

# North Yorkshire Council

## Corporate and Partnerships Overview and Scrutiny Committee

11 September 2023

### Notice of Motion on Trail Hunting

Report of the Assistant Chief Executive (Legal & Democratic Services)

#### 1.0 Purpose of Report

- 1.1 To present information on Trail Hunting in response to a Notice of Motion at Full Council on 19 July 2023. This information has been provided to enable the Committee to consider the proposal made and draft a response for full Council's consideration.

#### 2.0 Background

- 2.1 At Full Council on 19 July 2023, the Chairman decided that a Notice of Motion proposing the banning of trail hunting on council owned land should be passed to the Corporate and Partnerships OSC for consideration, with the intention of it being considered and recommendations brought back to the November 2023 meeting of full Council.

- 2.2 The Notice of Motion proposed by Councillor Rich Maw (and seconded by Councillor Arnold Warneken) stated:

'This council resolves to ban trail hunting, exempt hunting, hound exercise and hunt meets outright across all council land where legally possible, including any NEW tenancies where there are positive covenants attached to the land that currently require the council as owner to allow trail hunting events and formal gatherings.'

We request that the Chairman considers that the matter be debated today at Council without being referred to the Executive or a relevant committee. This is because the hunting season is September to March and therefore this motion requires debating at the July full council as to do so in November will potentially put the lives of wildlife at risk.'

#### 3.0 Introduction

- 3.1 Trail hunting is a legal, although controversial, alternative to hunting animals with hounds in Great Britain. A scent trail is laid using the 'prey' animal's urine (foxes, hares, or other animals) and deliberately laid in areas where those animals naturally occur; ostensibly to recreate the experience of chasing a real animal. The trail does not follow a pre-determined course and those controlling the hounds do not know the route in advance. The trail is tracked by the hound pack and a group of followers; on foot, horseback, or both.
- 3.2 By 2005, most forms of hunting animals with hounds had been made illegal across Great Britain, although many remain within the law in Northern Ireland. To preserve their traditional practices, most registered hunts switched to trail hunting as a legal alternative.
- 3.3 It is claimed that Trail hunting is designed to replicate the practice of hunting as closely as possible, but without the deliberate involvement of live prey (superficially similar to the established sport of drag hunting, where mounted riders hunt the trail of an artificially laid scent with hounds). According to the Countryside Alliance most foxhound packs use an ethically sourced quarry-based scent based on fox urine. The hounds are bred to follow this scent and this, rather than an artificial scent, prevents offering the hounds an element of choice which could lead them to deviate onto the scent of other quarry species. Trails are laid where they are

permitted such as in woods, across fields, through hedgerows, into farmyards, across rivers or along ditches etc ahead of the hounds for them to search and follow. The timescale for laying a trail before the hounds start to search varies considerably, whilst the hounds' ability to hunt can depend on several environmental factors such as the terrain, wind, rain, air pressure, temperature, etc. The hunt area allowed on a specific day is known in advance and hounds are encouraged to search for the trail within those parameters. If the scent of a live quarry species is picked up the hounds are stopped as soon as it is known that the hounds are no longer following a trail that has been laid ([Countryside Alliance guide to trail-hunting](#)).

- 3.4 Anti-hunt organisations claim trail hunting is a smokescreen for illegal hunting and a means of circumventing the Hunting Act 2004<sup>1</sup> which applies in England and Wales, and the [Protection of Wild Mammals \(Scotland\) Act 2002](#), which applies in Scotland.<sup>[11]</sup>
- 3.5 It is argued that because the trail is laid using animal urine, and in areas where such animals naturally occur, hounds often pick up the scent of live animals; sometimes resulting in them being caught and killed.
- 3.6 It has also been alleged that trail hunts rarely lay an actual trail; therefore, encouraging hounds to pick up live animal scent. The League Against Cruel Sports has claimed that, of 4,000 monitored hunts, someone was seen laying a possible trail in an average of around only 3% of occasions.

#### **4.0 National Position**

- 4.1 In recent years several major landowners have suspended or permanently banned trail hunting on their land:
- In 2020 the Lake District National Park suspended trail hunting indefinitely and the Church of England announced a ban on use of its land for trail-hunting.
  - In 2021 the board of Natural Resources Wales (one of Britain's biggest landowner - a government-sponsored agency managing 7% of Wales' land area which includes 311,000 acres of woodlands) decided the outcome of a court case against a senior leader of the Masters of Fox Hounds Association (MFHA) had resulted in a loss of confidence in the organisation's ability to ensure its activities were carried out within the law and terms of its agreement. They therefore agreed to end its agreement with the MFHA and stop all forms of trail hunting on its land. The Head of Land Stewardship at NRW confirmed that in order to properly assure themselves that trail hunting was not being used as a cover for illegal activity, they would have had to invest heavily in skills and resources, to police it properly.
  - In the same year, the [Malvern Hills Trust](#), banned trail hunting on its land, having said that, during the monitoring of ten separate hunts, they had seen only one trail being laid.
  - In September 2022 the Forestry England Board announced that trail hunting in the nation's forests was suspended until the Board could take a decision on its future. The asked for more information and agreed to suspend Trail hunting in the nation's forests until their next Board meeting in 2023. To date have not publicised the outcome of their deliberations.

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<sup>1</sup> The Hunting Act 2004 came into force on 18 February 2005. The Act bans the hunting of most wild mammals notably foxes, deer, hares and mink) with dogs in England and Wales, subject to some strictly limited exemptions; the Act does not cover the use of dogs in the process of flushing out an unidentified wild mammal, nor does it affect drag hunting, where hounds are trained to follow an artificial scent.

- In October 2022 the National Trust whose Board of Trustees voted overwhelmingly to stop issuing licences for trail hunting on its land – almost a year to the day since they had temporarily suspended the activity.
- In 2023, following a thorough review, United Utilities (major water provider in North West England) concluded that it would no longer issue licences to trail hunting groups. In coming to that decision, they considered several factors including local stakeholder views and an assessment of the resources required to facilitate and monitor trail hunting.

4.2 A number of local authorities have also banned trail hunting on their land due to concerns that foxes were being hunted illegally. This includes:

- In 2019 Nottinghamshire County Council was the first local Authority to ban trail hunting on its land. They chose to introduce a ban to close a loophole that allowed both the 'accidental' and deliberate illegal hunting and killing of animals and remove a 'false alibi' regularly used by hunts to avoid prosecution. At that time there had been 282 reports of illegal hunting in the hunting season, including 39 reported fox kills
- Cheshire West & Chester Council – Cheshire is a hot spot for hunting in Britain and in the lead up to the introduction of their ban, there had been 27 reported incidents of illegal activity.
- Peterborough City Council – whilst they introduced a ban of trail hunting on their own land, they noted it would not affect any of the local hunts because none of them used council-owned land to conduct their hunting activities.

4.3 In May 2019 Essex County Council rejected a proposal to ban trail hunting and hound exercise on County Council land on the basis here had been no convictions for unlawful hunting in the county and therefore no justification for the motion. They agreed a ban would remove the rights of the common man to freely use public rights of way.

4.4 In 2020 Cherwell District Council in Oxfordshire also rejected a proposal to ban trail hunting on the basis that it was unclear whether the council actually held rights over any land on which trail hunting took place.

4.5 In 2022 Cornwall Council agreed that banning a lawful activity would be a direct attack on rural people, and therefore rejected a proposal to ban trail hunting despite a petition with more than 10,000 signatures. Their Council agreed to continue to permit the council farm tenants to decide whether or not to allow trail hunting on land within their agricultural holding. That where land was owned and managed by the council the officers responsible for its management would continue to make the decision to allow or not allow trail hunting on that land in line with the overall management plan for that land. And finally, that the council would continue to comply where there were positive covenants attached to the land that required the council as owner to allow trail hunting on a specific site.

## 5.0 Issues to Consider

### Equalities

5.1 There are no significant Equalities issues associated with the matters raised in this report

### Climate Change

5.2 There are no significant climate change issues associated with the matters raised in this report

### Financial Implications

- 5.3 In considering the Notice of Motion put to the Council earlier this month, Members will recognise there may be issues around enforcement if a decision were taken to ban trail hunting on council owned land i.e., the huge amount of property/land owned by the Council, and the possible financial implications and other resources it may require. It is difficult to quantify any potential costs, however, there would be costs of officer time, both in legal and estates and it would depend on the individual circumstances and volume of actions associated with both implementing and enforcing a ban.

### Legal Implications

- 5.4 The land owned by the Council mostly affected by this issue will be the Council's Farm Estate Portfolio. The Council has a number of farm tenancies either granted under the Agricultural Holdings Act 1986 or farm business tenancies under the Agricultural Tenancies Act 1995.
- 5.5 Property services are not aware of any individual tenants that do permit trail hunting on the Council's land based on their knowledge of the portfolio and the tenants. They have also not been made aware of any reports of illegal activity in relation to hunting taking place on the Council's land and the Council has no individual agreements with any hunts or other third parties to specifically permit trail hunting on its land.
- 5.6 Some of the Council's tenancies reserve sporting rights to the Council others pass those rights to the tenants. Sporting rights are the right to hunt, fish and shoot on the land. It is not clear whether trail hunting is a sporting right and therefore could be relied upon to control trail hunting on land where the Council has reserved the right.
- 5.4 Currently existing leases do not contain specific provisions restricting trail hunting on the land. The Council as landlord has no power to legally require its tenants to prevent trail hunting. The Council would be reliant upon the voluntary co-operation of its tenants to comply with such a ban.
- 5.5 A ban could be introduced on new farm business tenancies or other leases by including specific clauses in the agreement to prevent trail hunting occurring on the land. However, it may be very difficult, costly and time consuming to enforce such a ban. The routes of enforcement would be limited. Firstly, it would be necessary to establish that a breach has occurred then the Council would need to consider forfeiture action. Forfeiture is the landlords right to prematurely terminate a tenancy and should not be considered lightly particularly where the holdings include a residential element. The tenant would have a right to apply to the court for relief from forfeiture. The courts have a wide discretion and if the tenant can remedy the breach of covenant quickly the court are likely to rule in favour of the tenant, this is likely to be the case in this situation as the nature of trail hunting is a short-term event.
- 5.6 In respect of highways and grass verges the Council does not have the legal ability to prevent trail hunters from using the same. Highways maintainable at the public expense only vests in the highway authority (the surface and sub-soil as far as necessary), ownership of the subsoil (that below the highway) remains that of the landowner (note a landowner of the subsoil cannot interfere with the public right to use the highway).
- 5.7 The public (including pedestrians, horse riders and carriages) have the right to pass and re-pass along the full width of the highway (there are some limitations such as footways) and the highway authority has a duty to assert and protect the rights of the public to the use and enjoyment of any highway (s130 Highways Act 1980).

5.8 The highway authority has a duty to prevent as far as possible the obstruction of the highway in their area and any restriction that interferes with the public right to use the highway would be an interference/obstruction. The introduction of a TRO is not an option and there is no mechanism that could be used to prevent trail hunting over or on the Highway.

## **6.0 Options**

6.1 Taking account of the information within this report and the issues raised at the meeting, the options available to the Committee are:

- i. Agree no further information is required, and agree a recommendation to go to the next meeting of full Council on 15 November 2023;
- ii. Setup a task and finish group to meet in October/November 2023, to consider any further relevant evidence before making a final decision at the Committee's next meeting on 4 December 2023, in order to make a recommendation to full Council at its meeting on 14 February 2024;

## **7.0 Recommendation**

7.1 Members are asked to consider the information provided within the report and at the meeting and agree a way forward based on the options listed above.

Barry Khan  
Assistant Chief Executive (Legal and Democratic Services)  
County Hall, NORTHALLERTON  
11 September 2023

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Background documents:

Constitution of North Yorkshire County Council - [New Council Constitutions \(northyorks.gov.uk\)](#)

Full Council Meeting 19 July 2023 – [Agenda](#)

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.