

Federation of - Cumbria Commoners

Skeleton Argument on behalf of the Federation of Cumbria Commoners in advance of the Public Inquiry to Consider:

Applications to Cumbria County Council to amend the register to record an historic event - CL26 Murton Fell, CL27 Hilton Fell and CL122 Burton Fell and Warcop Fell

- 1) The Federation of Cumbria Commoners is a hill farmer owned and managed membership organisation and represents around 500 hill farmers who graze common land (commoners) as part of their overall farm business.
- 2) The Federation of Cumbria Commoners aims to be a representative voice to support and protect the commons of Cumbria. Our objectives are to:
 - To assist commoners and their associations in the protection of their rights
 - To support better collaboration amongst commoners
 - To support any initiative which will enable hill farming on common land to be a worthwhile and economically viable activity
 - To promote positive management of the environment by commoners
 - To improve public understanding of the commons
- 3) The Federation of Cumbria Commoners objects to the application by the Ministry of Defence for the deregistration of three common land units, CL26, CL27 and CL122 in the County of Cumbria (reference CA14/3; CA14/4; CA14/5).
- 4) We object to this application on three main grounds:
 - a) We support the objections made by the Open Spaces Society, the Foundation for Common Land and the Friends of the Lake District that the applications, as made, are incapable of being granted because they do not satisfy the tests for deregistration of land under para 2 of Sch. 3 to the 2006 Act
 - b) The application seeks to reduce the stock of common land in England by 4200 ha. This is against the intention of the Commons 2006 Act which sought to permanently secure the current stock of common land.
 - c) The provisions for establishing Commons Councils in the 2006 Act do not pose a risk to the MoD training exercises on these three common land units.
- 5) We recognize the Inspector considers that the main issues in this case center on 4a) above. We do not have the legal expertise to address the enquiry on these issues and are confident that the Open Spaces Society, the Foundation for Common land and the Friends of the Lake District can make a cogent case.
- 6) Therefore the main purpose of this skeleton argument is twofold:

- a) To briefly remind the Inspector and Cumbria County Council of the value of common land, its distinctive hill farming landscape, and the cultural and historic importance of commoning to Cumbria and England as a whole. Given the national importance of traditional grazing practices on common land we believe that any decision to deregister common land should look further than “the correct legal consequences of the 2003 vesting deeds under the applicable statutory framework.”
 - b) To briefly recount our first-hand experience of what is involved in setting up a Commons Council to show that the Ministry of Defense has exaggerated the risk that a council could be set up without their consent.
- 7) Half our countryside was once common land – privately owned land over which people have rights of use, mostly to graze livestock. It was a critical resource for the poor who lived off the land and suffered from successive waves of enclosures. By the mid-1800s over 7 million acres of land had been enclosed inspiring a concern that land was being lost for the public’s recreational use, and the forfeiture of individual common rights. The Commons Preservation Society (today known as the Open Spaces Society and Britain’s oldest environmental organisation) was formed in 1865 to successfully oppose enclosures at some of England’s most iconic landscapes. Today 3% of England remains common land, yet these areas are critical to our biodiversity and heritage, and make up most of our beloved landscapes: including Dartmoor, the Lake District, Yorkshire Dales, Epping Forest and Wimbledon Common.
- 8) Cumbria has one third of the common land in England - 112,900 ha in total. This land is mostly remote moorland. Commoners and shepherds have grazed hardy breeds of livestock on these commons for centuries shaping the mountain landscapes. This land is nationally important for wildlife habitats, water catchment and supply, tourism, access, carbon storage and archaeological conservation. No other category of farmed land delivers as many public benefits.
- 9) Today around 1,000 commoning families with a long proud history of farming use their rights of common to graze the Cumbrian fells and produce naturally-reared meat and excellent livestock. The traditional management of sheep on common land, including the ‘hefting’ of sheep to one area of the fells, and the marking of fleeces, link back to the Norse influence in the C10th. Common land has been central to this system for over 700 years.
- 10) Present day commoners like their forbears make the most of common land’s rough unforgiving terrain by farming it in conjunction with adjacent lower lying land. Commoning is all about community collaboration, a ‘bottom up’ approach where shepherds pull together on the common with their dogs to manage their flocks of sheep and herds of cattle. Successful commoning requires independent farm businesses to interdepend with their neighbours so they can farm remote hill areas. The combination of independence and interdependence is carefully and locally determined by all those involved.
- 11) Many farming families have farmed the same common land for hundreds of years developing and adapting their farming systems over the centuries. This has created a

rich farming cultural heritage of native sheep breeds, traditional shows and sports, shepherds meets and local dialects. These underpin the Lake District's new Word Heritage Status. James Rebanks' book 'The Shepherds Life' shed light on this way of life and became a surprise international bestseller.

- 12) Even though the rights of common have been removed from the registers for CL26, CL27 and CL122, the land in question is grazed by around 3000 sheep under grazing agreements entered into by local farmers with the Ministry of Defence. These farmers still practice traditional grazing practices to graze these commons. However, the uncertainty around our exit from the European Union, combined with the possible deregistering of these three CL Units may pose one uncertainty too many for these graziers who may decide to give up grazing the land. Experience shows that once common land ceases to be grazed, it is extremely difficult, if near impossible to re-establish grazing.
- 13) In other words, not only will the stock of common land be reduced, but also over time the skills and livestock needed to maintain the land will be lost and the species-rich mosaic flora and fauna dependent on managed grazing will disappear. Furthermore, if grazing is discontinued on these 3 CL units the commoners on the neighbouring contiguous commons towards the Crossfell summit are likely to be negatively affected. For example, their livestock may wander onto the ungrazed commons requiring more time and effort to retrieve them for routine animal husbandry tasks.
- 14) Common land and commoning are a fine example of "living landscapes". They embody the values and attributes the European Landscape Convention (Florence Agreement 2004) seeks to sustain. The UK is a signatory to this Convention. Deregistering CL26, CL 27 and CL122 will result in the removal of a significant site of cultural landscape and its communities and can rightly be described as not complying with the Convention.
- 15) Commons councils: We agree with the Foundation for Common Land's conclusion that the Ministry of Defense's suggestion that a commons council poses a risk to Warcop Training Area shows a complete lack of understanding of the process for the establishment of a Commons Council.
- 16) In 2008 Natural England commissioned a feasibility study to establish if there was sufficient interest among those with legal interests on common land in Cumbria to join a commons council. The result was positive and the Federation of Cumbria Commoners with support from consultants undertook an extensive consultation process and applied to Defra. As part of the application process we had to indicate which CL units were interested in joining the council. CL26, CL27 and CL122 have never been included.
- 17) Our application was accepted by Defra. Currently they are in the process of drafting our Establishment Order. They will then seek citizen's views via their own public consultation process as the Secretary of State must be satisfied that there is substantial support before making the Establishment Order. There is no way that CL26, CL27 and CL122 can join the commons council now, or at a later date without the Ministry of Defense's approval.

- 18) In conclusion, the Federation of Cumbria Commoners supports the objections made by the Open Spaces Society, the Foundation for Common Land and the Friends the Lake District that this application is without merit on legal grounds and Cumbria County Council should be advised to reject it. Furthermore, we ask the Inspector to consider the wider argument that common land is a precious resource for the benefit of all and should not be reduced by 4,200 ha. This contravenes the spirit of the European Landscape Convention (Florence Agreement 2004) to which the UK is a signatory. It also contravenes the commitments of the Commons Act 2006 to sustain commoning.
- 19) Finally, we wish to place on record that we believe that this whole exercise is a waste of public resources. The Ministry of Defense can secure its training needs without deregistering the commons land at Warcop Training Area.

10th August 2018