

Broads Local Access Forum

09 June 2021

Agenda item number 9

Review of access restrictions at Ludham and Potter Heigham marshes

Report by Waterways and Recreation Officer

Summary

The Broads Local Access Forum has a statutory role in both the initial and formal consultation stages regarding the restriction of public access on Open Access land, as administered by the Broads Authority. This report gives an opportunity to refresh Forum members on the process and introduce the initial consultation for a site requiring a periodic review of an existing access restriction within the Broads area. This report provides information to the Forum so that comments to the Broads Authority can be gained as part of the initial consultation on the review of restriction of dog access on Open Access land at Ludham and Potter Heigham marshes.

Recommendation

To review the details of the restriction and provide the Broads Authority with the Forum's initial feedback, prior to the opening of the public consultation period by the Broads Authority.

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1. Introduction

- 1.1. Under the Countryside and Rights of Way (CROW) Act 2000, the Broads Authority is obligated to consult on new applications, or review any long-term restrictions over Open Access land within the Broads Authority executive area. Such reviews are expected every five years until the restriction is revoked or expired, as required by the CROW Act, section 27 (3).

- 1.2. This particular direction at Ludham and Potter Heigham Marshes is for the purposes of protecting sensitive wildlife under section 26(3)(a) of the Countryside and Rights of Way (CROW) Act 2000.
- 1.3. The nature of the restriction means that public access by virtue of section 2(1) of the CROW Act to the land highlighted on the map is not exercisable by any persons accompanied by their dogs.

2. Natural England

- 2.1. In November 2011 Natural England decided that all parts of eligible National Nature Reserves (NNRs) should be dedicated for permanent public access unless there are compelling reasons on particular sites not to do so.
- 2.2. Ludham and Potter Heigham Marshes is highly compartmentalised by a network of dykes across much of the site, which practically impedes access use. There are a number of existing access routes around the site on public rights of way, which are located on land adjacent to, but outside of, the boundary of land owned by Natural England.
- 2.3. There was however one short section (320m) of land across the NNR that was deemed suitable for access rights, and would allow for a complete circular walk around the marshes. After consulting with the Natural England Responsible Officer for the site, the decision was to allow public access along a narrow path, as long as a restriction was imposed by not permitting dogs.
- 2.4. The restriction first came into effect on the 17th of November 2016 and was carried out by Natural England as the Broads Authority did not have the staff availability at the time. This report aims to reinstate the Authority's role in consulting and determining the continued relevance of such restrictions.

3. Reviewing the access restriction process

- 3.1. The following timeline and list of actions demonstrates the process for reviewing long term restrictions on Open Access Land which must take place every five years –
 - Before the review, the Broads Authority is to carry out an initial consultation with the Broads Local Access Forum, the applicant (usually the landowner) and Natural England. (for example Appendix 2 – statements from NE officers)
 - If all parties agree with Natural England and their reasoning (for example Appendix 3 – Initial screening report of the site). Then the process can proceed to the formal consultation.
 - Broads Authority to inform the Open Access contact centre (OACC) of the consultation and the period that this will run. OACC to generate the maps.

- Broads Authority to submit initial consultation report to the OACC who will upload it with the maps to the GOV.UK website. Broads Authority to serve direction notices to the statutory consultees and erect signs on site.
- Public consultation period commences.
- Public consultation period ends and Broads Authority complete the consultation outcome report and send to OACC with the direction notice.
- OACC will create the exclusion maps and upload them along with the outcome report on GOV.UK website
- The restriction is then complete and will need to be reviewed after five years by the Broads Authority.

4. Conclusion

- 4.1. The Broads Local Access Forum will be consulted formally, with a direction notice sent to the chairman in the coming weeks, regarding the renewal of this restriction.
- 4.2. It is the view of Natural England that a restriction should remain in place on Ludham and Potter Heigham Marshes National Nature Reserve to prevent access for dog walking given the continued sensitivity of birds breeding and feeding on the site.
- 4.3. This site is particularly sensitive to disturbance by human activity as it is designated as a Site of Special Scientific Interest in part due to its assemblage of wintering birds and breeding birds including small numbers of Redshank, Lapwing, Oystercatcher, Snipe and Yellow Wagtail.

Author: Lewis Treloar

Date of report: 21 May 2021

[Broads Plan](#) objectives: 2.4,2.5

Appendix 1 – NE Map of restriction

Appendix 2 – Statement from NE Officers

Appendix 3 – Access sensitive features appraisal

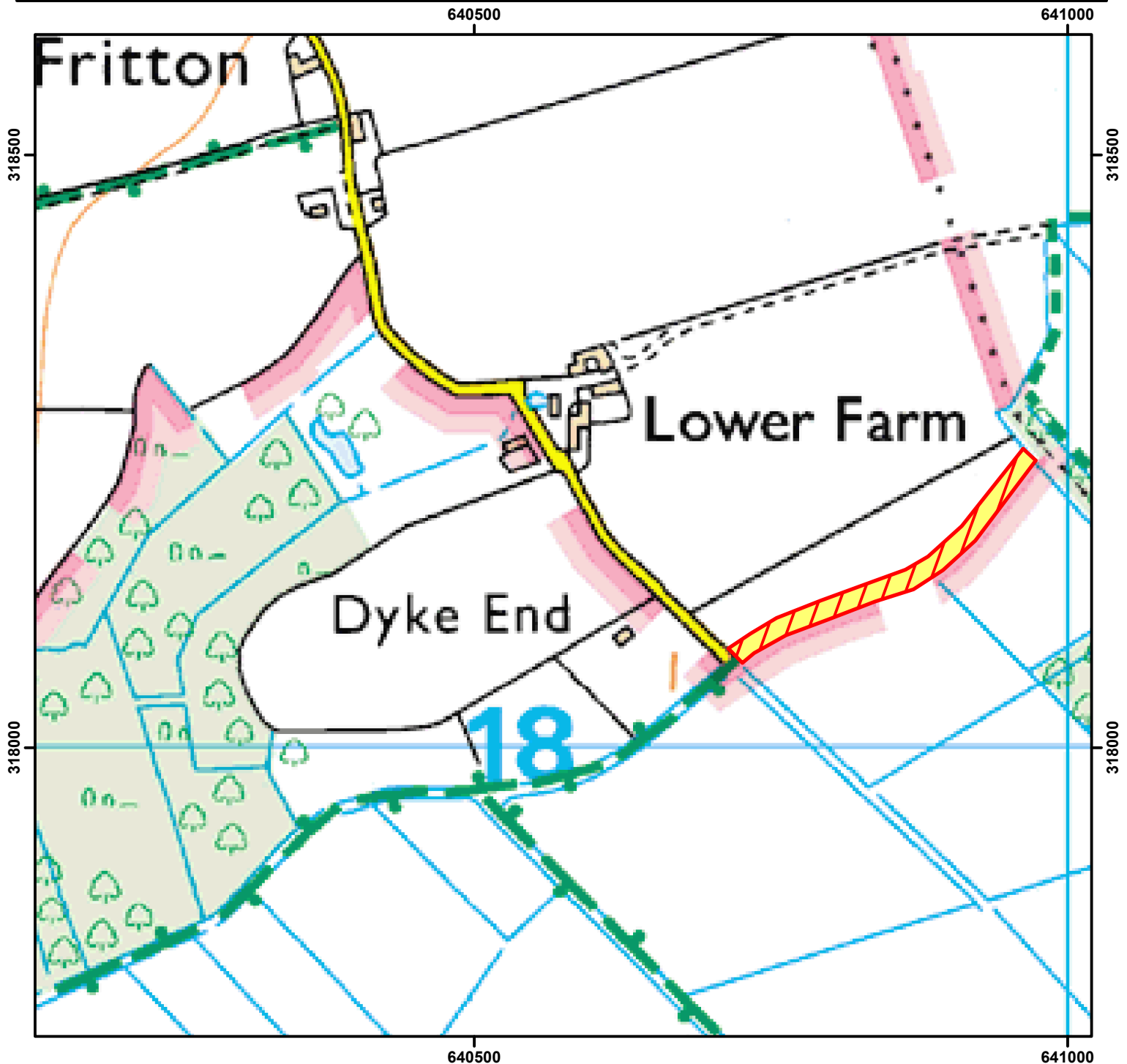
NATURAL
ENGLAND

NO DOGS

To protect sensitive wildlife, dogs are not allowed on open access land shown hatched on the map below. This does not apply to registered assistance dogs and dogs kept under effective control on Public Rights of Way.

Between: 17 November 2016 and 17 November 2022.

Case Number: 2016088212



0 150 300 Metres

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Restricted Open Access Land



Open Access Land



For more information call the Open Access Contact Centre on 0300 060 2091
or visit our website at www.gov.uk/right-of-way-open-access-land/use-your-right-to-roam

14/05/2021

Our ref: Ludham and Potter Heigham Marshes CROW Access

Your ref: 2016088212



Broads Authority,
Yare House,
62-64 Thorpe Road,
Norwich
NR1 1RY

Natural England,
Dragonfly House,
2 Gilders Way
Norwich,
NR3 1UB

Dear Lewis

Natural England's view on CROW Access Restrictions at Ludham and Potter Heigham Marshes

It is the view of Natural England that a restriction should remain in place on Ludham and Potter Heigham Marshes National Nature Reserve to prevent access for dog walking.

This site is particularly sensitive to disturbance by human activity as it is designated as a Site of Special Scientific Interest in part due to its assemblage of wintering birds and breeding birds including "small numbers of Redshank, Lapwing, Oystercatcher, Snipe and Yellow Wagtail". In recent years these species have struggled to establish breeding populations on the site. Any further disturbance might well cause these species to abandon nesting attempts entirely and thus lead to the site entering Unfavourable Condition. Ludham and Potter Heigham Marshes are also designated as a part of the Broadland SPA and The Broads SAC due to its role in providing habitat for both the species listed above, as well as others such as otters, which might also be vulnerable to disturbance by dogs. Brown hare and water vole, both Section 41 Species species, are also present on site and vulnerable to disturbance.

In addition to protecting the designated features of the site there is also a concern for the health and safety of any dog walkers who might wish to use the site. In order to promote the plant and bird communities for which the site is designated it is vital to graze the site with cattle. Whilst these should not present a threat to humans normally, interactions between dogs and cattle increase the risk of a health and safety incident.

Yours

Ezra Lucas

Lead Adviser – Broads and River Wensum

Rick Southwood

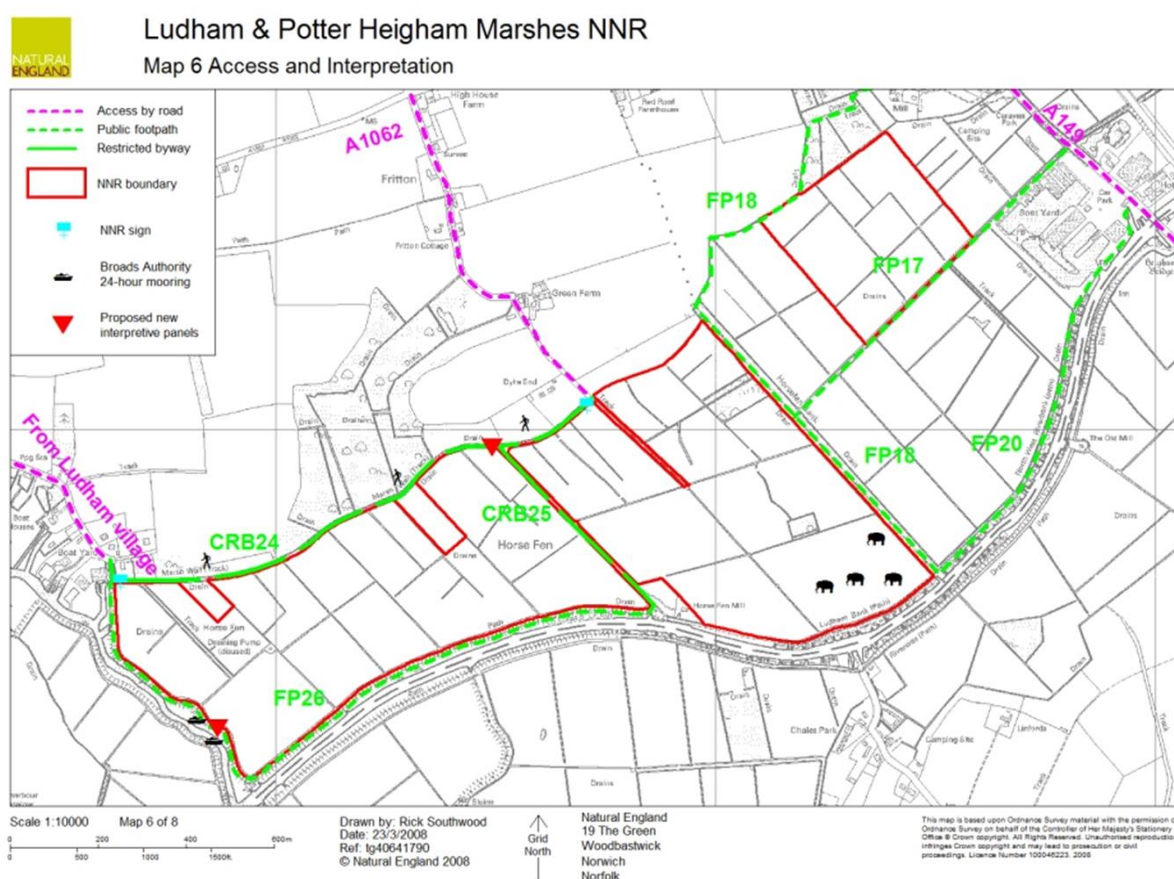
Senior Reserves Manager – The Broads

Access and Sensitive Features Appraisal

Programme	NNR Dedication
Proposal title	Ludham and Potter Heigham Marshes NNR, Norfolk
Aim and location	Dedication of linear route on freehold NNR owned by Natural England in the Norfolk Broads
Report Status	Final
Date	27 October 2015
TRIM reference	
Access Case Officer	Sarah Haigh
Site Responsible Officer	Diane Monsey

Section 1: SITE MAP(S) AND OVERVIEW OF NEW ACCESS PROPOSAL/ CONSIDERATION

Map



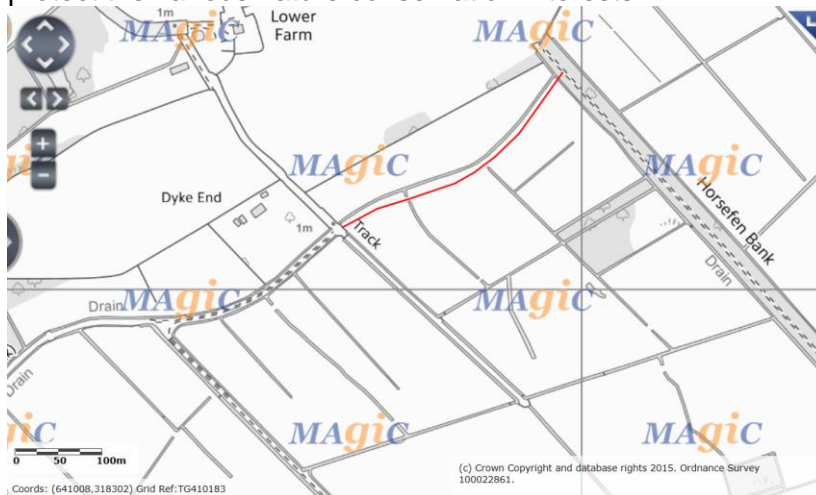
Land within NNR boundary is freehold owned by Natural England.

Proposed new access provisions

In November 2011 the Natural England Board decided that all parts of our eligible National Nature Reserves (NNRs) should be dedicated for permanent public access unless there are compelling reasons on particular sites not to do so.

Ludham and Potter Heigham Marshes is highly compartmentalised by a network of dykes across much of the site, which practically impedes access use. There are a number of existing access routes around the site on public rights of way, which are located on land adjacent to, but outside of, the boundary of land owned by Natural England. There is also an existing informal route accessed by the public on foot along the southern side of Ludham Marshes linking the existing public footpaths. This informal path is located on land adjacent to, but outside of, the boundary of land owned by Natural England.

Considering the practical difficulties in accessing the site and the existing network of paths around the site that offer good views across it, we have decided not to dedicate permanent public access on foot across the whole site. However, permanent public access on foot will be dedicated in perpetuity under Section 16 of the Countryside and Rights of Way (CROW) Act 2000 on land owned by Natural England along a linear route on the northern side of Ludham Marshes (indicated in red on the map below). The new access provision will introduce CROW open access rights on foot, linking to the current established access provided by Public Rights of Way. To maintain the current circumstances where dogs are not present on the site, a year round exclusion on dogs will be given to continue to protect the various nature conservation interests.



The dedicated route has been assessed as unsuitable for use by horses or bikes. There are no other paths or tracks on land that we own here to assess for suitability for higher rights, and there are no other opportunities to extend access on horses and bikes beyond that which already exists on adjacent public rights of way.

Section 2: PREDICTED CHANGE IN PUBLIC USE OF AREA

[For completion only if the Responsible Officer has initial concerns about the potential impact of the new access proposal on our conservation objectives]

How do visitors already use the site?

Ludham and Potter Heigham Marshes are located within the Norfolk Broads, covering 86 hectares. The NNR has two sections of land; the larger, western area is Ludham Marshes and the smaller, eastern area is Potter Heigham Marshes.

The public have views to the site using the public rights of way shown on the map. Level of usage is generally low. No recreational use is made of the reserve other than walking, dog walking and occasional horse riding on the public rights of way. The public rights of way (footpaths and a Restricted Byway) which surround the site offer linear and circular walks, with views from the elevated riverbank, giving considerable opportunities to appreciate its qualities, without compromising nature conservation interests or grazing.

A Broads Authority 24-hour mooring at Womack water gives views over the NNR and access to the footpath system. There are no visitor facilities present on the site, other than the public rights of way, the condition of which varies from wide hard-surfaced tracks to narrow footpaths. NNR signs are in place, and there is scope for interpretive panels.

How is the new access proposal likely to affect use of this site by the public?

There is no evidence of demand for additional access to the site by the public, and it is anticipated that the current use of the site is unlikely to change significantly with the dedication of the linear route with CROW access rights in the immediate future. However, it is anticipated that the new access right will provide a useful link between the existing public rights of way, enabling a larger circular route around Ludham Marshes for access use.

Concerns raised by the Senior Reserve Manager

Wintering birds (from 1st October to 31st March) – easily disturbed, by as little as one person crossing the marshes, and especially by dogs. This is at a time when we would expect little or no human presence, since there is no need for graziers to be onsite.

Breeding birds (from 15th March to 31st July) – ground-nesting waders are currently at very low numbers, both locally and nationally. We have been trying to make the site more attractive for breeding waders by water level and predator management. Human disturbance can be a contributory factor in both site selection (failure to use otherwise suitable habitat) and nest failure. Dogs are inimical to nests, eggs and unfledged young.

Otter (SAC), brown hare (BAP), water vole (BAP) are all susceptible to disturbance, particularly by dogs. Brown hare probably most susceptible, others are semi-aquatic.

There is no existing public access with dogs on the NNR, but the linear route will cross open compartments of land. The introduction of dogs onto the site would have a detrimental impact on wintering and ground nesting birds, and on the otter, water vole and brown hare population. To maintain the current circumstances where dogs are essentially excluded from the site, and to protect the various nature conservation interests at risk from disturbance from the presence of dogs, Natural England recommends that dogs are excluded from the site entirely, all year round.

Regarding concerns of disturbance from people to wintering birds and ground nesting birds, people with dogs are generally considered as a more disturbing factor than people without dogs. Given that we are only dedicating a linear route across a small area of the NNR, we believe that a dog exclusion is sufficient in preventing disturbance, with the proviso that we will revisit this arrangement if circumstances change.

The Norfolk Broads Authority are the Relevant Authority, and will need to give the direction described above. Interpretation boards will need to be updated to reflect the restriction that will be put in place.

Access case officer

Signed:

S. Haigh

Name:

Sarah Haigh

Date:

27 October 2015

Section 3: POTENTIAL IMPACT ON FEATURES FROM NEW ACCESS PROPOSAL

Broadland SPA & Ramsar, The Broads SAC, Ludham-Potter Heigham Marshes SSSI										
		SPA	p/SPA		SAC	p/SAC		Ramsar	p/Ramsar	SSSI
Designation types present		X			X			X		X

Potential concern about new access proposal (summary)

Wintering birds (from 1st October to 31st March) – easily disturbed, by as little as one person crossing the marshes, and especially by dogs. This is at a time when we would expect little or no human presence, since there is no need for graziers to be onsite.

Breeding birds (from 15th March to 31st July) – ground-nesting waders are currently at very low numbers, both locally and nationally. We have been trying to make the site more attractive for breeding waders by water level and predator management. Human disturbance can be a contributory factor in both site selection (failure to use otherwise suitable habitat) and nest failure. Dogs are inimical to nests, eggs and unfledged young.

Otter (SAC), brown hare (BAP), water vole (BAP) are all susceptible to disturbance, particularly by dogs. Brown hare probably most susceptible, others are semi-aquatic.

Concerns about existing public use and action already taken to address this (summary)

None.

Key sensitive features relevant to site (detail)

Feature	Any potential sensitivity to visitors	Any likely impact
(Full breakdown in NNR management plan)	<i>In each case give details of the location or distribution of this feature within the site (show on the map as appropriate) and the nature of any known sensitivity to visitors.</i>	<i>State in each case whether the access proposal (incorporating any special measures that are now proposed) adequately addresses the known sensitivity of this feature.</i>
SAC: Natural eutrophic lakes, Molinia meadows, Alluvial forests, Lutra lutra; Otter	Wintering and breeding bird assemblages are susceptible to disturbance from visitors, particularly those with dogs.	Existing patterns and levels of visitors on foot across the site are unlikely to change as a result of this proposal.
SPA/RAMSAR: Wintering waterfowl assemblage, Cygnus columbianus bewickii; Bewick's swan, Cygnus cygnus; Whooper swan, Anas strepera; Gadwall,	Otters (SAC), hares (BAP) and water voles (BAP) are susceptible to disturbance from visitors, particularly those with dogs.	To maintain the current circumstances where dogs are not present on the site, a year round exclusion on dogs will be given, to continue to protect the various nature conservation interests. As a result, no likely impact is anticipated.

<p>Anas clypeata; Northern shoveler, Philomachus pugnax; Ruff</p> <p>SSSI: Assemblage of breeding birds, including Vanellus vanellus; Lapwing, Gallinago gallinago; Snipe, Alauda arvensis; Skylark, Tringa tetanus; Redshank</p> <p>Circus aeruginosus; Eurasian marsh harrier</p> <p>BAP: Lepus capensis; Brown hare</p>		
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Note: If the table suggests unacceptable residual impacts on the features in question, the norm is to repeat the earlier process of consideration, and complete when ready a further version of the template. But if at this point the access case officer and responsible officer cannot agree whether the access proposal adequately addresses the potential sensitivities, the case should be referred to the Access and Nature Conservation Review Panel.

Section 4: FINAL CONCLUSIONS

THIS FINAL STAGE SHOULD ONLY BE COMPLETED AFTER THE ACCESS CASE OFFICER AND RESPONSIBLE OFFICER HAVE REACHED AGREEMENT, OR FOLLOWING ESCALATION TO THE ACCESS AND NATURE CONSERVATION REVIEW PANEL

[Inapplicable sections below should be left blank]

4A: FINAL CONCLUSION - EUROPEAN SITE

Screening for Likely Significant Effect under Habitats Regulations – alone

In relation to the new access proposal detailed in sections 1 and 2, taken alone, Natural England has concluded on the best available evidence and information that:

[Mark one box with an X only, and complete that entry as shown]

☐ A. **It can be excluded that the new access proposal, taken alone, will have any effect** on any of the features listed in section 3 above for which the European site has been designated or classified, for the following reasons:

[Summarise reasons here]

☒ B. While it cannot be excluded that the new access proposal taken alone will have an effect, **it is not considered that the effect is likely to be significant**, for the following reasons:

With a dog exclusion and a very small area of the site that could be affected by the dedicated route, no likely significant effect is anticipated.

☐ C. **It cannot be excluded that the new access proposal, taken alone, will have a significant effect** on the following feature(s) for which the European site has been designated or classified, for the following reasons:

[Specify relevant feature(s) here and summarise reasons]

Screening for Likely Significant Effect under Habitats Regulations – in combination

(See Notes on Completion)

Other relevant plan or project	Is each other plan or project clear and specific enough for a judgement to be made at this stage about the probability or risk of its having any <i>similar</i> effect on the features in question? <i>(see notes)</i>	Where the answer in Column 2 is Yes, what effect is it considered the other plan or project is likely to have in its own right on the features in question? Enter <u>one</u> of the following values, with brief reasons: <ul style="list-style-type: none"> No effect A non-significant effect A significant effect Where the answer in Column 2 is No, enter "Not applicable" in this column.

Conclusions of screening in combination *(leave blank unless In Combination Table used)*

Having considered the best available evidence and information on any other qualifying plans or projects that might operate in combination with the new access proposal detailed in sections 1 and 2, Natural England has concluded that **it can/cannot be excluded** *[delete as appropriate]* that the new access proposal, in combination with any such qualifying plans or projects, will have a significant effect on any of the features for which the European site has been designated or classified, for the following reasons:

[Summarise reasons for conclusion]

Overall Screening Decision for European site/features

Accordingly, taking into account the preceding screening both alone and, where appropriate, in combination, Natural England has concluded:

[Mark with an X as appropriate]

☒ **No likely significant effect** – the new access proposal may proceed as finally specified, subject to any separate considerations in relation to SSSI features etc (see below);

OR

☐ **Likely significant effect** - appropriate assessment is required to consider whether the new access proposal may proceed.

[Continued]

PART 4B: FINAL CONCLUSION – SSSI**Conclusion**

In the light of the analysis in section 3, Natural England has concluded that the new access proposal detailed in sections 1 and 2:

[Mark one box with an X only below]

<input type="checkbox"/>	complies with NE's duty to further the conservation and enhancement of the notified features of the SSSI, consistent with the proper exercise of its functions ¹ - and accordingly the new access proposal may proceed as finally specified in this template
<input type="checkbox"/>	would not comply with the duty referred to in (a) – and accordingly permission/authorisation/ assent for the new proposal should not be given, for the following reasons:

[summarise reasons here if this option is selected]

[Continued]

PART 4C: FINAL CONCLUSION - Other features about which concerns have been expressed**Conclusion**

In the light of the analysis in section 3, Natural England has concluded that:

[Mark one box with an X only below]


<input type="checkbox"/>	the appropriate balance has been struck by the new access proposal between NE's conservation and access objectives, duties and purposes - and accordingly the new access proposal should proceed as finally specified in this template
<input type="checkbox"/>	the appropriate balance referred to above has not been struck – and accordingly the new

☐ access proposal should not proceed in the form specified in this template, for the following reasons:

[Summarise reasons here if this option is selected]

[Continued]

SIGNATURE COVERING THE WHOLE OF PART 4:

Responsible officer		
Name: Diane Monsey	Signed: 	Date: 28/10/2015

Access and Sensitive Features Template - Notes On Completion

Purpose

1. We use this template where a Natural England programme is developing proposals for new or improved public access that might potentially impact on key sensitive features that occur on designated or other sites. This is to ensure that levels of protection appropriate to the status of the sensitive features in question are built in to proposals at the design stage, and that a proportionate audit trail is kept according to the circumstances.

Process

2. The template should be used wherever access programmes interface with designated conservation sites. A number of designated sites within the same area may be grouped together for this purpose if the responsible officer agrees this is the most efficient way to consider the issues. The template may also be used to provide an audit trail for decisions relating to non-designated sites.

3. Only the relevant parts of the template should be completed. For example if the features for which a site is designated are not sensitive to access at all, it may be appropriate to leave section 2 uncompleted and simply complete the overview of section 3, and then proceed to the conclusions at section 4. Where there are known to be potential sensitivities, it is important that preliminary discussions (see below) clarify potentially viable access options that can sensibly be considered and evaluated, rather than completing the template mechanistically for access options that are never going to be viable.

4. The key stages in the process are:

1. Map affected area and summarise new access proposal.
2. If there are potential concerns, predict how public use of area likely to change.
3. Document sensitivities and consider whether proposal deals with them.
4. Record formal conclusions for affected European site, SSSI or other areas.

5. In practice the process is highly iterative between the Access Case Officer and the Responsible Officer. It also involves as appropriate discussion with other key interests, such as site staff, local conservation organisations, the local access authority and subject specialists - so that the relevant expertise and information can be applied to the case, any concerns identified early and constructive discussions held. For Coastal Access projects, specific commitments in this respect are set out in section 4.9 of the statutory Scheme.

6. The template is designed so that only the necessary sections have to be completed in each case. Even so, it may be necessary in some cases to complete more than one version of sections 1 to 3 before the right solution is identified, and the final conclusions are then recorded at section 4. The template refers to this possibility.

Who does what

7. The Access Case Officer should take the lead in completing all sections of the form, drawing extensively on the views expressed (or evidence supplied) by the Site Responsible Officer or others. Ultimate responsibility for quality assuring the resulting content is colour coded like this in the different section headings of the template:

Access case officer

Responsible officer

8. These two officers have to sign sections 2 and 4 respectively, once the final version of the template has been agreed. The formal set of conclusions at section 4 should be something the two officers have agreed upon. If this does not prove possible, the case should be referred to the Access and Nature Conservation Review Panel for advice before section 4 is signed off. Should appropriate assessment under the Habitat Regulations exceptionally prove necessary, customised advice should be sought on appropriate documentation.

9. The final version of the template will usually be made available via our website but all completed versions of it should be stored on Trim as part of the audit trail for the case.

Map (Section 1)

10. As noted in the template itself, the map used for Section 1 may be any suitable existing map, suitably annotated in relation to the issues mentioned there. It need not be (but may be) a specially produced electronic map.

In combination screening (Section 4A) – some detailed guidance

11. The table in the second part of section 4A only needs to be completed where in the first part of the same section, Box B is ticked to indicate that:

- it cannot be excluded that the new access proposal taken alone will have any adverse effect, but
- it is not considered that the effect is likely to be significant.

In this situation (only), the In Combination table is completed. Do not complete the table if Box A or Box C have been ticked in the first part of section 4A.

12. Where the table is used, a separate row should be completed for each other current or forthcoming plan or project in the vicinity.

13. Where the entry in the third column is “Not applicable” because a proposal currently lacks sufficiently clear and specific information to enable an informed prediction to be made of its likely impact on any of the features for which the European site has been designated or classified, in combination screening is **not** appropriate.

14. Similarly, where the prediction in Column 3 is No Effect or A Significant Effect, in combination screening is **not** appropriate.

15. The possibility of an in combination effect **may** need to be considered for any rows in the table where the prediction in Column 3 is A Non-Significant Effect – ie that:

- it cannot be excluded that the ‘other’ proposal taken alone will have any adverse effect, but
- it is not considered that the effect is likely to be significant.

Where this is so, the further question to be clear about is whether the Non-Significant Effect that is predicted relates to the same feature(s) as the one to which the Non-Significant Effect of the access proposal relates:

- if yes, then in combination screening **is** needed;
- if no, then in combination screening is **not needed**.

16. Where in combination screening is needed, the Responsible Officer must also complete the further statement found immediately below the table, headed “Conclusions of screening in combination”.

17. Further information on In Combination Assessment can be found in the Habitats Regulation guidance linked below if required.

Resources and further guidance

18. The following resources and guidance may be useful when working through this process:

- Webmap provides details of designated sites.
- For advice on potentially vulnerable habitats and species, please see the published Wildlife and Access Advisory Group Guidance reports NECR012 and NECR013.
- The current conservation objectives and notified species or habitats for European Sites are available [here](#)
- The corresponding SSSI information is available [here](#)
- Internal Habitats Regulations operational guidance is available [here](#)