



THE CUMBRIA COUNTRYSIDE ACCESS PARTNERSHIP BOARD

{the partnership between Cumbria County Council and the Cumbria Local Access Forum}

Dear Mr Brooks,

CRoW Act 2000 – Consultation on a Section 28 Indefinite Direction - Spadeadam

At the end of January, you consulted both the County Council and the Cumbria Local Access Forum on your proposal that the Secretary of State (MoD) should make a Section 28 Direction under the Act in respect of land at Spadeadam. This letter constitutes our joint response. In particular, you should note that this document constitutes formal advice from the Cumbria Local Access Forum, and that the Secretary of State is required, in accordance with section 94(5) of the Act, to have regard to relevant advice from the forum in carrying out his functions.

Given the detailed content of our response, it may be helpful if I state at the outset that we are quite clear that the Secretary of State *should* make an appropriate Section 28 Direction in respect of most of the land at Spadeadam. I should add that we were most grateful to your colleagues for agreeing to meet us at Warcop to discuss the issues. My colleagues and I found the meeting helpful.

We should also express our concern at the MoD's delay in dealing properly with this matter. As your letter acknowledges, all the land in question has been properly mapped as access land under the Act (indeed, if it were not so, there would be no question of the use of Section 28). Accordingly, in law, and however undesirable it may have been, the public has had a legal right of access to all the land in question for nearly two years. You say "*This Direction is for a secure area where the Ministry of Defence does not permit public access*", and in respect of the land North of the public highway this has *de facto* continued to be the case. We agree that this has been pragmatically sensible. However, since the coming into effect of the Act there has been, and at the moment continues to be, no legal right for the MoD to deny access.

We therefore agree that in respect of all the land North of the road the public should be denied access on an indefinite basis; are entirely content to see an appropriate Section 28 Direction made; and believe that there is a strong case for saying that this should have been dealt with long since.

The position in respect of the land South of the public highway is different. There is no history of any military training on this land, nor of any attempt to deny the public access, in particular to the permissive paths to Crammel Linn or along the course of the River Irthing that essentially marks the Southern boundary of the MoD land. To quote your own documentation "*The area to the north of the road is a Closed Impact Area for live firing*" (our emphasis), whereas "*The area to the south of the road although outside {of} the Impact Area is still within the danger area. Within this area helicopters fly to ground level on approach to live firing and can appear with no warning.*"

The documentation acknowledges that helicopter pilots are briefed to the effect that there may be traffic on the public highway: indeed, it would be astonishing in the extreme if it were not routinely assumed that members of the public (not necessarily in vehicles) might be on the highway at any time. But you go on to say “ ... *if people were able to walk across the area south of the road then ... helicopter training would have to cease because of Health and Safety risks*”. We do not accept the validity of this argument: people *have* been walking across (parts of) this land for years.

Accordingly, we strongly advise the Secretary of State **not** to make a Section 28 Direction in respect of **any** of the land to the South of the public highway.

In respect of the access to the Linn, and along the Irthing, we go further. The Partnership Board has adopted three guiding principles for its work:-

*We are in favour of access as far as it is legally provided for and practicably sensible to provide it:
We believe that access should be available (within the bounds of reasonableness) to all existing and potential future users; and
We believe that access should be exercised in an informed and responsible manner.*

We commend these principles to the Secretary of State, and, indeed, firmly believe that he himself is duty bound to follow the so-called “least restrictive” principle clearly laid down in all the relevant guidance on the implementation of the Act. We should oppose as strongly as possible any attempt to use the mechanism of a Section 28 Direction to deny public access to the Linn and the Irthing at any time.

We look forward to hearing that an appropriate Section 28 Direction (*i.e.* one applying exclusively to the land North of the public highway) has been made in respect of the MoD land at Spadeadam which is the subject of this consultation. The Partnership Board is happy to engage in further discussion and/or correspondence on this matter should it be thought helpful.

Duncan Graham
Chairman of the Cumbria Countryside Access Partnership Board

25 April 2007