address

27 Goswell Road

Town or city

London

County (optional)

Postcode

E | C | 1 | M | 7 | A | J

Name of court

High Court of Justice  
Administrative Court

Claim number

AC-2024-LON-002896

Name of claimant (including any reference)

THE KING (on the application of WILD JUSTICE)

Name of defendant

DARTMOOR COMMONERS' COUNCIL

Interested parties

(1) The Department for Environment, Food and Rural Affairs ('DEFRA')

(2) Natural England



## Section 1

Tick the appropriate box

- I intend to contest all of the claim  
– **complete sections 2, 3, 4 and 6**
- I intend to contest part of the claim  
– **complete sections 2, 3, 4 and 6**
- I do not intend to contest the claim  
– **complete section 6**
- The defendant (interested party) is a court or tribunal and intends to make a submission  
– **complete sections 2, 3 and 6**
- The defendant (interested party) is a court or tribunal and does not intend to make a submission  
– **complete sections 2 and 6**
- The applicant has indicated that this is a claim to which the Aarhus Convention applies  
– **complete sections 5 and 6**
- The Defendant asks the Court to consider whether the outcome for the claimant would have been substantially different if the conduct complained of had not occurred (see s.31(3C) of the Senior Courts Act 1981)  
– **A summary of the grounds for that request must be set out in/accompany this Acknowledgment of Service**

**Note:** If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

## Section 2

**2.1** Insert the name and address of any person you consider should be added as an interested party.

**Note 2.1:** If you consider there is more than one interested party, set out their details on a separate sheet, marking that sheet so that it is clear it relates to this part of the Acknowledgment of Service.

Name

Organisation

### Address

Building and street

Second line of address

Town or city

County (optional)

Postcode

--	--	--	--	--	--	--	--

Phone number

Email (if you have one)

Reference, if known

### Section 3

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

**Note 3:** See Practice Direction 54A at paragraphs 6.1 – 6.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the Acknowledgment of Service.

Please see the Summary Grounds of Resistance attached.

## Section 4

4.1. Give details of any directions you want the court to make.

N/A

**Note 4:** If you wish to make any interlocutory application now, set out the application and the reasons and/or evidence relied on in support of it in this Section. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the Acknowledgment of Service.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties form **N464** with this acknowledgment of service.

If, after this Acknowledgment of Service has been filed, you wish to make an interlocutory application, use form **N244**.

## Section 5

Response to the claimant's contention that the claim is an Aarhus claim

5.1 Do you dispute that the claim is an Aarhus Convention claim?

Yes. Set out your reasons in the box below.

No

5.2 Do you wish the court to vary or remove the costs limits under CPR45.43(2)?

Yes. Set out your reasons in the box below.

No


## Section 6

### Statement of truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- I believe** that the facts stated in this form are true.
- The defendant** believes that the facts stated in this form are true. **I am authorised** by the defendant to sign this statement.
- The interested party** believes the facts stated in this form are true. **I am authorised** by the interested party to sign this statement.

### Signature



- Defendant
- Defendant's legal representative (as defined by CPR 2.3(1))
- Interested party
- Interested party's legal representative (as defined by CPR 2.3(1))
- Litigation friend

### Date

Day	Month	Year
1 9	1 1	2 0 2 4

Full name

Sophia Khan

If legal representative, state name and firm

Government Legal Department

If signing on behalf of firm or company give position or office held

Lawyer

Give an address to which notices about this case can be sent to you

Name

Sophia Khan

Organisation

PIE team - Government Legal Department

### Address

Building and street

102 Petty France

Second line of address

Town or city

London

County (optional)

Postcode

S | W | 1 | H | 9 | A | J

If applicable

Phone number

DX number

Email

Sophia.Khan7@governmentlegal.gov.uk

Reference number

Z2411839

If you have instructed counsel, please give their name address and contact details below.

Name

Charles Streeten

**Address**

Building and street

Francis Taylor Building Chambers

Second line of address

Town or city

County (optional)

Postcode

If applicable

Phone number

07724 609727

DX number

Your reference

Email

Charles.Streeten@ftbchambers.co.uk

**Completed forms**, together with a copy, should be filed at the Administrative Court Office (court address, listed below), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of filing with the Court. See CPR 54.8.

### **Administrative Court addresses**

#### **Administrative Court in London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

#### **Administrative Court in Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

#### **Administrative Court in Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

#### **Administrative Court in Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

#### **Administrative Court in Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.



**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

AC-2024-LON-002896

**B E T W E E N: -**

**THE KING**  
on the application of  
**WILD JUSTICE**

Claimant

- and -

**DARTMOOR COMMONERS' COUNCIL**

Defendant

-and-

**(1) SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**  
**(2) NATURAL ENGLAND**

Interested Parties

---

**SUMMARY GROUNDS**  
**ON BEHALF OF THE SECRETARY OF STATE**

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*References to the Core Bundle take the Format CB/pp*  
*References to the Supplemental Bundle take the format SB/pp*

**A. Introduction**

1. The First Interested Party, the Secretary of State for Environment, Food and Rural Affairs (“the **Secretary of State**”), produces these Summary Grounds pursuant to para. 5 of the Order of Lang J dated 2 October 2024.
2. The Claimant’s Claim challenges what it describes as “the Dartmoor Commoners’ Council’s ongoing failure to act lawfully in relation to its duties under: (i) Sections 4(1) and 5(1) of the Dartmoor Commons Act 1985; (ii) Section 28G of the Wildlife and Countryside Act 1981; and (iii) Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017; and furthermore its ultra vires and/or for an improper purpose conduct in acting as if to represent commoners rather than in accordance with its statutory duties under the Dartmoor Commons Act 1985” [CB/11].

3. The Claimant seeks: (i) declarations of unlawfulness, (ii) a mandatory order that Dartmoor Commoners' Council ("**DCC**") carry out an assessment of the number of animals that can be depastured on the Dartmoor commons under section 4(1) of the Dartmoor Commons Act 1985 ("**the 1985 Act**"), and in light of that assessment to issue limitation notices in respect of any area of the Dartmoor commons where the number of animals being depastured exceeds the level that can properly be depastured without damage being caused to the natural environment; and (iii) a mandatory order that the Defendant comply with section 28G of the Wildlife and Countryside 1981 ("**the 1981 Act**") and regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**") [CB/45-46].
4. The Secretary of State takes a neutral position in these proceedings. There is no allegation of unlawful conduct by the Secretary of State. The duties under sections 4(1) and 5(1) of the 1985 Act fall upon DCC and not upon the Secretary of State. DCC is best placed to respond to the Claimant's allegations.
5. Having been joined as an Interested Party, however, the Secretary of State seeks to assist the Court with reference to: (1) Relevant aspects of the legal framework; and (2) The Independent Review of Protected Site Management on Dartmoor published on 12 December 2023 ("**the Fursdon Review**") and the Government's Response to it dated 10 April 2024 ("**the Government's Response**").

## **B. Legal Framework**

### *The 1985 Act*

6. DCC was constituted on 30 June 1986 pursuant to section 3 of the 1985 Act. The Secretary of State's functions relevant to that Act include (by virtue of section 3(2)(b) of the 1985 Act) the appointment of certain DCC members.
7. Under section 4(1) of the 1985 Act, DCC is subject to a duty 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).

8. In discharging that duty, DCC must 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.
9. By virtue of section 2(3) of the 1985 Act, references to the conservation of the natural beauty of any area is defined to include the conservation of its flora, fauna, ecological, archaeological and geological and physiographical features.
10. Section 4(2) of the 1985 Act also empowers DCC to protect the commons and render assistance to any commoner in the maintenance of his rights of common.
11. Section 5(1) of the 1985 Act empowers DCC to make regulations for the purposes of fulfilling their functions under section 4 of that Act, and: (a) Places DCC under a duty to make such regulations for the purposes specified in section 5(1)(a); and (b) Gives DCC a power to make such other regulations as they think fit (section 5(1)(b)).
12. Regulations made under section 5(1) of the 1985 Act do not have effect unless and until confirmed by the Secretary of State (see section 5(6)).
13. Regulations under section 5(1) were made on 10 January 1990 and confirmed by the Secretary of State on 3 August 1990.

*Section 28G of the 1981 Act*

14. Under section 28G of the 1981 Act, all section 28G authorities, which includes Ministers of the Crown and Government departments, as well as any other public body of any description, must, in exercising their 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, take reasonable steps, consistent with the proper exercise of those functions, to further the conservation and enhancement of the flora, fauna, geological or physiographical features by reason of which the site is of special scientific interest.
15. In applying that section, the Courts have held that:
  - a. The section 28G duty does not impose a general duty on the decision-maker to have some particular regard to the desirability of protecting and preserving SSSIs. It imposes an entirely different type of obligation. Rather than seeking to protect SSSIs by weighting the desirability of their protection as against other factors, the

section 28G duty requires relevant authorities to take reasonable steps 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” (see *R (FoTE) v Welsh Ministers* [2016] Env LR 1 per Hickinbottom J (as he then was) paras. 129 – 130).

- b. “Conservation” is not necessarily the same as “preservation”, although in some, perhaps many, circumstances preservation may be the best way to conserve. Whether that is so in any particular case will be a matter, not for the lawyers, but for the professional judgment of the person whose statutory duty it is to conserve (*R (Boggis) v NE* [2010] PTSR 725 per Sullivan LJ at para. 18)

#### *Regulation 9(3) of the Habitats Regulations*

16. Regulation 9(3) of the Habitats Regulations requires a competent authority, in exercising any of its functions, to have “regard to the requirements of the [Habitats Directive] so far as they may be affected by the exercise of those functions”.
17. The contents of that duty under regulation 9(3) of the Habitats Regulations has been subject to recent consideration by the High Court in *R (Harris) v Environment Agency* [2022] PTSR 1751 at paras. 82 – 106 and *R (River Action UK) v Environment Agency* [2024] EWHC 1279 (Admin) at paras. 28 – 33 and 139 – 144. As the High Court made clear in those cases, the natural and conventional approach to the have regard duty is that a competent authority is obligated to take account of the requirements of the Habitats Directive and the Wild Birds Directive but may depart from their requirements if there is a good reason to do so. When considering whether a departure can be justified, however, it is relevant that the objective of the “have regard” duty is “requirements” rather than advice or guidance. Advice or guidance is not, ordinarily, mandatory. The “requirements” in the Directives are in mandatory terms. In this context, there is not the same broad scope for taking something into account, but then deciding for good reason to depart from it, as there is in the case of non-binding guidance. An important part of the regulatory context nevertheless helps explain the different language between regulations 9(1) and (3). Regulation 9(1) is concerned with the Secretary of State and the nature conservation bodies, who each have overarching responsibility for compliance with the Directives. Regulation 9(3) is concerned with a “competent authority”. That has a broad meaning (including every public body). In some contexts, there will be a matrix of competent

authorities with overlapping regulatory responsibilities relevant to the discharge of the requirements of the Directives. In such cases, it would not be meaningful or appropriate to impose on one single competent authority (or on every competent authority) an obligation to secure compliance with the Directives. Instead, what is required is that all competent authorities have regard to the Directives, with each competent authority required to “play their part”, so as to ensure that, in the result, compliance with the Directives is achieved.

### C. The Fursdon Review

18. The Fursdon Review was commissioned, pursuant to Terms of Reference dated 9 August 2023 (“the **ToR**”), with the objective of supporting farmers and those living and working on Dartmoor to join together with the appropriate statutory bodies to safeguard and improve its long-term management, especially the areas with greatest environmental value, drawing on the best available evidence to provide an independent perspective on the management of the protected sites on the moor.
  
19. The ToR specified the scope of the Fursdon Review must include:
  - *considering recent trends in numbers and types of grazing animals on Dartmoor and the influence that this has had on its ecology*
  - *reviewing the existing ecological evidence base to consider the current management of Sites of Special Scientific Interest (SSSIs) and Special Areas of Conservation (SACs) across Dartmoor to determine why some sites are seeing improvements and others are not, and how lessons might be applied across all sites on Dartmoor*
  - *considering any lessons to be learned from previous approaches on Dartmoor or similar situations elsewhere in the UK by examining comparable case studies, considering the different contributing factors in each case*
  - *making recommendations as to the most effective grazing and management regime or regimes to deliver improvements on the protected sites across Dartmoor, so they can maintain or achieve favourable condition whilst also contributing to the long-term, sustainable delivery of other priorities, such as agricultural production, public access and the preservation of cultural and natural heritage*
  - *advising what’s needed to support the delivery of an effective grazing regime, consistent with meeting existing legally binding targets and statutory requirements*
  - *proposing options focusing on those sites that are currently not recovering or in favourable condition*
  
20. Matters which the Fursdon Review had a discretion to consider were:
  - *establishing the parameters for a grazing and hydrological restoration regime that will deliver SSSI favourable condition.*
  - *recognising the risk of undesirable grass species (*Molinia*) and scrub predominating if grazing is reduced too far and the attendant fire risk associated with this, the co-*

*existence of over-grazed and under-grazed areas on Dartmoor and the need to maintain overall grazing at an appropriate level to manage these risks*

- *the appropriate mix and management of livestock required to graze Dartmoor, including the role that should be played by rare or traditional (or both) breeds and the minimum population requirements to secure the genetic diversity of the Dartmoor Hill pony population*
- *identifying the adaptations required to adjust successfully to climate change on Dartmoor and any associated implications for the achievement of favourable condition on particular sites*
- *recognising the important roles that hill farming plays on Dartmoor in contributing to community cohesion and food production*
- *presenting agro-economic models that would enable farm businesses to deliver SSSI favourable condition, identifying and proposing the investment, innovation or incentives, or all of these, needed to support farmers in doing so*
- *exploring how achieving SSSI favourable condition can be combined with the attainment of other desirable public outcomes – maintaining and improving biodiversity, managing appropriate public access, preserving Dartmoor’s rich historical and cultural environment and protecting its archaeology*

21. The scope of the Fursdon Review expressly excluded:

- *commissioning primary ecological data collection*
- ***providing recommendations on the existing legal framework including, but not limited to, the Natural Environment and Rural Communities Act 2006, the Environment Act 2020 and Agriculture Act 2020***
- *considering any changes to existing Commons legislation*
- *commenting on landlord-tenant relationships on Dartmoor and those between Commons rights holders and Commons owners, which are a matter for negotiation between the parties (emphasis added).*

22. It did not, therefore, fall within the scope of the Fursdon Review to make recommendations relating to the existing legal framework, including DCC’s statutory obligations.

23. The Fursdon Review reported on 12 December 2023 [CB/144-179]. Section 5 of the Fursdon Review identified its recommendations and conclusions [CB/171-179]. These were summarised in Appendix 1 (with recommendations 11 – 15 relating to Land-use, ecology and biodiversity, and recommendations 26 – 34 relating to Grazing and vegetation management).

24. The Government’s Response was published on 10 April 2024 [CB/180-202]. As part of the Government’s Response, the Secretary of State agreed with the Fursdon Review’s recommendation to “reinforce Dartmoor’s governance through the creation of a Land Use Management Group” (“LUMG”) “tasked with developing a multi-functional land use framework and a land-use plan for Dartmoor” and announced a commitment to set up a LUMG

to act as a forum to build strong relationships between farmers, landowners and commoners, and enhance open decision making with effective governance [CB/184] and [CB/188-189].

25. The LUMG is tasked with implementing 25 of the Fursdon Review's recommendations, including the development of a multi-functional land use framework and land use plan for Dartmoor [CB/188] and [CB/192-202].
26. The Chair of the LUMG (Phil Stocker) has now been appointed by the Secretary of State and will set the membership of the group in consultation with the Secretary of State. It is anticipated that the LUMG will be operational by the end of 2024. The Chair will then report back to the Secretary of State in quarterly progress reports.
27. On grazing specifically, the Government recognised that currently, the grazing regime is not working for farmers, the environment, food production or visitors. It concluded:

*We agree with the Review's assessment, including the observation that under-grazing can be as much of a problem as over-grazing. The key is getting the right grazing (in terms of grazing load and species mix) in the right location at the right time of year; a challenge which is compounded by grazing on open moorland with animals straying. A conservation grazing regime should aim to restore and sustain heathland vegetation and diversify plant communities, such as those over-represented by a single species, for example, Molinia. It would also need to explore how shepherding can be used to even out grazing pressure and address the continuing effect of historic peatland drainage [CB/189].*

28. These issues and the response to them were then considered in more detail in the Government's Response by recommendation.
29. There was no challenge to the legality of the Fursdon Review or the Government's Response. The Government's Response remains the policy of the Government.

**D. Conclusion**

30. The Secretary of State's position in relation to the Claimant's Claim is one of neutrality. The above is provided, consistent with the Order of Lang J. dated 2 October 2024, by way of a contextual explanation of material facts for the benefit of the Court.

**CHARLES STREETEN**

**FTB**

**19 November 2024**