Planning Inspectorate logo

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| **Application Decision** |
| Site visit made on 8 September 2021 |
| **by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 December 2021** |

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| **Application Ref: COM/3251470**  **WHERNSIDE GREAT ALLOTMENT, DENT, CUMBRIA**  Register Unit No: CL501  Commons Registration Authority: Cumbria County Council |
| * The application, dated 24 April 2020, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land. * The application is made by Mr Tom Watson of Landteam Whernside LLP. * The works comprise the retention, for a further five or ten years, of 650 metres of stock fencing, consisting of wire sheep mesh with two strands of plain top wire, enclosing an area of 60 h. Posts at 3.5 metre intervals. Stock gates are timber with wooden stile located every 200 metres. All fencing complies with British Standard 1722. |
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Decision

1. Consent is granted for the proposed works in accordance with the application dated 24 April 2020, subject to the accompanying drawing, and the following condition:

1) Notwithstanding the time period applied for, the existing fencing and associated works shall be removed in full, no later than 2 years from the date of this decision.

1. For the purpose of identification only a copy of the application plan is attached to this decision.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy (November 2015) in determining this application under Section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
2. This application has been determined solely on the basis of written evidence and an unaccompanied site visit.
3. I have taken account of the representations made by Whernside Moor Grazing Association, Natural England (NE) and the Open Spaces Society (OSS).
4. This application seeks to extend the time period for fencing and associated works (the development) granted under a previous application (COM 148), which expired on 3 June 2020. The previous application was granted on the basis that there was a Higher Level Stewardship Scheme (the HLSS) to maintain and improve biodiversity, particularly changing acid grassland to a dwarf shrub habitat.
5. I note the assertions from various parties that the development was not carried out fully in accordance with the previous application. The applicant has confirmed that there might be slight deviations from the previous consent due to health & safety and practicality grounds. I also note that there is other fencing in the vicinity of the site, but that is not subject of this application. It follows that I have determined the application on this basis and my findings during the site visit.

**Main Issues**

1. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application:-

a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

b. the interests of the neighbourhood;

c. the public interest; and,

d. any other matter considered to be relevant.

Reasons

***The interests of those occupying or having rights over the land***

1. There are a number of registered rights recorded over the land as outlined on the Register, which include grazing, gathering of rushes and bracken and sheep gaits. As the fencing to be retained was to facilitate a grazing regime, I am satisfied that the works would be in the interests of persons exercising rights of common over the land. Furthermore, I am satisfied that the retention of the development will not harm the interests of those occupying or having rights over the land.

***The interests of the neighbourhood***

1. Whernside Great Allotment (also known as Whernside Common) is approximately 740ha in area and is registered as common land under the Commons Registration Act 1965. The majority of the common lies within the Whernside Site of Special Scientific Interest (SSSI). However, the fenced enclosure, subject of this application encompasses an area known as the Brows, which is located outside the SSSI. The area is remote but lies within the Yorkshire Dales National Park (YDNP) so is likely to attract recreational visitors.
2. The interests of the neighbourhood test relate to whether the works will impact on the way the Common is used by local people. In general terms works should only be permitted if they maintain or improve the condition of the Common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact. The application area extends to some 60ha and comprises an undulating area of land.
3. Whilst noting the objection to the retention of the development from the OSS and Whernside Moor Grazing Association, I also acknowledge that the expiry of the HLSS is a misgiving on this application. Nonetheless, the applicant is working with the NE on securing a Higher Tier Countryside Stewardship (HTCS) agreement.

***The public interest***

1. Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

*Nature Conservation*

1. There is no evidence before me to indicate that the development harms nature conservation interests.
2. Whilst I acknowledge that the HLSS came to an end, the NE confirms in an email dated 6 October 2020 that one of its local advisers noted ‘that the moorland management was generally compliant, and the agreement holders appeared to be following the management prescriptions’. Additionally, the area assessed at the time by the NE local advisor also noted that the blanket bog habitat on the wider site appeared to have been protected and the management appeared to facilitate the development of acid grassland to fragmented heath. Although, I recognise there was limitations in establishing the degree of change due to the lack of baseline data.
3. Nonetheless, whilst no HTCS agreement is in place, as requested by NE to ensure support of the management of the site and to promote further peatland restoration, there is little before me to suggest that the removal of the development would not undo any habitat improvements achieved to date. Thus, at this present time, I am not convinced that it would be in the best interest of the Common and its habitat to remove the development without firstly establishing the updated management arrangements. However, this does not mean that the development should remain in place indefinitely.
4. The applicant has begun work with NE, but it is acknowledged that there is a lack of completed study and the HTCS agreement may require a further Section 38 application to be submitted, especially if the current location of the development requires amending. I have considered the comments received from the applicant with regards to the duration of the permission, but there is little evidence to support a further extension for a minimum period of 5 years, as suggested. Therefore, taking into account the time already lapsed since the HLSS ceased, and the possible impact of the pandemic on such matters, albeit not expressly cited by the applicant, I consider that a further modest extension of 2 years is not unreasonable in this instance.

*Landscape*

1. The land is located within the YDNP and the area subject of this application positively contributes to the wider visual amenities of the Common and the YDNP. I consider that the temporary nature of the development results in a slight visual impact. However, I consider that the harm to the landscape is not unacceptable and that the benefit to the neighbourhood and nature conservation outweighs any such harm, in this instance.
2. Consequently, I am satisfied that the retention of the development for a modest further temporary period to afford the applicant the opportunity to secure a HTCS agreement with NE would help to ensure the wider natural beauty and conservation aims of the YDNP. Overall, and in the current circumstances, I am satisfied that the retention of the development would not have a significant permanent impact on the conservation of the landscape.

*Public access*

1. The development restricts access to the common to some degree, but the wooden stiles provide access along the fencing. I consider that the development does not unacceptably restrict public rights of access or harm the interests of people from the neighbourhood wishing to use the common.

*Archaeological Remains and Features of Historic Interest*

1. There is no evidence to suggest that the development has an adverse effect on any archaeological remains or features of historic interest.

**Conclusion**

1. The retention of the development would ensure the existing improvements to the habitat are not undermined and would allow the applicant a notable amount of time to secure the emerging HTCS agreement. The application does not harm the interests of persons having rights in relation to, or occupying the land, the interests of the neighbourhood or the wider public.
2. Accordingly, the application should therefore be granted for a further period, albeit limited to 2 years, as specified in the Decision above.

W Johnson

INSPECTOR

Drawing referred to in paragraph 1