

NORTH YORKSHIRE COUNTY COUNCIL
NORTH YORKSHIRE LOCAL ACCESS FORUM

5 August 2004

Access to Public Open Spaces (section 42 of the CROW Act 2000)

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of the outcome of a meeting held in London on 20 July 2004 at the offices of DEFRA to discuss issues related to access to public open spaces affected by quarries and mines.
- 1.2 The meeting was attended by representatives of the Department for Environment, Food and Rural Affairs (DEFRA), the Countryside Agency, the Chartered Institute of Environmental Health Officers, the Country Land and Business Association, the Ramblers' Association, the Yorkshire Dales National Park Authority and North Yorkshire County Council. The County Council was represented by Keith Watkins and Chris Jones and the National Park Authority by Alan Hulme.
- 1.3 The purpose of the meeting was to explain why the Minister had decided not to issue regulations with regard to section 42 of the CROW Act in relation to quarries and mines. The local authorities were invited following comments made in their response to the DEFRA consultation paper described below.

2.0 BACKGROUND

- 2.1 Earlier this year, DEFRA issued a consultation paper relating to the need to pass regulations in relation to public places under section 42 of the Countryside and Rights of Way Act 2000 (CROW Act) and invited views on whether land that becomes recorded as "access land" on the conclusive maps should be regarded as "public open space".
- 2.2 The results of the consultation would determine whether or not they would introduce new legislation regarding the liabilities of landowners. The stated aim in the consultation paper in developing any regulations under section 42 "will be to seek a balance between protecting public safety and the amenity and environment of access land on the one hand, and minimising the impact on owners and occupiers on the other".
- 2.3 Although legislation is currently in place relating to abandoned mines and quarries under the provisions of section 151 of the

Mines and Quarries Act 1954, some of these provisions turn on whether the workings are accessible from a public place.

- 2.4 Section 151 (1) of the Mines and Quarries Act 1954 requires the owner of mines, either abandoned or not worked for a period of twelve months or more, to secure and maintain the surface entrance to every shaft or outlet with a sufficient enclosure or other device to prevent any person from accidentally entering the outlet or falling down the shaft.
- 2.5 The statutory duty under section 151 (1) above does not, however, apply to quarries or to metalliferous mines, i.e. mines not used for the extraction of coal, stratified ironstone, shale or fireclay. Instead, section 151 (2) of the 1954 Act provides that any metalliferous mine that has not been worked since 1872, which has a surface entrance not sufficiently secured in the manner described in the preceding paragraph, and which by virtue of its accessibility from a public place constitutes a danger to the public, is deemed to be a statutory nuisance for the purposes of Pt III of the Environmental Protection Act 1990. Section 152(2)(c) of the 1954 Act provides that any quarry, whether being worked or not, which is not protected by a properly maintained barrier designed and constructed to prevent any person falling into the quarry, and which is accessible from a public place, constitutes a danger to the public and is also deemed to be a statutory nuisance.
- 2.6 The main concern was in relation to the number of old mines and quarries that would now become accessible and be classed as being accessible from a public place and could be classed as being a “statutory nuisance.” This not only includes lead mines but a number of old worked out coal pits on the Pennines.

3.0 DEFRA’S COMMENTS

3.1 The representative of DEFRA made the following points:

- The Minister believes on balance that the benefits for public safety as being a Public Place outweigh the need to regulate the existing legislation.
- There exists legislation to deal with the issue of Mines and Quarries that landowners should have already implemented or will need to implement if an abatement notice is served on them.
- There is no evidence that a local authority has ever served an abatement notice in respect of a disused mine or quarry to have mine shafts dealt with by the land owner/mineral right owner. This begs the question of whether there is actually a need.

- As access land is deemed to be a “public place,” there is existing legislation that makes the site the responsibility of the landowner or those with the mineral rights and not the responsibility of the local authority.
- If access land becomes excluded, then it does not fall into the category of a public place.
- There is a judgement to be made, namely, does a danger exist. If it transpires that a large number of abatement notices are being served, DEFRA may have to revisit the issue.

4.0 DISCUSSION DURING THE MEETING AND COMMENTS MADE

4.1 The Country Land and Business Association

4.1.1 They were concerned because the new right of access had not come into force as a result of the landowner granting the public the right to roam on access land, but as a result of the CROW Act and they were concerned in relation to:

- (i) When would a ‘statutory nuisance’ notice be served and how?
- (ii) Who is going to pay for works to abate the nuisance?
- (iii) Would it be possible to employ other measures such as restrictions, informal restrictions, and legal closure?
- (iv) Would not want it to be an automatic requirement to fence or cap a mineshaft if an abatement notice is served. Would want a notice to be served only in cases where there was a proven danger.
- (v) If a landowner or occupier requested an exclusion order because of the existence of mine shafts, this would acknowledge a potential danger and initiate an assessment by the Relevant Authority and the District Council. If it was found to be a danger, the District Council would then be under a duty to serve notice to abate the nuisance which could incur the applicant in additional costs.

4.1 Chartered Institute of Environmental Health Officers

4.1.1 Local Authorities have a duty to inspect their areas to determine if a “statutory nuisance” exists, especially if they are made aware of any potential nuisance. In this case the local authority is the District Council

Environmental Health department who are required to identify a 'statutory nuisance' and serve the necessary enforcement notice.

4.1.2 Local Authorities (District Councils) are amenable to negotiation on how to deal with cases with individual owners and other interested parties. If a case is brought to their attention they cannot ignore their statutory duty to deal with the problem. However, once it has identified the statutory nuisance, it has a choice to specify the works required to abate the nuisance or it can serve a general notice to abate the nuisance. However, if the works carried out under a general notice are not satisfactory, they can take further enforcement action.

4.1.3 it is not under any obligation to specify the necessary works required to abate the nuisance as it has a choice.

4.2 Ramblers' Association

4.2.1 They would support the least restrictive option that would not place an undue burden on landowners or occupiers and would support discussions before the serving of a statutory nuisance notice.

4.2.2 The Ramblers' Association members believe that there are some inherent risks with open access, but do not want to see landowners or occupiers having to pay for expensive works to abate the nuisance.

4.3 Local Authorities

4.3.1 If a statutory notice is served to abate a nuisance, which at the present time means fencing or capping the danger, this could place an undue financial burden on landowners and occupiers. It could also have an unacceptable effect on the landscape or cultural heritage of the place.

4.3.2 If a relevant authority receives a request from a landowner or occupier to make an exclusion order for a specific area on public safety grounds, it may cause difficulties in respect of other similar areas where an application has not been made by the landowner or occupier.

4.3.3 It was considered that some landowners and occupiers are already thinking that applying for an exclusion order may be a 'get out of jail free card' in relation to open access. It may be that they have not thought of the consequences of applying on public safety grounds and their responsibilities if a statutory nuisance is identified by the District Council. This may have the effect of deterring

a landowner from informing the relevant authority of a potential danger on their land.

- 4.3.4 If a landowner informs the relevant authority of a mine shaft on their land and the District Council inspects the specified mine shaft and has to walk past a number of other shafts, would a statutory nuisance notice be served in relation to all the mine shafts or just the one to be inspected?

4.5 General Discussion

- 3.4.1 There was a debate as to whether it would be possible to employ other methods which would satisfy the criteria of “abating the nuisance” such as employing the use of signing to direct the public away from the mine shaft. The general consensus was that although this would be helpful, it would not have “abated the nuisance” as the danger would still be there. This also raised the question of whether route restrictions removed the remaining area as being a public place and did not still tackle the issue of the Mines and Quarries Act and Public Liability Acts.
- 3.4.2 There was discussion as to what would happen if a person was injured and where the blame would rest. The Countryside Agency stated that there had been no case law and decisions would have to be made on an individual basis. This again raised the issue of the liability of an Access Authority or a Relevant Authority which is aware of a potential statutory nuisance. The general consensus was it would be the responsibility of the District Councils with their duty to inspect their areas from time to time to detect any statutory nuisances. There is however no guidance on this in relation to time periods for the District Councils to carry out their inspections.
- 3.4.3 It was suggested by those present that DEFRA Guidance should be produced to clarify the points raised and that it should include a flow chart for making a decision on how to manage an area. An example of such a flow chart is included as Appendix A

5.0 CONCLUSION

5.1 The general opinion was that information notices should be erected as a means of informing the public of a potential danger in the area.

5.2 There are a number of mine shafts that have been “capped” in the past by employing various methods such as placing beams across the mouth of the shaft and covering with earth. Whilst this would

appear to satisfy the legislation, there is no way of knowing by a visual inspection just how safe such shafts are.

5.3 There are literally thousands of old lead mine shafts in the Yorkshire Dales National Park Authority area and within the Nidderdale AONB which have been capped in such a way. To ensure the safety of the public, they would need to be identified and a proper engineering survey carried out. The Act does not make any provision for the payment of any such survey.

5.4 It is the view of Officers that the Local Access Forum should request the County Council to write to DEFRA requesting some form of grant payment be made available to enable such a survey to be carried out at no cost to the landowners or occupiers.

6.0 RECOMMENDATION

It is recommended that the Local Access Forum:

- (a) Notes the contents of the report for information; and
- (b) Requests the County Council to write to DEFRA on its behalf to:
 - (1) Request that clear guidance be issued on the responsibilities of landowners and occupiers and local authorities with regard to access to open country affected by former mining activity;
 - (2) Request that funding be made available to enable appropriate engineering surveys to be undertaken at no cost to the landowner and occupier to determine the safety of mines and shafts in areas of open access land.

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