

North Yorkshire Local Access Forum**25 July 2018****Consultation on the proposed scope and application of Natural England's SSSI
byelaw-making powers****Report of the Secretary****1.0 Purpose of the Report**

- 1.1 To advise members of the current consultation by Natural England and to invite the Forum to consider its response to the consultation.

2.0 Background

- 2.1 Natural England is currently consulting on the proposed scope and application of its byelaw-making powers in relation to the protection of Sites of Special Scientific Interest (SSSIs). The consultation can be viewed here:

<https://consult.defra.gov.uk/natural-england/byelaws-for-sssis/>

3.0 Responding to the consultation

- 3.1 The deadline for responses to the consultation is 5.00pm on Wednesday 22 August 2018.
- 3.2 It is suggested that the Secretary produces a draft response based on any comments made at the meeting, and circulates it for agreement by email prior to submission to Natural England to meet the deadline.

4.0 Local Access Forums and Sites of Special Scientific Interest

- 4.1 In light of the consultation by Natural England, and to alert Forum members to the issue of SSSIs, Mike Bartholomew has also produced the attached report for discussion, focussing on Blubberhouses Moor.

5.0 Recommendations

- 5.1 That the Local Access Forum considers the content of any response it wishes to submit to the England Coast Path consultation.
- 5.2 That the Local Access Forum considers the attached paper LAFs and Sites of Special Scientific Interest.

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Background Documents: None



A consultation on the proposed scope and application of Natural England's SSSI byelaw-making powers

Issued: June 2018

1. Introduction

- 1.1 [Natural England](#) is the government's adviser for the natural environment in England, helping to protect England's nature and landscapes for people to enjoy and for the services they provide. It is an executive non-departmental public body sponsored by the Department for Environment, Food & Rural Affairs ('Defra').
- 1.2 This consultation paper concerns Natural England's proposed approach to considering the use of its existing byelaw-making powers provided by Section 28R of the 1981 Wildlife and Countryside Act (as amended by the Countryside and Rights of Way Act 2000).
- 1.3 These byelaw-making powers are to be used specifically for the protection of Sites of Special Scientific Interest ('SSSIs') in England. Sites of Special Scientific Interest (SSSIs) are notified by Natural England as part of its statutory functions and are specially protected by law in order to conserve their wildlife or geology.
- 1.4 The ongoing protection and conservation of SSSIs, as core areas of ecological networks and resilient landscapes and seas, is central to furthering the ambitions set out in Government's [25 Year Environment Plan](#), [England's Biodiversity Strategy](#) ('biodiversity 2020') and Natural England's [Conservation Strategy](#).

2. What's the purpose of this consultation?

- 2.1 Natural England is inviting views on its proposed approach to considering the use of its SSSI byelaw-making powers.
- 2.2 As part of its ongoing work to deliver better and proportionate regulation to benefit the natural environment and to further support our collaborative approach of working with stakeholders to secure better environmental outcomes, Natural England is seeking to improve its capability to exercise its

existing SSSI byelaw-making powers, where this might be considered an appropriate and necessary action.

- 2.3 Enabling the consideration of SSSI byelaws as a conservation measure will maximize the flexibility Natural England has to protect the special wildlife of these special and important places, working in partnership with their owners, occupiers and managers.
- 2.4 In discharging its duty to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of SSSIs¹, Natural England considers that SSSI byelaws can, in certain circumstances, be a valuable and more proportionate tool which can be used flexibly to help to protect the special wildlife and geological features of SSSIs from inadvertent damage or deterioration.
- 2.5 Natural England believes that SSSI byelaws have the potential to support and back up the positive voluntary work of many landowners, site managers and local partnerships to protect and conserve SSSIs. They can help to promote the sustainable use and enjoyment of ecologically sensitive SSSIs by the general public.
- 2.6 Government's [SSSI Code of Guidance](#) (2003) first advocated the use of SSSI byelaws as a legitimate tool for site protection. This guidance also committed to a prior external consultation with stakeholders over a model set of SSSI byelaws.
- 2.7 To help us develop an approach to making use of SSSI byelaws where appropriate, Natural England is inviting views on three aspects of its proposed approach to exercising its byelaw-making powers, specifically,
 - A set of proposed Operational Principles which would guide Natural England's approach to considering when and how it may recommend to the Secretary of State that a SSSI byelaw is made
 - A set of Model SSSI byelaws which would provide a standard format and content for any individual SSSI byelaws
 - A call for views as to how, should a SSSI byelaw be made, Natural England can help people become aware of it and comply with it in order to ensure the byelaw is effective and helps to protect the SSSI.
- 2.8 Please read this document in conjunction with these three accompanying documents.
- 2.9 You can find out how and when to comment in section 9 below.

3. Background to SSSI Byelaws

- 3.1 Byelaws are locally-made laws established to tackle local issues. They are commonplace in our towns and cities, the seaside and other public open spaces and are widely applied by the local authorities and the wide range of public

¹ Section 28G of the 1981 Wildlife and Countryside Act (as amended)

bodies empowered to make them. They are primarily made to deter, and where necessary to regulate, undesirable public behaviour.

- 3.2 Natural England has a long-standing statutory power to make byelaws for the protection of its nature reserves. This discretionary power is given in section 20 of the 1949 National Parks and Access to the Countryside Act ('the 1949 Act'). In 2000, the 1981 Wildlife and Countryside Act was amended by the Countryside and Rights of Way Act. One of the amendments was the introduction of section 28R, which extended these existing byelaw-making powers for the protection of SSSIs in England.
- 3.3 At that time, Defra considered these new powers to make SSSI byelaws to be an important and valuable tool which Natural England can use flexibly to address problems arising from damaging activities. Defra recommended that a set of Model SSSI Byelaws for use in these circumstances should first be developed and subject to wide consultation.
- 3.4 The Secretary of State expects Natural England to seek the views of those with an interest in the land before making any SSSI byelaws.
- 3.5 Where owners and occupiers of the land affected by a SSSI byelaw express strong opposition, the Secretary of State expects Natural England to examine their concerns sensitively, and to proceed only where there are no other practicable solutions that would protect the special interest of that site.
- 3.6 The Secretary of State also has the power to hold an inquiry, if appropriate, to hear any objections to a SSSI byelaw.

What can SSSI byelaws be used for?

- 3.7 Section 28R of the 1981 Wildlife and Countryside Act (as amended) provides that Natural England may make byelaws for the protection of a site of special scientific interest. It applies subsections (2) and (3) of section 20, and sections 106 and 107, of the 1949 Act (reading references there to 'nature reserves' as references to 'sites of special scientific interest'). This means that a SSSI byelaw;
 - a. may provide for prohibiting or restricting the entry into, or movement within SSSIs of persons, vehicles, boats and animals;
 - b. may prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in a SSSI, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in a SSSI, or the doing of anything therein which will interfere with the soil or damage any object in the SSSI;
 - c. may prohibit or restrict the shooting of birds of any description within such area surrounding or adjoining a SSSI (whether the area be of land or of sea) as appears to Natural England requisite for the protection of the [SSSI];

- d. may contain provisions prohibiting the depositing of rubbish and the leaving of litter in a SSSI;
- e. may prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in a SSSI, or the doing of anything likely to cause a fire in a SSSI;
- f. may provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising entry into a SSSI or the doing of anything therein which would otherwise be unlawful, whether under the byelaws or otherwise;
- g. may be made so as to relate either to the whole or to any part of the SSSI or, in the case of byelaws made under paragraph (c) of this subsection, of any such surrounding or adjoining area as is mentioned in that paragraph, and may make different provisions for different parts thereof.

What can SSSI byelaws not be used for?

- 3.8 Byelaws should not be used to interfere with the exercise by any person of a right vested by virtue of ownership, lease or occupation of the land. Nor should they interfere with the use of public rights of way or with the activities of statutory undertakers.
- 3.9 To minimise any regulatory burden and avoid unnecessary regulatory duplication, Natural England also proposes that SSSI byelaws will not apply to those already in possession of a consent, assent, permission or licence given by Natural England or given by another statutory authority following prior consultation with Natural England.

How many SSSI byelaws has Natural England already made?

- 3.10 There are no SSSI byelaws currently in force. There are currently no live proposals to recommend to the Secretary of State that a SSSI byelaw is made. Any future proposals will be advertised on GOV.UK.
- 3.12 A number of National Nature Reserve Byelaws previously made by Natural England or its predecessor bodies are currently in force.

4. An overview of the proposed SSSI byelaw-making process

- 4.1 A case for any SSSI byelaw would be generated by a Natural England local Area Team in response to issues that may be undermining the protection of specific SSSIs. The team would be required to identify the persistent or continuing activity that is undermining or hindering the achievement of the site's conservation objectives and provide evidence that some or all of the special nature conservation features were or could be adversely affected by that activity.

- 4.2 In addition, the team would need to demonstrate that other informal or formal measures to address the issue have either been exhausted or are not feasible, and show that a thorough informal consultation with local stakeholders has been undertaken, with comments and concerns taken on board. The team will also have considered, and planned for, the prospect of enforcing the byelaw should it be approved.
- 4.3 At various stages of this process, this case would be subject to internal review and require the support of the Area Team Manager and the appropriate Chief Operating Officer. A draft proposal would also be submitted to Defra for their provisional approval.
- 4.4 Should Defra's provisional approval be given, Natural England's Board would be asked to further consider the proposal and make a formal recommendation to the Secretary of State for the Environment, Food & Rural Affairs that a SSSI byelaw is made. The decision to approve the making of a SSSI byelaw then rests with the Secretary of State.
- 4.5 Should a proposal to make a SSSI byelaw be approved by the Secretary of State, Natural England would make that byelaw by following the formal statutory procedures laid out in sections 235-238 of the 1972 Local Government Act and which is applicable to all byelaw-making bodies. These procedures include advertising the proposed byelaws, placing them on deposit and inviting representations from interested parties.
- 4.6 Following the statutory consultation period, the Secretary of State must formally confirm any SSSI byelaw that is made.
- 4.7 Once confirmed, SSSI byelaws may be amended by Natural England, though not without further ministerial approval. Where a SSSI byelaw is no longer considered necessary, it would be revoked.

5. Why does NE want to improve its ability to use byelaws to protect SSSIs?

- 5.1 Natural England considers that SSSI byelaws can, in certain circumstances, be a valuable and proportionate tool which can be used flexibly to help protect the special wildlife and geological features of SSSIs from inadvertent damage or deterioration.
- 5.2 Byelaws are a formal measure that are most suited to regulate ongoing activities and modify public behaviour in situations where a SSSI is being significantly affected by activities which are being carried out repeatedly or by a large number of people.
- 5.3 On some SSSIs, activities persistently undertaken by the general public are currently a reason for their unfavourable condition or pose a threat to their currently favourable state (see Natural England's IPENS Public Access and Disturbance [Theme Plan](#)). Such activities can include the use of off-road vehicles, lighting of fires, collection of fossils or geological specimens, the

undertaking of recreational activities, foraging for wild plants and the digging for bait. These activities typically take place without the permission of the SSSI land owner.

- 5.4 The Theme Plan advocated that the use of SSSI byelaws could, in certain circumstances, help to facilitate more sustainable public use and enjoyment of sensitive Protected Sites at levels which are more compatible with their special nature conservation qualities.
- 5.5 Natural England believes that SSSI byelaws can potentially help to deter damaging activity occurring in the first place, reducing the risk of further regulatory action being required after damage has been done. They can be a catalyst for local engagement with local managers and local communities, resolving issues of shared concern on protected sites and increasing the confidence of SSSI managers to implement the necessary conservation management of their sites.
- 5.6 Whilst it wishes to improve its capability to consider its byelaw-making powers, Natural England expects that the making of SSSI byelaws will be limited.

How would Natural England enforce SSSI byelaws?

- 5.8 Helping people to comply with a SSSI byelaw would be the primary aim. This would be carried out by Natural England working in conjunction with local landowners, partners, stakeholders and the Police depending on local circumstances.
- 5.9 We would encourage compliance in a variety of different ways suited to local circumstances. We anticipate this might initially include the on-site provision of informal advice, guidance and signage that can draw attention to the presence of the byelaws, the reasons for it and what can or cannot be done. These may be the only actions required. In some circumstances, the provision of more formal advice in the form of letters, written cautions or, as a last resort, prosecutions (civil sanctions are not currently available) may be necessary, additional steps.
- 5.10 The byelaw regime of section 28R of the 1981 Act allows for Natural England to issue permits that can authorise the holder to carry out activities that would otherwise be in breach of a byelaw. Where it is considered practical and appropriate, Natural England will consider the use of byelaw permits that can help with compliance and allow some activities to continue but at a more sustainable level.
- 5.11 Natural England is considering additional practical measures that can help people comply with any SSSI byelaws made in future to ensure the special features of England's SSSIs are protected.

6. The Consultation

Natural England is inviting views on the following;

The proposed Operational Principles

These ten guiding principles aim to inform the consideration of when and how NE would recommend to the Secretary of State that a SSSI byelaw is necessary. These principles would be published on GOV.UK.

These proposed principles aim to take into account Natural England's general purpose set out in the Natural Environment and Rural Communities Act 2006, and follow Natural England's published [Compliance and Enforcement Position](#). The development of these proposed principles have been informed by the approaches published by other byelaw-making public bodies to ensure there is consistency of approach.

Question 1.

Do you agree with these proposed Operational Principles in Annex 1? If not, please tell us how these could be improved, and why.

The proposed Model SSSI Byelaws

The proposed SSSI byelaws are based on, and adapted from, Defra's Model Byelaws for Local Nature Reserves (which remain unaffected by this consultation and would continue to be used by local authorities for this purpose).

It is envisaged that this list of model SSSI byelaws would provide a basic framework for any SSSI byelaws that may be proposed by Natural England in future. They are designed to cover a full and wide range of activities that might foreseeably take place on SSSI land so as to cater for the full range of situations that might arise.

Specific byelaws would be selected from this list of Model byelaws to target the specific activities and issue(s) affecting the site for which a SSSI byelaw might be required.

Question 2.

Do you agree with the scope of the Model SSSI Byelaws in Annex 2? If not, please tell us how these could be improved, and why.

Encouraging compliance with a SSSI byelaw

In the event of a SSSI byelaw coming into force in future, Natural England, working in conjunction with a site's stakeholders, will seek to promote compliance with it.

As a minimum, Natural England will publish details about the byelaw on GOV.UK, publish spatial information about the land subject to a SSSI byelaw on MAGIC and place signage on the site subject to the byelaw (in agreement with land owners,

occupiers and managers and using our powers to erect notices and signs on SSSI land provided by section 28S of the 1981 Wildlife and Countryside Act).

Natural England will also place a formal notice in a local newspaper and any other relevant local community publications or newsletters. All land owners, occupiers and managers would be informed directly by letter, as will the relevant Parish Councils and other local community groups known to us.

In addition to these traditional methods, Natural England is however keen to consider new or innovative approaches to making sure site users are aware of and can comply with a SSSI byelaw.

As part of this consultation, we are therefore inviting the submission of ideas and advice that can help to shape our future approach to helping people comply with any SSSI byelaws that may be made in the future.

Question 3.

What additional practical measures do you think Natural England could develop or consider that could help people comply with any byelaws designed to ensure the special features of England's SSSIs are protected?

7. Cost of measures (significant additional costs or burden)

7.1 The future exercising of Natural England's existing byelaw-making powers on SSSIs will incur no additional costs on business or public bodies. No impact-assessments would be considered necessary.

8. Equalities

8.1 As a public body, Natural England shares the public sector equality duty under the Equality Act 2010 which came into force across Great Britain on 5 April 2011. While developing these proposals we have had regard to the public sector equality duty. When publishing information about any SSSI byelaws which may be made in future, we will place notices in local newspapers and local community publications to help inform sectors of the local public without computer access.

9. How and when to respond

9.1 Please send your consultation response by email to Natural England at byelaws@naturalengland.org.uk (or by post to Natural England, Suite D, Unex House, Bourges Boulevard, Peterborough PE1 1NG FAO Mina Patel) no later than **Wednesday 22 August 2018**.

10. Using and sharing your consultation response(s)

- 10.1 In line with Natural England's [Access to Information Statement](#), at the end of the consultation period, copies of the responses and/or the information contained in them may be subject to publication or release to the public on request and/or on our website. If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. If we receive a request for release of the information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.
- 10.2 Responses received by that date will be analysed and taken into account by Natural England in finalising their proposals. The final proposals will be published on <https://www.gov.uk/government/organisations/natural-england>. We will also summarise all responses and place this summary on our website. This summary will include a list of names of organisations that responded but not the names, addresses or other contact details of individual respondents.

Thank you for reading this consultation and for taking the time to help us with this work.

OPERATIONAL PRINCIPLES - DRAFT FOR CONSULTATION

Key principles that Natural England will follow when considering the use of its byelaw-making powers for SSSIs¹

1. We will recommend the use of SSSI byelaws to help protect SSSIs where it is necessary to achieve a SSSI's Conservation Objectives and to help deliver our [Conservation Strategy](#).
2. Our approach to using SSSI byelaws will closely follow the principles set out in our [Regulation Standard](#) and our [Compliance and Enforcement Position](#). We will use SSSI byelaws in a proportionate and targeted way that is consistent with good regulatory practice
3. We will only propose a SSSI byelaw where activities which are, or may be, damaging to a SSSI are likely or known to be persistent and continuing in nature and are being carried out either repeatedly or by a large number of people.
4. We will only propose a SSSI byelaw when other measures have either failed or are likely to fail and there are no other practical or appropriate regulatory measures. We will first support voluntary and informal action by land managers, local communities and other stakeholders to protect and conserve their SSSIs before we will consider the use of byelaws.
5. Before proposing to make a SSSI byelaw, we will always carry out an early and thorough consultation with relevant landowners, land occupiers, local communities and other stakeholders.
6. We will listen to and take account of any local needs and concerns relating to a SSSI byelaw proposal in an open and sensitive manner and will seek the support of local stakeholders before recommending a SSSI byelaw is made.
7. We will not duplicate any existing byelaws and will work closely with other local byelaw-making bodies before using our own powers.
8. We will always be mindful of Natural England's general purpose and full range of statutory duties when using SSSI byelaws to ensure we achieve an appropriate balance between the legitimate use and enjoyment of sites for access and recreation and their protection as SSSIs.
9. We will not use SSSI byelaws to interfere with the exercise by any person of a right vested by virtue of ownership, lease or occupation of the land, the lawful use of public rights or way and open access land, or with the activities of statutory undertakers.
10. We will always publish any SSSI byelaws that are made and keep them under regular review.

¹ These principles, and the accompanying model SSSI byelaws, will also apply should Natural England wish to exercise the byelaw-making powers given to it by [regulation 32 of the Conservation of Habitats and Species Regulations 2017](#) in relation to terrestrial European Sites

DRAFT MODEL SSSI BYELAWS FOR CONSULTATION

Note: footnotes and brackets [] and { } are drafting aides and should be removed from the final version.



Byelaws for the Protection of [name] Site of Special Scientific Interest

WHEREAS Natural England in exercise of the powers conferred upon it by section 28R of the Wildlife and Countryside Act 1981, sections 20 and 106 of the National Parks and Access to the Countryside Act and section 236 of the Local Government Act 1972 hereby make the following byelaws for the protection of the Site of Special Scientific Interest known as [name] in the Parish[es] or community Parish[es] of [name] in the County of [name].

1. In these byelaws

1.1. "The Site" shall mean the pieces or parcels of land containing [] hectares or thereabouts and notified to the Secretary of State as being of special scientific interest pursuant to section 28 (1) of the Wildlife and Countryside Act 1981 on [date] and confirmed on [date]

and the Site is for the purposes of identification shown as nearly as may be on the map annexed to these byelaws and edged in red. *[Further text will be needed if the byelaws apply to part-only of the site or to adjoining areas]*

1.2. "Firearm" shall have the same meaning as in section 57 of the Firearms Act 1968.

1.3. "Animal" shall mean any mammal, bird, reptile, amphibian, fish or invertebrate.

1.4. "Plant" shall mean any tree, shrub, grass, fern, herb, moss, liverwort, hornwort, lichen, fungus or algae, or part thereof

1.5. "Dog" shall exclude police dogs, registered guide or assistance dogs and any dog that is working on the land with the consent of the person in control of the land

1.6. "Features of special scientific interest" shall mean the flora, fauna, or geological or physiographical features by reason of which the site is of special scientific interest

[Delete 1.2 – 1.6 above if not applicable to selected byelaws]

2. Within the Site the following acts are hereby **prohibited** except insofar as they;

(a) may be authorised by a permit issued by Natural England in accordance with Byelaw 4,

(b) may be authorised by effect of Byelaw 5, or,

(c) are necessary to the proper execution of his duty by an officer of Natural England or by any

person, or servant of any person, employed or authorised by Natural England.

[Select the appropriate byelaw(s) from Models 2.1 – 2.47 below to address the underlying problem/threats to the site(s) – delete all those not applicable]

Restriction of Access

- 2.1. Entering at any time those parts of the Site hatched [*colour*] on the attached map; or where notice to keep out has been posted by order of Natural England.
- 2.2. Entering any part of the Site during the period beginning on the [] day of [] and ending on the [] day of [] in any year.¹

Damage to or disturbance of things in the Site

- 2.3. Spreading or using any net, or setting or using any lamp or other instrument, or any snare, rod, hook or lure, for the capture, taking, injury or destruction of any living Animal or feature of special scientific interest [**specify features**]
- 2.4. Taking, molesting or intentionally disturbing, injuring or killing any living Animal or feature of special scientific interest [**specify features**].
- 2.5. Taking or intentionally disturbing or destroying the eggs, larvae, pupae or other immature stages, or the place used for shelter, reproduction or protection of any living Animal or feature of special scientific interest [**specify features**]
- 2.6. Intentionally removing or displacing any Plant, turf, water or mineral including peat, shingle, hard rock, sand and gravel, topsoil, subsoil, chalk, lime, limestone pavement, geological specimens or fossils, shells and spoil (**specify where possible**)
- 2.7. Climbing or ascending any tree or climbing or placing a ladder or steps against any tree.
- 2.8. Digging for, or taking of, lugworm, ragworm or any other form of fishing bait [from within those parts of the Site hatched in [*colour*] on the attached map].

Bringing animals into the Site

- 2.9. Intentionally bringing, or permitting to be brought, into the Site any living Animal, or the egg of any living Animal, or any Plant, or any seed or other part of any Plant, in such circumstances that it is likely that such Animal or Plant will reproduce or propagate itself, or such egg will hatch, or such seed will germinate.
- 2.10. Bringing into, or permitting to remain within, the Site any Dog.²
- 2.11. Permitting any Dog to disturb or worry any Animal.³

¹NOTE TO STAFF It is also possible to insert a byelaw allowing access only at certain times of day or states of the tide.

² NOTE TO STAFF If a Dog Control Order (now Public Space Protection Order) has not been made, this byelaw may be selected. Byelaws may also exclude dogs from the site, or part of it.

- 2.12. Allowing any Dog under your control to leave the width of any public right of ways within the Site⁴.
- 2.13. Failing to remove from the Site faeces deposited by any Dog under your control.⁵
- 2.14. Failing to keep a Dog either on a short lead (of no more than 2 metres in length) or under close control⁶, or failing to put and then keep any Dog either on a short lead (of no more than 2 metres in length) or under close control when directed to do so by either a notice exhibited by order of Natural England or a person duly authorized by Natural England
- 2.15. Entering the Site with any horse or pony, or riding any horse or pony within the Site
- 2.16. Bringing into, or permitting to remain within, the Site any animal (other than a dog) unless that animal is kept under proper control and is prevented from worrying or disturbing any other animal.
- 2.17. Turning out any animal to feed or graze, and providing any animal with any supplementary feed.

Areas of water

- 2.18. Committing any act which pollutes or is likely to cause pollution of any water.
- 2.19. Bathing, paddling or wading in any water.
- 2.20. Angling.
- 2.21. Water skiing, power-boating, jet-skiing or use of any motorized water-based craft.
- 2.22. Sailing model boats.
- 2.23. Propelling (by any means whatever) any boat or other water-based craft on an area or stretch of water other than a public waterway.
- 2.24. Mooring or leaving or launching any boat, including those with a residential use, or other water-based craft (elsewhere than on a launching or mooring site), and the upgrading, maintenance or repair of such boats or craft whilst within a mooring.
- 2.25. Obstructing any flow of any drain or watercourse, artificial or natural.

³ NOTE TO STAFF If a Dog Control Order [now Public Space Protection Order] has been made by a local authority this should be the only dog-related byelaw necessary.

⁴ NOTE TO STAFF Byelaws may not require dogs to be on leads whilst on public rights of way, but may restrict dogs to those rights of way.

⁵ NOTE TO STAFF If a Dog Control Order [now Public Space Protection Order] has not been made, this byelaw may be selected.

⁶ 'Close control' means that the dog(s) is kept close at heel and is able to quickly respond to commands

Use of vehicles

- 2.26. Driving, riding, propelling or leaving any mechanically propelled vehicle or any other motorized, land-based craft (including hovercraft) elsewhere than on a highway or on a road.
- 2.27. Landing any aircraft (except in case of emergency).
- 2.28. Launching, operating or landing (except in case of emergency) any hang glider, micro-light aircraft, hot-air balloon, paraglider, model aircraft, sky lantern, unmanned aerial vehicle ('drone') or similar airborne contrivance at a height or location that may disturb the features of special scientific interest [**specify features**] .
- 2.29. Launching or operating any sail or wind-powered land-based craft (including kite-buggies, kite-surfboards, land yachts or similar)

Use of certain equipment

- 2.30. Using any camera in circumstances that may disturb the features of special scientific interest [**specify features**] or the places used for shelter, reproduction or protection by the features of special scientific interest [**specify features**]
- 2.31. Using any apparatus for the transmission, reception, reproduction, or amplification of any sound, speech or images by electrical or mechanical means, except apparatus designed and used as an aid to defective hearing and apparatus used in a vehicle so as not to produce sound audible by a person outside the vehicle.
- 2.32. Using any device designed or adapted for detecting or locating any metal or mineral in the Site.

Use of Firearms, etc.

- 2.33. Being in possession of a firearm (with ammunition suitable for use in that firearm) otherwise than on a public paved road, or discharging a firearm or lighting a firework.
- 2.34. Projecting any missile manually or by artificial means.

General Prohibitions

- 2.35. Erecting, occupying or using any tent, shed, caravan or other structure for the purpose of camping elsewhere than in an area indicated by a notice as being available for camping.
- 2.36. Flying any kite.
- 2.37. Erecting any post, rail, fence, pole, booth, stand, building or other structure.
- 2.38. Neglecting to shut any gate or to fasten it if any means of doing so are provided.
- 2.39. Posting or placing any notice or advertisement.

- 2.40. Selling or offering or exposing for sale, or letting for hire or offering or exposing for letting for hire, any commodity or article, or selling or offering for sale any service.
- 2.41. Engaging in any event or activity which is causing or likely to cause damage or disturbance to the features of special scientific interest [**specify**].
- 2.42. Holding any show, event, performance, public meeting, exhibition or sports or the playing of any organized games.
- 2.43. Cycling, roller or ice skating, skiing, tobogganing, or skate boarding.
- 2.44. Lighting any fire, stove, barbecue, heater or other appliance capable of causing a fire, elsewhere than in an area indicated by a notice as being available for camping.
- 2.45. Letting fall or throwing any lighted match or lighted substance in a manner likely to cause a fire.
- 2.46. Intentionally or recklessly removing or displacing any notice board, notice exhibited by order of Natural England, apparatus, wall, boundary bank, fence, barrier, railing, post or hide.
- 2.47. Intentionally leaving items in a place other than a receptacle for the deposit of litter or refuse.

3. Interference with duly authorized officer

Intentionally obstructing any officer of Natural England or any person, or the servant of a person, employed or authorised by Natural England in the execution of any works including research or scientific work connected with the laying out, maintenance or management of the Site.

4. Permits

Natural England may issue permits authorising any person to do any act or class of acts within the Site or any part thereof which would otherwise be unlawful under these byelaws.

Any such permit shall be issued subject to the following conditions:

- (i) that it must be carried whenever a visit is made to the Site, and produced for inspection when required by a person duly authorised by Natural England in that behalf; and
- (ii) that it may be revoked by Natural England at any time.

To request a permit from Natural England contact [**insert details**].

5. Effect of Byelaws

These byelaws shall not operate so as to interfere with the exercise –

- a. By a person of –

- i. a right vested in him/her as owner, lessee or occupier of land in the Site,
 - ii. any easement or profit à prendre to which he is entitled,
 - iii. any public right of way.
- b. Of any functions of a local authority, statutory undertaker or drainage authority.
- c. By a constable or a member of the armed forces or of any fire brigade or ambulance service of the performance of his duty.
- d. By a person of –
 - i. a written consent given by Natural England in accordance with section 28E(3)(a) of the Wildlife and Countryside Act 1981 (as amended)
 - ii. a written agreement made with Natural England in accordance with section 16 of the National Parks and Access to the Countryside Act 1949, section 15 of the Countryside Act 1968 or section 7 of the Natural Environment and Rural Communities Act 2006
 - iii. a management scheme or a management notice served by Natural England in accordance with section 28J and section 28K of the Wildlife and Countryside Act 1981 Act (as amended)
 - iv. a written assent given by Natural England in accordance with section 28H(3)(b) of the Wildlife and Countryside Act 1981 (as amended)
 - v. a written permission given by Natural England or another section 28G authority⁷ in accordance with section 28I of the Wildlife and Countryside Act 1981 (as amended)

6. Penalty

Any person who offends against any of these byelaws shall be liable on summary conviction to a fine on level 2 on the Standard Scale and in the case of a continuing offence to a further fine for each day during which the offence continues after the said conviction.

7. Annex(es)

Map(s) showing the areas of land covered by these byelaws.

⁷ As defined in [section 28G of the 1981 Wildlife and Countryside Act \(as amended\)](#).

Explanatory Note *(This note is not part of the Byelaw)*

Natural England has made this byelaw to protect **[name]** Site of Special Scientific Interest in accordance with its duty, under section 28G of the 1981 Wildlife and Countryside Act (as amended), to take reasonable steps, consistent with the proper exercise of its 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.

This Byelaw protects **[name of feature(s)]** by prohibiting the **[activities]** to take place on the SSSI [or specified areas within or adjoining the SSSI].

The specified areas of the SSSI are defined above.

The specified areas of the SSSI are identified on the maps below/attached.

If you have any queries with regard to these byelaws please contact **[insert Area Team contact details]**.

DRAFT

LAFs and Sites of Special Scientific Interest

1. LAFs' statutory purposes. LAFs were set up by the CROW Act of 2000. Their function is to advise their appointing authority (in our case, NYCC)

as to the improvement of public access to land [in the area for which it is established] for the purposes of open-air recreation and the enjoyment of the area. (Section 94 (4))

This function is qualified in section 94 (5) (b). There, it is stipulated that in carrying out their functions, LAFs shall have regard to

The desirability of conserving the natural beauty of the area for which it is established, including the flora, fauna and the geological and physiographical features of the area.

These twin obligations – to promote access and conserve natural beauty – may sometimes come into conflict. When they do, which obligation takes precedence? National Parks have similar statutory obligations, and it has been established in court, in the so-called 'Sandford Principle', that the obligation to conserve natural beauty outweighs the obligation to promote access. It is reasonable to suppose that Sandford principles should apply to LAFs when they make recommendations to their appointing bodies.

What, therefore, should LAFs do when the obligation to promote public access clashes with the obligation to conserve natural beauty? The clash is at its most acute when the particular area of concern is a Site of Special Scientific Interest (SSSI), a zone that, by reason of its flora and fauna, and other features, is accorded the highest level of statutory protection. Using the analogy of the Sandford Principle, it seems plain that LAFs should never make recommendations that compromise SSSIs.

2. The case of Blubberhouses Moor. This is a huge moor, (see the accompanying map) and large portions of it are SSSI. The moor also meets European standards for landscapes of the highest environmental importance.

2.1 The moor is designated under CROW as an Open Access Area, thus giving the public access on foot, save for statutorily-defined periods of closure – eg shooting, fire hazard. Has access by the public on foot damaged the SSSI, and thereby alerted us to one of our obligations? Evidence here is anecdotal, but conversations with the proprietor of large portions of the moor, with two gamekeepers who manage the moor, and with the head keeper of the nearby Bolton Abbey estate, have convinced me that access on foot causes no concerns. Indeed, the proprietor positively welcomes walkers who respect the moor.

2.2 Public rights of way on the moor.

2.2.1 Footpaths. There are half a dozen or so footpaths criss-crossing the moor. A few of them exist on the ground, but walkers tend to follow paths that do not correspond to the lines on the maps, but which have evolved over time. This is of no great practical importance, for the moor is an Open Access area.

2.2.2 Bridleways. There is only one bridleway on the moor. It runs from Kexgill Farm, on the A59, southwards across the moor, to just northwest of March Ghyll Reservoir. For much of the route, there is no evidence on the ground of the bridleway. For the northern section,

the line on the map goes through unmarked, knee deep heather. Whether this is negotiable on or horse or a bicycle is doubtful. In over 30 years of regular visits to the moor I have never seen cyclists or equestrians attempting to use the bridleway. In principle, and in the furtherance of our obligation to promote public access, we could consider recommending to NYCC that the bridleway should be cleared of heather, and then waymarked, opening it up to cyclists and horseriders, but before we made such a recommendation, we should consult Natural England, who administer SSIs, to see if such a project would meet their approval.

2.2.3 Unsealed, Unclassified Roads (UURs). There are about 25kms of UURs criss-crossing the moor. The nature of the public rights of way on these UURs is unknown, beyond their necessarily bearing rights on foot. To establish exactly who is entitled to use them, and where exactly they run, on the ground, a great deal of historical research would need to be undertaken by NYCC Highways. There is no prospect that NYCC will deploy resources for this laborious, time-consuming task. To take just one example, the UUR that runs southwards from the track that leads onto the moor from near Blubberhouses church: when this route is followed scrupulously by GPS, it runs across two intake sheep pastures, through 2 walls, and then a further wall to emerge on to the moor itself. There is absolutely no evidence on the ground of the existence of this route. The moor has a number of access tracks constructed by the proprietors of the moor. Here and there, these tracks correspond for short sections with the line on the map of the UURs, but these access routes were constructed for land management purposes, not to define the line of the UURs.

2.2.4 The impact of recreational motor vehicles on the SSI. Up until 2005, the moor was used extensively by motor cycles, and, less commonly, by 4x4s. Assuming that the users of these vehicles believed that they had the right to use the network of UURs, and assuming that the users intended to keep to the mapped line of the routes, in practice, because there is no physical evidence of the routes on the ground, vehicles wandered from the lines on the map and wrecked extensive areas of the peat moorland. The damage caused is well-documented. So severe was the damage that, in 2005, NYCC convened a working group, composed of representatives of all parties with an interest in the moor, to look at the whole question of the management of the UURs. Remarkably, (and perhaps unprecedentedly) the working group, which included representatives of the motoring organisations, LARA and the TRF, recommended that the moor should be closed to recreational motors, on the grounds that the routes were no more than lines on a map, that the rights to use these routes was unclear, that the moor was incapable of sustaining non-essential motoring, and that the fabric of the SSSI was being damaged. The representative of English Nature (now Natural England) said that some sections of the moor were so badly damaged that they would never recover. The consequence of the working group's recommendation was a permanent, zonal traffic regulation order (TRO) imposed by NYCC on the entire network of UURs. This TRO, which came into effect in October 2005, was widely respected. The moor slowly but steadily recovered. Following the practice of the Dales National Park Authority, the TRO came up for review after five years of its operation. In the National Park, TROs are reviewed by officers and then, if the TRO is considered to be doing what it was intended to do, they are renewed for a further 5 years. Unfortunately, NYCC did not follow this practice. Highways, it seems, lost interest in the project and let the zonal TRO lapse. (The officer who, with great skill and impartiality, chaired the working group had retired.) Following complaints, and the re-entry on to the moor by vehicle users, temporary TROs were hastily imposed. Temporary TROs may be imposed for only 18 months, with, exceptionally, renewal for a further 18 months. This means that the moor will soon revert to the condition it was in before 2005,

when the working group was convened. Motorbikes and 4x4s, whose damaging impact is beyond question, will re-appear – indeed, have already started to appear

3. Conclusions

3.1 As a general principle, the LAF should be more alert to its statutory obligation to protect the natural beauty of the area we cover. Whenever an issue of public access comes before us, we should deliberately and systematically consider whether questions of the protection of natural beauty arise.

3.2 When an access issue that confronts us is on a SSSI, we should, as a matter of routine, take advice from Natural England to make sure that any recommendation we are inclined to make, does not compromise the integrity of the SSI.

3.3 In the case of Blubberhouses Moor, we should recommend to NYCC that the findings and recommendations of the 2005 working group should be implemented. That is to say, a permanent, all-year-round, zonal TRO, covering all the UURs on the moor, should be re-imposed.

***Note.** Our primary obligation is to promote public access for the purpose of 'open air recreation'. Whether driving, or being driven in, a 4x4 constitutes 'open air recreation' is questionable. If it is, the drivers and passengers in traffic on the A1 are taking 'open air recreation'. As far as I know, this definition of LAFs' duties has never been tested in the courts.*

Michael Bartholomew, July 2018.