

North York Moors National Park Authority

27 June 2016

Aislaby Moor – Loss of Section 3 Moorland

1. Purpose of the Report

- 1.1 To inform Members of the loss of Section 3 Moorland at Aislaby Moor and of the action being taken and what legal powers are available to this Authority and other organisations for the taking of enforcement action.

2. Background

- 2.1 Under the Wildlife and Countryside Act 1981 the Authority is required to identify on maps any areas of moor and heath whose natural beauty is particularly important to conserve and to review those maps every 5 years. This legislation resulted from the extensive loss of moorland in the 1950s-1980s. "Section 3" moorland thus has a special status recognising its importance to the special nature of the National Park.
- 2.2 The National Park Authorities have a duty to maintain and review these maps and the 1981 Act also includes powers of enforcement to protect Section 3 areas. However, this is through the creation of a statutory instrument, which has never been put in place and would require considerable resource to enact, would take at least nine months to make and officers estimate would cost the Authority at least £20k.

3. Description of the Area

- 3.1 The Authority became aware of the agricultural improvement of an area of Section 3 moorland in April 2016. The land is part of Aislaby Moor, located adjacent to the A171 to the north-west of the village of Aislaby, near Sleights.
- 3.2 A comparison of aerial photographs from 2009 and 2015 shows that an area of approximately 2.7ha has been affected in two separate blocks. A study of the aerial photographs seems to indicate that vegetation has been lost and appears to have been predominately acid grassland, gorse and bracken with scattered scrub. Site visits indicate that this has been ploughed and sown with grass.
- 3.3 The area is common land (CL51) in private ownership. There are two public footpaths crossing the site and a bridleway on the eastern edge.

4. Action Undertaken

- 4.1 The Authority is working closely with Natural England as this body may have existing powers to insist on a re-instatement of the moorland vegetation. Natural England is the regulatory body for the Environmental Impact Assessment (EIA) (Agriculture) 2006 regulations. These regulations give Natural England powers to prosecute and issue a remediation notice if uncultivated land has been changed without permission.
- 4.2 Natural England officers have carried out their own site visit and have gathered evidence about the site. They have submitted a report to their national enforcement team who will decide on the appropriate course of action.

- 4.3 Beyond the loss of Section 3 moorland there are potentially also other issues on the site that the Authority is investigating which may be relevant to its planning enforcement powers, or to the environmental health powers which rest with the relevant local authority, in this case Scarborough Borough Council.
- 4.4 In light of this case officers are planning to check the full extent of moorland from the latest photographic evidence against earlier records. In the light of this evidence Members may wish to consider whether the Authority would seek to make a statutory instrument to give statutory powers of enforcement for the loss of Section 3 moorland or heathland through prosecution. Such an instrument could be worded to give coverage for the whole of the National Park. The Peak District National Park Authority went through this process in 2002 and made a similar order (reference 2002 No. 80). Officers estimate that this would take at least nine months, would have to be started by November 2016 and would cost in the region of £20k plus officer time. The cost and time that this would take needs to be balanced against the frequency of such destructive actions taking place on important moorland areas in the National Park and also the other powers that are already available to Natural England under the Environmental Impact Assessment (EIA) (Agriculture) 2006 regulations.
- 4.5 Aislaby Moor is also registered common land (CL51). Under relevant legislation with respect to common land there are no legal powers available to this Authority to effect enforcement action for these agricultural operations. The individual commoners, commons councils and the Secretary of State all have powers through the Commons Act 2006 and the Secretary of State has specific powers of last resort with respect to agricultural operations. Officers feel that in this situation the powers available to Natural England under the Environmental Impact Assessment (EIA) (Agriculture) 2006 regulations are the most expedient and efficacious and that the Authority should support Natural England in using these powers.

5. Financial and Staffing Implications

- 5.1 At present staff time dealing with this matter can be absorbed in the normal regulatory work of the Conservation Department.

6. Contribution to National Park Management Plan

- 6.1 Policy E10 There will be no net loss of priority habitats.

7. Legal Implications

- 7.1 These relate essentially to Natural England's role as Regulator and to the other legislation referred to in this report relating to enforcement for the loss of important moorland and heathland.

8. Recommendation

8.1 That Members:

8.1.1 Are made aware of this issue and the action taken to date.

8.1.2 That the Authority should support Natural England in using its powers under Environmental Impact Assessment (EIA) (Agriculture) 2006 regulations.

8.1.3 That the Authority investigates further the use of its own powers under Town and Country Planning Act 1990 with respect to impact on amenity at the site and unauthorised development.

8.1.4 Consider the making of a statutory instrument to effect powers under Section 42 of the Wildlife and Countryside Act 1981 relating to the enforcement of loss of Section 3 moorland and heathland, once information is gathered on other possible losses.

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Background papers to this Report

File ref

1. None