



NPA/23/007

Dartmoor National Park Authority

27 January 2023

Backpack Camping on the Commons of Dartmoor

Report of the Chief Executive (National Park Officer)

Recommendation: **That Members:**

- i. **endorse the permissive approach being developed and authorise the Chief Executive (National Park Officer) to conclude the discussions and secure the agreements required within the parameters set by the Authority's Scheme of Delegation;**
- ii. **authorise the Chief Executive (National Park Officer) to determine appropriate areas of common land owned by the National Park Authority that might be included within the new system for backpack camping; and**
- iii. **agree that work on the review of byelaws is paused so the implications of the High Court judgment can be fully considered.**

1 Introduction

1.1 Section 10(1) of the Dartmoor Commons Act 1985 provides (as relevant):

“Subject to the provisions of this Act and compliance with all rules, regulations or byelaws relating to the commons and for the time being in force, the public shall have a right of access to the commons on foot and on horseback for the purpose of open air recreation; and a person who enters on the commons for that purpose having so entered shall not be treated as a trespasser on the commons or incur any other liability by reason only of so entering or being on the commons...”

1.2 The High Court claim brought by Mr and Mrs Darwall (the claimants) concerned the scope of the right conferred by section 10 of the 1985 Act. The National Park Authority had always believed that section 10(1) included a right to backpack camp for one or two nights on specified areas of common land and this was reflected through the National Park byelaws which sought to provide a framework for the management of access.

- 1.3 The claimants sought a declaration to the effect that backpack camping¹ was not provided for by section 10(1), specifically: “a declaration that members of the public are not entitled pursuant to section 10 of the 1985 Act to pitch tents or otherwise occupy Stall Moor overnight (or for more than one night), or otherwise so entitled except with the Claimants’ consent.” The claim was founded on the plea that the right conferred on the public by section 10(1) is merely “a public right to roam (a *jus spatiandi* in favour of the public) and not any other or larger right”.
- 1.4 The High Court judgment issued on 13 January 2023 ruled that section 10(1) of the 1985 Act does not confer on the public any right to pitch tents or otherwise camp overnight on Dartmoor commons. Any such camping requires the consent of the landowner.
- 1.5 The effect of this judgment is to render the previous system of backpack camping ‘by right’ obsolete; persons wishing to backpack camp on the commons of Dartmoor now need to seek the advance permission of the landowner. This raises obvious practical questions, including:
- How do I know who owns the land that I would like to camp on?
 - How do I contact them?
 - How do I identify that I am camping in the right area when ‘on the ground’?
- 1.6 It also raised wider questions:
- Would landowners seek to issue permits for backpack camping and potentially charge for this right/amenity?
 - How would landowners seek to enforce?
- 1.7 The purpose of this paper is not to consider the judgment in detail but to outline the in-principle agreement reached with the Dartmoor Commons Owners’ Association regarding a new ‘permissive system’ of agreements to secure the ability of the public to backpack camp on certain commons.

2 Permissive System for Backpack Camping

- 2.1 Following the High Court judgment officers have worked closely and at speed with representatives of the Dartmoor Commons Owners’ Association to develop a new permissive approach that secures the ability of the public to backpack camp in certain areas of the National Park without needing to seek advance permission from the landowner.
- 2.2 While there may be some debate about this new approach, officers felt it was important to act quickly to ensure clarity for Ten Tors, Duke of Edinburgh participants and other persons wanting to backpack camp. We are grateful to the Dartmoor Commons Owners’ Association who have been proactive in enabling a practical solution. Agreement was reached in principle following a meeting open to

¹ Backpack camping is the term used by Dartmoor National Park Authority to emphasise the small-scale, ‘leave no trace’ ethos of this activity. All you need to camp one or two nights is carried in your backpack. It is also referred to as wild camping. Backpack camping is not the same as ‘fly camping’ the later term has been used to describe illegal camping that has a detrimental impact on the environment and is often associated with anti-social behaviour.

all members of the Dartmoor Commons Owners' Association held at Parke on Wednesday 18 January 2023 and a [joint press statement](#) issued on Thursday 19 January 2023. The new approach is still being developed but is outlined in this report.

- 2.3 Landowners will grant permission to the Authority to allow the public to backpack camp on land that they own through a permissive legal agreement. This enables the National Park Authority to publicise (via the Authority's [website](#)) areas where the public can backpack camp without seeking permission from individual landowners.
- 2.4 During the discussions about the new permissive approach officers have been clear that this is without prejudice to any appeal by the Authority concerning the High Court judgment.
- 2.5 Whilst we are continuing to develop the detail there are some key questions which we have sought to answer below (in no particular order).

How much will the new system cost the National Park Authority? How will the Authority pay for this at a time of having to make further cuts to its staff and work programmes?

The Dartmoor Commons Owners' Association have suggested that the annual amount payable under the new permissive agreements should be a maximum of £300.00 net of VAT per owner and that this will be reviewed every three years. We expect a maximum of 20 owners to opt into this scheme which would mean a maximum cost to the Authority of £6,000 per annum. On this assumption we believe that the Authority can afford to enter into such agreements and the cost would, in 2023/24, be taken from the Projects Fund and in future years would be built into the revenue budget.

Some landowners have indicated that they would donate the payment back to access and/or conservation work on Dartmoor via initiatives such as Donate for Dartmoor.

The payment would 'seal' the legal agreement and provide some funding to enable landowners to pay for professional advice or support management.

How long will the agreements last? What certainty do they provide?

The proposal is for an initial three-year agreement with a one-year break clause on both sides. After the initial three-year period the agreement would continue on a rolling annual basis or could be formally extended for a further three years or more. The area where backpack camping will be allowed would be reviewed annually in a joint discussion with the National Park Authority and could be subject to amendment to reflect environmental needs or other identified management needs. This would be a two-way process and would facilitate input from other statutory bodies as required. The implication is that the area opted in for backpack camping will only decrease if there is a sound environmental or estate management reason for that to happen.

How will the public know where they are allowed to camp?

The agreed areas will be mapped by the Authority and made available to members of the public through an interactive map on the National Park Authority's website. This mirrors the approach that existed prior to the High Court judgment save for the fact that landowners are now granting permission.

How does the new permissive area for backpack camping compare to the area where you could backpack camp prior to the High Court judgment?

The interactive map which we launched on 19 January is a 'work in progress'. We are still in discussion with landowners about some areas of common land and other landowners have approached us indicating a willingness to allow backpack camping on land that you could not previously camp on. At the time of writing this report we estimate that there has been a 14% reduction in the total area where the public is permitted to backpack camp.

Will the Authority allow backpack camping on common land that it owns?

As part of the byelaw review officers have been reviewing whether the Authority should allow backpack camping on common land that it owns. The Authority owns common land at Plasterdown, Haytor and Holne. The view of officers is that the Authority should allow backpack camping on suitable land within its ownership at Holne and we are discussing this with other landowners and representatives of the commoners. We do not believe that the common land that we own at Plasterdown would be suitable for backpack camping and discussions are still ongoing at Haytor but this is already a honeypot location and we are concerned about impact.

What about insurance risks?

This is subject to ongoing discussion with the Dartmoor Commons Owners' Association. It is an area of 'risk' that needs to be fully clarified.

What is the total cost to the Authority of this approach?

In addition to the direct financial cost there will be implications for staff workloads: generating and amending the map, reviewing the agreements etc.. The Dartmoor Commons Owners' Association have agreed to produce the first draft of the legal agreement for the Authority to comment on with the intention being that this is a template to be used for all agreements rather than separate negotiations with each landowner.

What is the legal basis for such agreements?

The Authority has the power to enter into legal agreements for the purpose of access under the National Parks and Access to the Countryside Act 1949 (as amended) and the Wildlife and Countryside Act 1981 (as amended).

3 Review of the National Park Byelaws

- 3.1 Section 11 of the Act empowers the Dartmoor National Park Authority to make byelaws under section 90 of the National Parks and Access to the Countryside Act 1949 in respect of the whole of the area to which section 10(1) applies, including for the prevention of nuisances.
- 3.2 The current set of byelaws have been subject to review and the Authority was due to consider a paper proposing that a revised set of byelaws be sealed for final public notice prior to submission to Defra. However, it is now recommended that this work be paused whilst we consider, in full, the implications of the High Court judgment.

4 Financial Implications

- 4.1 Please refer to section 3 above regarding potential costs.

5 Sustainability and Equality Considerations

- 5.1 Backpack camping, done responsibly, has little impact on the environment but offers considerable well-being benefits to participants. We are conscious of the equality implications and will discuss these with landowners with the aim of seeking to provide a range of backpack camping opportunities for people of all abilities.

6 Conclusion and Recommendation

- 6.1 The High Court judgment issued on 13 January 2023 stated that section 10(1) of the Dartmoor Commons Act 1985 does not confer on the public any right to pitch tents or otherwise make camp overnight on Dartmoor commons. Any such camping requires the consent of the landowner. In the absence of a legal right the Authority has worked in partnership with the Dartmoor Commons Owners' Association, to develop a new permissive approach which will offer public benefit.
- 6.2 By definition the new approach requires landowners to grant permission. The model being developed would mean they grant that permission to the Authority who can then offer the ability to backpack camp in specified areas, in a responsible way which 'leaves no trace' to members of the public. For the public, this approach offers certainty in the absence of a legal right and an easy to use map based system to check where you can backpack camp. Importantly, the announcement on 19 January 2023 provided certainty for Ten Tors training and the event itself.
- 6.3 The new system has been developed without prejudice to any appeal regarding the High Court judgment.
- 6.4 We are grateful for the active support of the Chair and Secretary of the Dartmoor Commons Owners' Association who have spent considerable time on this issue, with officers of the Authority since the judgment was issued.
- 6.5 Whilst the detail is still being developed the view of officers is that this new permissive approach provides as much certainty as can be provided in the absence of a legal right to backpack camp. Under the terms being discussed it is affordable and in the public interest. It should also be recognised that the system would not be possible without the positive attitude shown by the majority of common landowners and their long-term commitment to the moor.
- 6.6 It is recommended that Members:
- endorse the permissive approach being developed and authorise the Chief Executive (National Park Officer) to conclude the discussions and secure the agreements required within the parameters set by the Authority's Scheme of Delegation;
 - authorise the Chief Executive (National Park Officer) to determine appropriate areas of common land owned by the National Park Authority that might be included within the new system for backpack camping; and
 - agree that work on the review of byelaws is paused so the implications of the High Court judgment can be considered in full.

DR KEVIN BISHOP