

# LESSONS LEARNED REPORT

## CROW MAPPING AND MAPPING APPEALS



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Working towards *Natural England* for people, places and nature

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## INTRODUCTION

### ***1.1. The mapping of Open Country and Registered Common Land***

The Countryside Agency (The Agency) were tasked by government under section 4(1) of the Countryside and Rights of Way Act 2000 (CROW) to prepare maps of England outside of inner London which show all registered common land and open country. As part of the mapping programme, the Agency had a significant role in a mapping appeals process. The right of access has now commenced across England.

The mapping work has involved a number of contractors, other external bodies, and a significant number of staff from within the Agency.

The Agency has successfully delivered a complex, high profile and innovative project, one of the largest that Defra have ever had to deliver. It has been delivered to government targets. The Agency should be confident that it can take forward valuable experience in delivering large and complex pieces of work in the future as part of Natural England.



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### ***1.2. Why carry out a Lessons Learned report?***

The purpose of a lessons learned review is to pass on any lessons that could usefully be applied to other projects. This report should be used by management to improve estimates of the effort and resource required to provide similar deliverables, including any necessary follow-on actions. Carrying out a lessons learned exercise now has enabled lessons to be identified before valuable expertise and knowledge is lost from the team. The lessons learned report should also be used to flag any unresolved issues that need action after the project has concluded.

Defra and the Planning Inspectorate (Pins) are in the process of reviewing their work under the implementation of part 1 of the CROW Act. It is important that the Agency has an active involvement in feeding into their reports.

The Agency is undergoing a period of significant change in preparation for Natural England, and it is vital that experience and knowledge is retained and used in the new organisation, which will have responsibility for future CROW mapping issues such as the decadal reviews and also work on improving access to coastal land.

### ***1.3. The Structure of the report***

This report is based on a number of different consultation exercises, which can be split into internal meetings and brainstorming events attended by members of the Agency, and external consultation with a selection of working contacts at various organisations.

This report has its focus on evaluating feedback on technical and process elements of the mapping and appeals work, drawing conclusions and making recommendations for future projects, focussing on future mapping work that is likely to be carried out by Natural England.

This report identifies all those lessons learned during the mapping and mapping appeals process. The lessons are split into three sections, these are;

- 2.1 Transferable lessons for all Countryside Agency / Natural England projects**
- 2.2 Lessons that have been learned that relate specifically to the Agency's Open Access mapping project**
- 2.3 Lessons learned that relate to Defra and the Planning Inspectorate**

This report summarises the lessons learned by the Agency. It is not a post project review or a summary of what other organisations, agencies, government departments and private individuals have learned from the mapping and mapping appeals work.

Following the completion of this report the Open Access team will examine in more detail those lessons that relate specifically to the Agency's OA mapping project.



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## 2. CORE OF THE REPORT

### 2.1. TRANSFERABLE LESSONS FOR ALL COUNTRYSIDE AGENCY / NATURAL ENGLAND PROJECTS

This section contains the lessons learned that need to be passed and utilised in the planning of other projects within the Agency.

The lessons (summarised below) have been identified through internal and external consultation. Where possible, suggestions are included.

Resolving and implementing the lessons outlined below falls outside of the scope of the Open Access team. They need to be implemented by the relevant project or programme board.

#### 2.1.1. Project management

Future projects would benefit from a clear understanding of where policy development work ends and actual implementation begins. This distinction is vital if complex implementation projects are to be planned in accordance with best practice and government standards. Ideally the initiation of a project would relate to the business / corporate planning timetables so that adequate resource planning can occur at the right time to secure funding.

Project management systems need to be fit for purpose for the particular project, which in the case of complex, high risk or high cost projects, may require named project support resources. Where projects form part of a multi-organisational programme, the use of outside consultants can be extremely valuable in avoiding a “blame culture” by providing an impartial facilitator and driver role. In the case of the access mapping and appeals process, effective programme management support and tools supplied by WS Atkins helped to bridge gaps between the Agency and the Planning Inspectorate (PINS), improving working relationships and helping to ensure that targets were owned jointly and met.

Recommendation – appropriate project management methods must be in place before any project is initiated. The amount of resource required will vary depending on the size and scope of the project.



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### **2.1.2. Contract management**

Contract specification and procurement needs to be recognised as a specific discipline. Input from subject specialists is of absolute importance. There is a general tendency to underestimate the amount of time needed for specifying requirements from both subject specialists and procurement experts. An over reliance on distance communication between the contract manager (and their team) and the contractors can lead to mistrust and misunderstanding. Face to face communication is more expensive on running costs, but more effective in achieving understanding and deliverables.

Recommendation – experienced and dedicated contract managers are required to negotiate contracts, supplied either from a central team or from a dedicated member of staff within the project team.

### **2.1.3. Internal resources and resourcing**

The Agency does not have the ability to respond quickly to changing resource requirements, both in terms of acquiring specific subject expertise (eg GIS) and in terms of increasing staff numbers. Buying in external advice should not be viewed as failure, as the Agency can not compete with external expertise. The Agency can deliver large, complex projects like Open Access but its ability to do so is constrained by the fact that it cannot respond quickly enough to changing staff resource demands.

Recommendation – Central services (HR, IT, accommodation etc.) need to be able to respond more effectively to meet the organisations business needs. Where specific expertise is not available within the Agency it should be brought in from outside.



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#### **2.1.4. Filing and customer services**

During the OA project, retrieval of information has not been as effective as it could have been, there has been replication of work as a result. Difficulties have arisen where contractors hold some or the majority of information that is also required by Agency staff. Standards of customer service have varied over time as the handling of public comments and enquiries has fallen to different staff with different priorities and skills. The approach to filing has been similar to that of customer services, there has been a lack of continuity and consistency, which has resulted in losing important information such as contact details with the public and research documents.

Recommendation – Implement and provide a more robust filing structure. Ensure that the filing system can last the duration of the project. A customer service team or representative needs to be in place from the start of any future project. A single coherent database of public contacts needs to be populated and maintained throughout the length of the project, and made accessible to all relevant parties. In creating and maintaining this database, due attention should be given to the requirements of the Data Protection Act 1998. Procedures for handling the correspondence needs to be introduced from the start of the project.

#### **2.1.5. Time to test and pilot the mapping approach**

Many of the lessons that have been learned would have been identified if there had been time at the start of the project to trial and test the processes. In the case of the mapping project that would have meant going through the whole mapping process from draft map production to the production of the conclusive maps (for areas 1 and 2). This would have added years (at least 2) to the PSA timetable.

Circumstances may arise where a timescale that would allow for thorough piloting of a new process is not acceptable to Government. In such a case, the Agency should record as transparently as possible the balance that it proposes to strike between time, cost and quality, and the potential consequences of striking such a balance. The aim should be to ensure and record that the SRO and Project Board (and, if appropriate, the sponsoring Department) are making a properly informed choice, and accepting the risks inherent in such a choice - which should then be identified as clearly as possible in the risks register.

## **2.2. LESSONS THAT HAVE BEEN LEARNED THAT RELATE SPECIFICALLY TO THE AGENCY’S OPEN ACCESS MAPPING PROJECT**

This section outlines those lessons that fall to the Agency to resolve before future mapping work is undertaken. This includes:

- The decadal review of open access maps
- The section 15 mapping project
- Other future mapping projects carried out under the CROW Act.

The lessons (summarised below) have been identified through internal and external consultation. Where possible, suggestions are included.

### **2.2.1. Mapping to the smallest parcel is not the only way that open country could have been mapped. Whatever boundaries are chosen to define the mapped area need to be readily identifiable and sensible on the ground.**

Disagreement on the adequacy of physical features that can act as mapping boundaries led to confusion on the ground for surveyors and planning inspectors, and resulted in numerous mapping appeals being allowed. An extract of the British Mountaineering Council response states that:

*“Boundaries would, in many instances, appear to have been drawn on a somewhat arbitrary basis rather than so as to appropriately reflect the character of the land parcel on the ground”*

In addition, the Agency mapped open country on a parcel basis, using the Ordnance Survey Mastermap (TM) product to identify where the boundaries are, which are the most appropriate etc. Whilst this method of mapping has worked, in that the mapping work has been completed, it has resulted in a scattering of open country across southern England, and around the margins of the core areas of the northern uplands.

At the beginning of any future mapping process that focuses on specific areas of land, and which involves multiple parties, it is vital that a consistent, transparent and understandable means of boundary selection is agreed.

This requirement needs to be considered at the early stages so that the ability to effectively share an agreed geographical record between different parties, relying on various systems, can be ensured.

Different approaches to mapping need to be examined, in particular the potential use of the joint character areas (as identified by the Agency and English Nature). A consistent and robust method of identifying boundaries of any mapped areas needs to be devised. Mapping at a landscape level rather than a parcel level would require some substantial changes to the mapping process (boundary selection would take on a



very different meaning) A detailed examination of the benefits and problems of such an approach is needed.

**2.2.2. When mapping open country, definitions must be as clear and defensible as possible. Without testing a definition on the ground it is not possible to use that definition with confidence.**

The Agency's interpretation of Mountain Moor Heath and Down (MMHD) as defined in the MME has been subject to detailed scrutiny at appeal. All definitions and the interpretation of those definitions outlined in the MME need to be tested. An extract from the Ramblers' Association (RA) lessons learned response states that:

*“As the mapping progressed it became clear to the RA that the CA was interpreting its MME in ways that were not obvious from the published criteria. In particular the CA decided to look for “core habitat”, particularly in relation to moorland and heathland, there is no mention of core habitat in the MME...”*

The way in which MMHD is defined and how those definitions are interpreted in the future needs to be reviewed in the light of the experience gained during the mapping appeals process.

The Agency needs to establish what other expertise is available to assist in its mapping work. This involves improving communication with partner organisations and other government agencies. The Agency needs to identify and summarise all other research and criteria used to map areas of mountain, moor, heath and down.

The approach to the identification of improved grassland (IG) and semi-improved grassland (SIG) needs to be reviewed. The CROW Act is clear that the Agency should not map parcels of land that are predominantly IG and SIG. The way that this is explained in the MME does not make it sufficiently clear how to divide SIG and unimproved grassland (a component of MMHD) this is a legacy of the non-botanical approach used by the CA when mapping open country. It is no coincidence that where this issue has been particularly evident has been when mapping downland, the vegetation type where our decisions have been the most difficult to defend at appeal, and which has received the most public criticism. The way that IG and SIG are identified and mapped needs to be reassessed. The Country Land and Business Association (CLA) in their response suggest that:

*“Improved and semi improved grassland should be defined according to its management (for example, mowing and topping) in addition to identification based on vegetation.”*

Site surveys were carried out when a parcel could not be determined in a desk based scenario. The RA in their response state that:

*“Lack of site visits was a major problem”*

The CLA also state:

*“The CLA would recommend more site visits and also a decision notice given at comment stage”*

Clearly the most accurate way of assessing whether a parcel of land has been mapped correctly is by visiting the site. Every open country appeal site had a site visit; in many cases these sites had been visited at determination stage. As well as reviewing how many site visits were carried out, how those surveys are conducted together with what information was recorded needs to be examined. There also needs to be clearer criteria and guidance as to when site visits are necessary.

### **2.2.3. The Open Character description in the MME was not detailed enough for open character to be measured whilst on survey or defended whilst at appeal.**

The Open Character element of mapping open country was included in the MME to attempt to ensure that all areas of MMHD had a feeling of open ness. It was, however, not described in detail (it appears as a footnote to the descriptions of MMHD) and as a result the way in which open character was identified varied considerably over time and as personnel changed. The RA say:

*“It seems that once the mapping had started CA had started to place more emphasis on this aspect of the criteria (Open Character assessments) than they envisaged at the start. A clarification of “open character” and the weight given to this criteria by the CA is required”.*

The most obvious problem that arose due to the lack of detail in the MME regarding open character was at the appeal stage, where a significant number of appeals were allowed on the basis of not meeting the open character criteria.

It has been suggested on many occasions that the joint character area assessments should have been used to help make the decisions as to how “open” a parcel of MMHD is. This needs to be tested and trialled on the ground.



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**2.2.4. Mapping discretions were not used in a consistent and transparent way. They were effectively “learned” as the process went on which was directly due to lack of trialling and testing before the mapping work started.**

Discretions were given to the Agency in the CROW Act to assist with the mapping duties; the discretions have been used throughout England. The way in which the MME has been interpreted however has not been clear. The Ramblers’ Association state that:

*“Use of no useful purpose (NUP) discretion is unclear”.*

As with Open Character the MME describes how discretions should be applied in a very general way. A more detailed definition is required, ensuring that whatever process or definition is used it is part of a transparent process with attention to recording the audit trail.

Before future mapping projects are initiated there needs to be trialling to determine how discretions ought to be applied. In the future, it is vital to show that discretions have been exercised and that guidelines for the exercise of the discretion have been followed. If time to test and trial is not possible then the risks associated with the method of interpretation need to be recognised.

**2.2.5. The quality of the map produced from existing data was directly related to the quality of the data and the skill of its interpreter.**

Mapping from existing data sources has been proved to be a successful way of identifying areas of MMHD, however more rigour and testing is needed to ensure this data is accurate before it is used. When data sources are not conclusive site visits need to be carried out.

Following the production of the draft map, datasets were used again when comments were received. At this point more interrogation of the data should have been carried out. Where there was any new evidence supplied in the comment or where a decision could not be confidently made, a site visit should have been made.

**2.2.6. The OA team should utilise the most up to date technology to improve the efficiency of the mapping work.**

There was duplication of work where parcels of land received more than one site visit. Due to poor recording and technology the information gathered at earlier stages of the project was either not available or of insufficient quality to use. A standard and robust approach to recording site visit information needs to be tested and incorporated into the MME.

Any new mapping project should give full consideration to all available technologies and select the most appropriate - the cheapest or easiest to commission are not

necessarily the most cost effective in the longer term. An example of this might be the investment in all-digital technology for site surveys, based on 'palm' computers, with 'pocket GIS' software and GPS linkage. Whilst such digital technology might involve a greater initial expense in hardware, software and training, the major benefits of such digital data include the ability to share such data effortlessly and cheaply, irrespective of number of end users and without any degradation in quality, no matter how many times it is replicated. Digital data may also be analysed and considered against other data sets, further enhancing value.

**2.2.7. All practicable steps to ensure consistency when delivering future mapping work need to be taken. Differences when carrying out subjective assessments must be planned for and expected.**

A consistent approach to mapping needs to be ensured. One of the main aims of the mapping of OC and RCL and the subsequent appeals was to take a consistent approach. An improvement in internal briefing / training and monitoring needs to be in place before future projects are started. This will ensure that any variance in exercising subjective discretions is kept to a minimum.

Mapping projects that involve an assessment of landscape type or land cover will incorporate an element of subjectivity, however much effort is put into developing an objective approach. Any such project must recognise this factor and work to understand the consequences of this subjectivity. For example, whilst it is possible to brief and train all project staff to work carefully to maximise consistency, other parties beyond the immediate boundaries of the project team are likely to adopt a different interpretation. If this is accepted at the early stages of the project, it is possible to produce a contingency plan.



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**2.2.8. Not enough quality checking of work was carried out on documents produced by the Agency, in particular site survey forms and appeal statements of case.**

Subjectivity (see above) and personal style meant that there was variation in the decisions made whilst on site visit and in the way that the statements of case were written and presented. There was no consistent approach to quality checking work, this led to variation in survey and statement of case quality and content.

A clear and consistent approach to quality checking needs to be in place before any future projects are started.

**2.2.9. The mapping work would have been more accurate and better received if a greater consideration of public and partner organisation comments had been made.**

Many LAFs feel they were not consulted enough and their comments and feedback were not listened to. An extract of the feedback received by Hampshire LAF is:

*“Our Local Access Forum was confused at what input was sought at the draft map stage – they were set up to be strategic, and advised to provide comments, but in fact there was no way for these comments to be addressed (since they were not saying ‘this parcel should not be shown’), and entailed extra CA staff to respond rather needlessly....”*

A clear line needs to be taken on what the Agency wants from its partners and this line needs to be fully understood by all actual and potential partners.

There was confusion as to what the general public should supply to the Agency and also confusion as to how the comments were dealt with. The CLA in their response state that:

*“there was no justification given for the decision made by the Agency as to why a comment was not accepted or why land had been brought on, or taken off the maps. The CLA would recommend that more site visits and also a decision notice given at comment stage as there was considerable feeling that the landowner comments were not given adequate attention”*.

Consultation with the public needs to be carried out in a far more rigorous way. The Agency needs to be clear what they are asking for and how the information will be used. The determination of comments received on the draft maps of OC and RCL has been highlighted as one of the main issues that need to be examined before future mapping work is started. The majority of costs awarded at appeal were awarded on the basis of poor determination of draft map comments.

The Agency went to great efforts to ensure that everyone who wanted to comment could comment on the draft maps without providing sufficient clarity as to how it would use the information supplied and what information was needed. More consideration is needed for comments and advice from the general public.

The general public can and want to supply information to the Agency that could and should be used. The Agency needs to draw up a framework that will outline what will be done with comments, how the Agency feeds back to commentators (including an explanation of how and why decisions were made) and how the comments will be checked to ensure they are valid.

**2.2.10. The Agency does not have legal expertise in house (nor should it have) but effective legal advice is essential.**

There is very little evidence of expert legal advice being incorporated into the drawing up of the MME. This has resulted in mapping processes being used that can be successfully challenged at appeal and judicial review.

Legal advice is needed from the start of any future mapping work (including setting down of definitions and guidance as to their interpretation), to ensure that procedures are in line with legislation and that the approaches taken do not have any obvious weaknesses (opportunities for successful legal challenge). In particular to ensure that documentation and correspondence will not cause legal problems. Ongoing legal advice is needed throughout the “life time” of any project, who delivers this advice, how it is acted upon and when it is needed needs to be examined with guidance produced.

This point is also raised in paragraph 2.3.3 of the “Lessons learned that relate to Defra and the Planning Inspectorate”.



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### **2.3. LESSONS LEARNED THAT RELATE TO DEFRA AND THE PLANNING INSPECTORATE**

This final section contains lessons to be passed on to Defra and the Planning Inspectorate (PINS). It is recommended that these be included within their respective lessons learned work.

The lessons (summarised below) have been identified through internal and external consultation. Where possible, suggestions are included.

#### **2.3.1. Regulations and Guidance**

At the start of the mapping project, not all the appropriate regulations and guidance were in place. As a result, contract costs were higher (to allow for the risk associated with unknowns). The reputations of Defra, PINS and the Agency suffered because there was not clarity about what regulations and guidance would be produced.

It is recommended that every effort is made in future to have as much as possible of the regulations and guidance in place before a new project begins. Where this is not possible, the risks associated with starting a project before (any part of) the regulations and guidance are in place must be fully recognised and documented, in particular in relation to procurement and contracts.

#### **2.3.2. Planning and management of the mapping project**

A programme of the size of the mapping project needs to have a clear management and reporting structure and yet early in the programme it was unclear where the responsibility for certain tasks lay (eg. issuing press releases and the availability of legal advice). This was rectified once clear programme management was introduced by Defra.

It is recommended that in future Defra is clear about programme management responsibilities and the roles and linkages both between and within projects.

#### **2.3.3. Provision of legal advice**

Related to the planning and management of the project as a whole is the issue of legal advice. The requirement for and possible sourcing of legal advice needs to be identified through discussion with all at the programme level at the very early stages of a project (during project initiation).

Expert legal advice was required at the outset and subsequent key stage of the mapping project. In practice, the majority of the legal advice used by the Agency was provided by independent legal firms but there was insufficient clarity – for instance during the development of the mapping methodology – about the extent to which Defra Legal had been or should be involved.

In future, clarity needs to be established at the outset about whether and, if so, to what extent legal advice will be available via Defra to statutory bodies within the Defra family.

#### **2.3.4. Semi – improved grassland**

The CROW Act makes it plain the Agency cannot map semi – improved grassland as mountain, moor, heath and down (MMHD). This caused difficulties with the way that the mapping work was undertaken, particularly with regards to identifying downland. It has also had the effect of pushing the identification of MMHD towards a botanical assessment. This in turn increased the cost and complexity of the mapping project.

Whilst it is not suggested that Defra should, or were in a position to, have changed the wording in the CROW Act (this is largely outside their power), it is important for government to recognise the impact of any relatively late addition, particularly on the time, quality and cost of the project.

#### **2.3.5. Mapping appeals**

The Agency appeals team and the Ramblers Association reported inconsistent approaches by PINS inspectors because the PINS “Access Inspectors Handbook” and the Agency’s “Mapping Methodology” contained different approaches to how open access land was identified. This is to an extent inevitable in a complex project of this size.

There was too much variation between the PINS access inspectors handbook and the Agency methodology, this led to decisions being made in different ways by PINS and Agency staff. The risks associated with this difference in opinion were never identified. As a result there were many cases where different outcomes and conclusions were reached by PINS and the Agency.

It is recommended that in the future a process is in place to deal with mapping appeals which is agreed between PINS and the Agency but managed by Defra. This approach should set out how mapping appeals are dealt with, how the various aspects of MMHD are assessed and how a consistent quality is ensured.

There were inequalities between the available appeal procedures in terms of applicants’ eligibility to claim costs (applicants opting for a hearing or inquiry were eligible to claim costs, whereas those opting to use written representation were not). In the Agency’s view, this amounted to an unhelpful incentive for applicants to chose a more expensive appeal route than was merited by the nature of their case – which was, understandably, sometimes reinforced by their professional advisers. In reality, the vast majority of appeals turned on site-specific issues of land cover, boundaries and openness of character, which could most sensibly be determined by means of a statement of case and a site inspection.



It is recommended that in future the CROW mapping appeals system is reviewed to reflect the particular characteristics of mapping appeals, and the lessons learned by the Planning Inspectorate, Defra and the Agency. With a suitable replacement in place before any future mapping appeals are heard, or if the same processes are used, the risks associated need to be clearly identified in advance.

It is also recommended that PINS inspectors provide more detail and are more transparent in their decision making. In particular, it is recommended that PINS explain why decisions have been made and on what evidence they were based. For example a decision to allow an appeal on the basis that it did not have the necessary open character (see section 2.2.3) without describing why did not allow the Agency to review and possibly update it's approach.

It was often difficult to identify the specific factors / evidence that led to appeals being allowed or dismissed, this made it difficult for the Agency to understand and learn from the decisions. Greater detail in decision letters would also provide transparency to third parties.

#### **2.3.6. Long term approach and decadal review of the OA maps**

The PSA target in relation to the mapping of open access land has been met. There is now an opportunity to review the mapping and appeals processes, to determine how processes can be refined before the decadal review of the maps is carried out.

The Agency, Pins and Defra need to develop a long term strategy for mapping access land to ensure that mapping work in the future is carried out in the most efficient and effective way. A key element of this will be the production of the decadal review regulations.

Work will start shortly by the Agency to review the mapping methodology and associated guidance. It is important that this work is carried out with the full knowledge and support of Defra. Subject to approval by the project board, the review of the mapping methodology will be a project in its own right. It is vital that Defra and Pins feed into this project.