

|  |
| --- |
| **Application Decision** |
| Site visit made on 20 September 2022 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 February 2023** |

|  |
| --- |
| **Application Ref: COM/3296303****Gooseholme, Kendal**Register Unit No. CL153 Registration Authority: Cumbria County Council  |
| * The application dated 31 March 2022 is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
 |
| * The application is made by the Environment Agency.
 |
| * The permanent works comprise flood defence works including walls, kerbs, floodgates, subterranean culvert works with associated hardstanding, access hatches, and a new outfall into the River Kent.
* The temporary works comprise site compounds and 2m high wooden hoarding to maintain public safety during works.
 |
| **Decision: Consent is granted in accordance with the application and is subject to the following conditions:*** The works shall not commence until after planning permission has been granted.
* The works shall not commence until Flood Risk Activity Permits have been granted.
* All temporary fencing and compounds shall be removed and the land shall be fully reinstated within three months of completion of the works.
 |
|  |

Preliminary Matters

1. Objections were made by the Friends of the Lake District (FOLD) and the Open Spaces Society (OSS).
2. An accompanied site visit was held on 20 September 2022 with representatives of the Environment Agency (EA).

Description of the Common

1. The common land registered under CL153 is on the banks of, alongside and within the River Kent, Kendal with a total area of 2.17 hectares. It includes three areas that were added to the commons register on 12 October 2020 following an application by the OSS on 28 June 2019.
2. Two areas of Gooseholme Common are part of the River Kent and consist of largely shallow waters. The banks of the River Kent within the common consist of stone-clad revetments overgrown with natural vegetation. On the eastern side of the river, the common consists of a largely grassed area with a tarmac riverside path, streetlights, trees, and benches. The very northern corner is hardstanding surfaced with tarmac and concrete slabs. A strip of the common alongside Thorny Hills and Little Aynam is a putting green with a shed at the southern end. The putting green was formally part of the river channel and is separated from the rest of the common by hedges and trees. At the time of the site visit, a replacement footbridge over the river was in the final stages of construction. Part of the bridge abutments and access ramps are within the common and have previously been granted consent.

The Application

1. The application is for flood defence works consisting of walls, kerbs, floodgates, and subterranean culvert works with associated hardstanding, access hatches and a new outfall into the River Kent. Additionally, there would be a pumping station and substation just north of Gooseholme Common outside of its boundary. Temporary compounds and fencing would also be required during the construction of the defence works to ensure the safety of the public.
2. On the western bank the proposed works are for approximately 60 metres of stone-clad flood wall within and along the boundary of the common. It would be a maximum height of 1.274 metres above ground level, although this would be higher on the riverside. Where the height is less than 1.1 metres a handrail would be fixed on top of the wall. It would replace an existing wall with metal railings on top. At the time of my site visit this work appeared to be largely complete.
3. On the eastern bank the works proposed consists of a stone-clad wall or kerb along the southern boundary of the common alongside Little Aynam, with approximately 95 metres alongside the common to a maximum height of 1.2 metres. Currently there are metal railings with a line of conifer trees behind them and access to the common is only available by the new footbridge.
4. Further stone-clad walls or kerbs are proposed alongside the boundary of the common alongside the northern end of Thorny Hills and the southern end of St. George’s Walk for approximately 50 metres. Currently there are metal railings and a low stone wall in this location with no access to the common. The walls and kerb would be erected behind the railings. A gate to match the railings would be provided near the junction of Thorny Hills and St. George’s Crescent providing a new access point onto the common. A 3 metre wide floodgate would be provided in the wall near the southwestern corner of St. George’s Church which would remain open except when there is a risk of flooding.
5. A stone-clad wall approximately 30 metres long is proposed across the common at a height of 1.2 metres with a 4.2 metre wide floodgate across the public footpath. The gate would remain open except when there is a risk of flooding. Where the wall reaches the river it would continue northwest along the top of the bank to join Stramongate Bridge. Approximately 60 metres of this would be within the common and all but 15 metres is new wall.
6. A subterranean culvert network with gravity and pumping systems is proposed under the common with a new outfall in the riverbank. Above the subterranean works new hardstanding would be required on the common with landscaping, plant beds, trees and seating proposed. The hardstanding would cover an area of 854m2 comprising of a mix of blocks, sets and coloured tarmac to be approved by the planning authority. These works are to the north of the wall across the common and east of the riverside wall. Additionally, some tree planting, shrub beds and wildflower meadows are proposed within the common south of the wall across it.
7. Temporary fencing with compound areas would be necessary during the construction of the flood defences consisting of 2 metre high wooden hoarding with windows to allow the public to view the works. A total area of 3,430.3m2 would be fenced. These works would take place over three periods; eight months for the works to the walls on the southern boundary of the common; seven months for the works to construct the pumping station, subterranean works, and adjacent walls on the eastern bank; and seven months for the works on the western bank of the common.

The Main Issues

1. Section 38 of the Commons Act 2006 (the 2006 Act) provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land, including the erection of fencing; the construction of buildings and other structures; the digging of ditches, trenches, and the building of embankments; and the resurfacing of land if this consists of laying concrete, tarmacadam, coated roadstone or similar material.
2. I am required by section 39 of the 2006 Act to have regard to the following in determining the application:
3. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
4. the interests of the neighbourhood;
5. the public interest, which includes the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
6. any other matters considered to be relevant.
7. I have had regard to Defra’s Common Land Consents Policy Guidance in determining this application, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its own merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from this guidance.

Reasons

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

1. There are no registered rights of common. A bi-annual fun fair has rights to use Kendal’s commons under a royal charter but it usually sets up on New Road Common on the western bank of the river. The floodgates are wide enough to allow the fairground to access Gooseholme Common. Access would not be available during the construction stage, but this would be temporary.
2. Kendal Putting Association occupy the putting green part of the common. Walls and kerbs are proposed along their southern boundary alongside Little Aynam and a line of conifer trees, but these would not affect the putting green. The existing access to the south side of the common would be maintained during the works by the new footbridge.
3. Overall, I am satisfied that the proposals would have no negative impact on anyone having rights in relation to or occupying Gooseholme Common.

***The interests of the neighbourhood***

1. The proposed flood defence works would reduce the flood risk in the Stock Beck and Gooseholme Common area to between 2% and 5% in any given year; currently there is a 20% risk. In a 50 year flood event around 90 residential and two non-residential properties would directly benefit from the proposed works and flooding would occur in all events without any works being put into place. The works at Gooseholme Common are also an integral part of the Kendal Flood Risk Management Scheme (KFRMS) which, when combined with phases 1, 2 and 3, of the scheme, would achieve protection against a 1 in 100 year flood.
2. FOLD questions the public benefit with concerns that some properties would have an increased risk of flooding unless other phases of the scheme proceed. The EA advise that in the short term there would be some decrease in flood resilience to properties upstream. However, they are working to deliver flood resilience works for this area which they hope will be completed in Summer 2023, before the completion of the Gooseholme Common works. Without these measures, other areas would also be inundated in a flood event. The proposed scheme in its entirety would improve flood resilience for the whole of Kendal, having a significant public benefit.
3. The inhabitants have a right of free access to the common and the privilege of playing games and enjoying other recreation under the Scheme of Management. The permanent works would take up an area of 928m2, with 90m2 being walls and 854m2 being hardstanding. Access would still be available over the hardstanding which would make up 3% of the total area of the common. The proposed tree planting is predominantly along the riverbank and at the junction of St. George’s Walk and Thorny Hills. Therefore, the proposed works would only reduce access to 90m2 of the common and a couple of small areas of flower and shrub beds.
4. Therefore, inhabitants would still be able to use the majority of the common as they did previously. The neighbourhood would also benefit from improved flood defences reducing the likelihood of flooding and the associated social and economic impacts.

***The public interest***

*Nature conservation*

1. The River Kent is a Site of Special Scientific Interest (SSSI) and Special Conservation Area (SCA).
2. The Environmental Statement and Habitat Risk Assessment (HRA) concluded that there would be no adverse effect on the integrity of the SSSI and SCA as a result of the flood defence works.
3. Natural England (NE) has advised that they agree with the conclusions set out in the HRA, but further detail may be necessary. The EA has made an amended planning application to South Lakeland District Council (SLDC). The EA need to provide them with the final design and methodology details and updated HRAs to ensure that they have all the information necessary to determine the planning application and ensure that all mitigation measures are identified and secured. Flood Risk Activity Permits will also be required from the EA before works are undertaken. NE and SLDC will consider how best to secure the necessary mitigation measures and permits through planning conditions and SLDC is satisfied that they can condition this even if an updated HRA is required. NE advise that they will continue to engage with SLDC and the EA to ensure that appropriate mitigation will be identified and secured prior to the works being progressed.
4. During the works, mitigation measures are proposed to reduce the impact on the natural habitat and ensure that invasive species are not introduced. Once working platforms, cofferdam and bulk bags are removed, it is expected that there would be a short-term natural recovery of the riverbed with no residual impact on the SCA and SSSI. There may be a temporary negative effect on species such as otters and white-clawed crayfish during construction, but no long-term negative effects.
5. There would be a permanent loss of 68m2 of riverbank and 3 metres of riverbed from the new outfall. However, this area is already heavily modified so is not expected to alter the function of the SCA and SSSI.
6. Mitigation has been embedded into the design of the permanent scheme. Measures would be implemented to ensure that the outflow and scour protection do not alter the sediment dynamics in this area. The pumps have been designed so that they do not affect or trap fish. The use of gravel within the Stock Beck culvert is considered to have a minor positive impact on fish and eel movements. Approximately 70m2 of good quality semi-improved neutral grassland is to be installed on the bankside north of the outfall to offset the loss of the riverbank.
7. FOLD and OSS have concerns that the proposed formal, ornamental, and decorative planting are inappropriate and would have a negative impact on biodiversity and wildlife. This planting could also be spread downstream by the river. They consider that biodiversity gains could be made without tree and shrub planting by using meadow-type plants and different mowing regimes. OSS also consider that, although the existing grassland has minimal ecological diversity, its replacement with hardstanding is significant and would reduce surface vegetation and remove the soil ecosystem.
8. The Environment Statement states that there would be a permanent loss of 230m2 of amenity grassland due to the extension of the hardstanding area, representing a 3% loss. This would cause a permanent reduction in permeability, but given the limited area, this impact is considered to be minor. Rain gardens, which hold and soak away rain and surface water, would replace 186m2 of amenity grassland. They would enhance biodiversity and reduce pollution entering the river with surface water run-off. The permanent loss of the amenity grassland would be offset by tree planting, rain gardens and meadow planting, resulting in a neutral impact on biodiversity. I consider that the area of amenity grassland lost is limited and the use of rain gardens would mitigate the loss of permeability. The additional tree and wildflower meadow planting would further offset the change from amenity grass to hardstanding and provide some biodiversity gains.
9. The EA advises that the proposed planting is a mix of native trees, wildflower meadow and decorative trees, shrubs and perennial planting which has been approved by ecologists. None of the species chosen have qualities that would lead them to be considered invasive species and their risk of spreading outside of their planted area is low. They also have benefits to wildlife for pollinators in spring and summer and leaf and ground cover in winter. There would be the removal of 13 trees, but replacement trees are to be provided with a net gain of 19 trees. A formal biodiversity net gain calculation has not been carried out but the Environmental Statement states that a net gain for biodiversity could be achieved on site providing sufficient amenity grassland is enhanced as meadow/ species-rich grassland. When considered with the wider KFRMS the overall proposed habitat creation would lead to a net gain in biodiversity along the River Kent corridor.
10. The mitigation measure proposed during the works will prevent any long-term negative effects. I consider that the replacement of some areas of amenity grassland with more biodiverse wildflower meadows would improve biodiversity. The use of rain gardens would offset the loss of permeability caused by hardstanding. The risk of planting spreading is low and there would be conservation benefits from the planting. Although the Environment Statement identifies limited benefits to nature conservation as a result of the proposed works on Gooseholme Common, there are no significant adverse effects that would impact on the wider public interest.
11. The areas of common affected by the temporary site compounds during the construction stages are proposed to be reinstated. If I authorise the works, I can apply conditions to ensure that the reinstatement works are undertaken. A reinstatement condition was applied to the consent for works to provide the replacement footbridge on Gooseholme Common referred to by the OSS.

*Conservation of the landscape*

1. FOLD and OSS consider that the erection of flood barriers, hardstanding and the planting scheme would destroy the open, green, informal feel of the common. The walls would lead to a sense of separation and severance, splitting the common into two distinct areas and isolating the connection with the river for users of the common. The proposed works would lead to the appearance of a formal urban park rather than a common.
2. A line of conifers and railings currently run along the southern boundary of the common for most of the length of Little Aynam. These prevent access to the common and views of it. Therefore, the proposed walls and kerbs in this area would have a minimal impact on the openness and feel of the common. If it were necessary to remove any of these trees for the proposed works, it would make the boundary here more open.
3. At the northern end of Thorny Hills and the southern end of St. George’s Walk it is proposed to replace some of the existing rail fencing with reclaimed railings from elsewhere in Kendal. A new gate would also be provided, currently there is no access into the common at this point. Behind it would be a low kerb and the ground within the common would be reprofiled to ensure that it is not visible from the common. The section of wall directly alongside St. George’s walk would be behind an existing low stone wall which would remain in place. Therefore, the works alongside Thorny Hills and St. George’s Walk would have a minimal impact on the openness and feel of the common.
4. In my opinion the open feel and view of the common is currently limited for much of the roadside boundary by existing trees, walls, and railings seen during my site visit. Therefore, the proposed works would have minimal impact on the openness and feel of the common along Little Aynam, Thorny Hills and much of St. George’s Walk.
5. The proposed works would have the greatest impact at the northern end of the common where the river is a focal point. The Environmental Statement accepts that the floodgates and walls across the common would have an adverse effect on its open character and sense of scale, both physically and visually. However, the requirement to keep the pumping station and associated infrastructure on the ‘dry side’ to protect them from flooding means that some flood defence walls are necessary across the common and alongside the river. To enable maintenance of the subterranean works the EA state that the ground above them needs to be hardstanding. Some of this area is already hardstanding, but it would be increased to cover an additional 3% of the overall common area.
6. The EA accepts that the proposed works would have an impact on the landscape and create a barrier between the river and the common. However, the EA assessment of various flood risk management schemes concluded that the best option would be a pumping station and linear defences. Linear defences alongside the river were discounted due to the severe visual impacts, loss of access to the river and loss of connectivity for residents. Setting some of the defences further inland was also discounted as it would cause significant disruption and operational issues in a flood event and would still require some defences across the common. Alternative locations for the pumping station and associated works were considered but were not feasible due to the significant risk of undermining existing properties, the timescales needed to undertake the works safely, operational risks and increased costs. Other options were considered in detail but discounted as they would have resulted in the loss of larger areas of the common or unacceptable visual or landscape impacts. The proposed works were considered to be the most feasible option in terms of flood risk management, reducing the impact on the common, environmental, social, and economic concerns.
7. The supporting documents indicate that the works have been designed to limit the impact of the new flood defences on the visual, amenity and historic value of the common. Walls have been located as far back from the river as possible and their height kept to a minimum to reduce the visual severance of the common from the river. Natural stone cladding would be used to blend the walls into the existing townscape. Planting would be used to minimise the visual impact of the wall on the common and screen or filter views of the new structures. The use of low kerbs reduces the visual impact and the reprofiling of the ground on the ‘wet side’ would ensure that they are not visible from the common. The subterranean works intend to minimise encroachment and intrusion on the common. The use of curved planting areas, block paving and coloured asphalt within the hardstanding area intends to provide an aesthetically pleasing solution.
8. The proposed walls at the northern end of Gooseholme Common are low enough to allow most people to see over them into the common. I consider that, although the proposed new walls at the northern end would form a physical barrier between the common and the river and would impact on the landscape and openness of the common, their low height would mean that views of the river are still possible maintaining a connection with the river. The impact would be limited and would have less of an impact than the existing trees alongside Little Aynam and Thorny Hills.
9. I agree that the walls and hardstanding here would effectively create two distinct amenity spaces, the existing informal common to the south of the wall, and a more formal urban park to the north. However, some of this area is already hardstanding with a wall alongside the river and some raised planting beds. The existing hardstanding is a mix of concrete slabs and different mixes of tarmac which I consider drab and not visually appealing. The proposed hardstanding works would be an improvement on the existing hardstanding. I appreciate that some parties would prefer more green space. However, there may be others who would find enjoyment from more formal planting and an area to sit and enjoy the view, particularly in an urban location. The area only impacts on a relatively small part of the common.
10. I consider that the use of planting would minimise the visual impact of the walls on the landscape and that the use of wildflower meadow would be more natural and attractive than the existing amenity grass which covers most of the common.
11. Although there will be some impact on the landscape at the northern end of the common, overall I do not consider that the works will have a negative effect on this existing landscape within this urban area.

*The protection of public rights of access*

1. OSS and FOLD consider that the use of flood barriers, especially across the common, would constrain the ability of the public to move freely and confine them to certain pathways and limited gateways. The walls and floodgates would create barriers and a sense of severance, separation, and obstruction. There would no longer be free movement in, out, across or around the common. The works would affect the feel and experience of the common as well as physically and visually deterring access.
2. Access is currently only available at the southern end of the common by the bridge, with railings and conifers preventing access alongside most of Little Aynam. Although the bridge works have amended access, on completion access to the common would be equivalent to the access before any works occurred.
3. Currently there is no access to the common alongside Thorny Hills due to trees, hedges, fences, and railings. A new gate would be provided into the common at the northern end near the junction with St. George’s Crescent, improving access here. The proposed wall alongside St. George’s Walk would be behind an existing wall for most of its length, with a 3 metre wide floodgate in the wall just before it crosses the common. This would remain open except when there is a risk of flooding. Therefore, access into the common from this part of St. George’s Walk would be unaffected.
4. At the northern end of the common direct access from St. George’s Walk would be limited by two areas of planting, raised kerbs, a seating wall, and stone cubes for approximately 40 metres. The EA advises that these are required to prevent anti-social behaviour. Direct access to approximately 25 metres of the common from the road would still be available. Overall, direct access to the common from the roadside would only be affected for approximately 40 metres.
5. The 30 metre long wall across the common would confine access between the hardstanding and grassed area to a 4.2 metre wide floodgate on the line of the existing public footpath. This gate would remain open except when there is a risk of flooding. At the time of my site visit temporary fencing relating to the bridge works restricted access to part of the common from St. George’s Walk which makes it more difficult to view how the public are using the common. However, those using it were predominately walking along the tarmac footpath with a few dog walkers standing in the grassed area playing with their dogs. Therefore, although the wall would restrict access between the two areas to the line of the footpath, this appears to be the preferred line. Once through the wall, there are no works proposed within the common that would prevent the public from freely wandering. As detailed in paragraph 20 above, the walls would only take up 90m2 of the common.
6. The seating and flowerbeds in the common would prevent use of some parts of it. However, they are largely within the new hardstanding area which only affects 3% of the common. The proposed new trees and shrub beds within the rest of the common are confined to the roadside and riverside where trees are already growing. Similar shrub beds already exist alongside Thorny Hills and there are existing trees along St. George’s Walk where the new shrub beds and trees are proposed. I consider that the proposed seating, planting, flower, and shrub beds would have limited impact on use of the common by the public and would not adversely affect the experience or enjoyment of the common.
7. The flood defence walls and kerbs are a maximum height of 1.2 metres. Therefore, most people would be able to see over them to gain views of the common and river from the roadside. Once on the grassed part of the common, riverside views would remain largely unchanged as there would be no wall alongside the river here. Therefore, I consider that the walls would only have a limited impact on connections to the common and river and would not create a feeling of severance or separation.
8. The EA consider that the design of the hardstanding area would have a beneficial effect on the area by creating a pathway, meeting place and public space. It is intended to be a focal point and arrival area creating an entrance feature to the common. They believe that the new seating and flowerbeds would enhance the townscape and landscape benefiting the wider community. The existing hardstanding area would be improved and visually more appealing than before. The design in this area is apparently based on earlier ones proposed by the Kendal Civic Society, although I have not seen these proposals. As the design is intended to encourage use and invite the public in, I do not consider that the proposed works would deter access to the common. I also consider that the additional hardstanding and seating areas could provide additional access and greater enjoyment for less mobile members of the public.
9. FOLD also advise that residents and visitors access the river, which forms part of the common, near the weir and fish pass. The riverside wall would compromise access to the river.
10. At the time of my site visit, there was a notice at the fish pass advising of dangerous water and that it was an offence to enter the fish pass. Another notice at the top of the existing outlet stated, ‘keep off’ and ‘no unauthorised access.’ There were several wear lines in the vegetation down to the river, some of which were south of the proposed riverside wall.
11. The wall would run along the top of the bank for approximately 60 metres, but the riverbank would still be available to residents and visitors. Anyone wishing to enter the river would still be able to do so from the south side of the wall and along the riverbank instead of directly down it from the top of the bank. The exiting culvert outfall would also be removed and backfilled with the revetment reinstated. Currently this area has signs prohibiting access but is alongside the shallowest part of the river where residents may wish to paddle. On the west side of the river, steps are to be provided over the new flood wall to provide access to the common for residents of the apartments. Although the new wall is higher, residents of the apartments had to climb the previous wall to get back up from the riverbank. The steps should make access to the river for them easier than it was before.
12. Overall residents and the public would still be able to use the majority of the common in the same way as before. An alternative route would need to be used to gain access to the river. At the northern end of the common access between the hardstanding and grassed areas would be limited to the footpath through the floodgate. Access onto the common from the adjoining roads would largely be unchanged, although it would be reduced by approximately 40 metres at the northern end. Overall, I consider that there would be no significant impact on public rights over the common.
13. Ongoing maintenance would be required twice a year. For the most part, this would be a visual inspection of the walls, floodgates, manhole covers and hardstanding and would not affect access to the common. However, temporary closures to some areas of the common may be needed when inspecting the subterranean features to ensure that there is no public safety risk from open chambers. This would be necessary twice a year between 8 am and 5 pm. Due to the limited number of chambers, I consider that this would only affect a very small area of the common and would be a minor limitation for a short period.
14. Temporary closures of the footpath and parts of the common would be required during the construction works with two periods of seven months and one of eight months in different areas of the common over non-overlapping periods. Works are planned to ensure some areas of the common are available during the construction works and alternative routes would be available when the public footpath is closed. Although these would result in a temporary loss of access to some of the common, I consider this to be a relatively short period, particularly considering the longer-term benefits of the flood defences for the neighbourhood.

*Archaeological remains and features of historic interest*

1. Documentary evidence indicates that Stock Beck is a Victorian culvert which is still in use. The Heritage Statement submitted with the application advises that if there are any surviving remains associated with the culvert they could be removed or severely truncated by excavation works. However, they are considered to be of low archaeological value.
2. Much of the area comprises land reclaimed from the river and former riverbank. It has previously been heavily disturbed by the laying of cables and pipes; therefore, the presence of unidentified underground archaeological features is unlikely.
3. The common is within the Kendal Conservation Area (KCA) and the medieval Stramongate Bridge to the north of the common, is a scheduled monument. There are several listed buildings in the vicinity of the common. The special character and appearance of KCA is enhanced by the open spaces around the river, with Gooseholme Common being one of the most important green spaces. It is an informal, open, green area edged with mature trees.
4. The new flood defence walls would impact on views within KCA and of Stramongate Bridge. The works would encroach on the green space within KCA. The pumping station would be prominent from some viewpoints and would block the view of the bridge slightly more than the existing kiosk. However, it would not dominate them, and the removal of an existing tree would open up the view of the bridge from the south. The materials for the building and walls would be locally sourced and correspond with existing buildings to reflect the character of the town. The Heritage Statement considers that the works would not detract from the impression of Gooseholme Common and Stramongate Bridge and the impact of the development would cause less than substantial or no harm.
5. The listed buildings are not in direct line of sight and are screened by vegetation, therefore the proposed works would not harm these heritage assets or affect their character.
6. The proposed works are unlikely to cause harm to archaeological remains or features of historic interest within Gooseholme Common. They would provide improved flood defences to listed buildings and other heritage features within the area protecting them from flood damage.

*Benefits of the KFRMS and other options*

1. The proposed works would increase flood protection benefiting the neighbourhood by reducing flooding to residential and commercial properties. Where works would lead to less than substantial harm, they should be weighed against the public benefits of them. These include the social and economic benefits from a reduced risk of flooding and the protection of listed buildings and heritage features.
2. Whilst it is accepted that the flood defences provide a barrier between the public and the river, the benefits of preventing flooding outweigh the negative impact on the landscape and public access. The works have limited or no impact on nature conservation, archaeological and historic features. There are limited impacts on those occupying or having an interest in the common. The public benefits of the proposed works, both socially and economically, would outweigh the impact it would have on public access, the neighbourhood, nature conservation, the landscape, and archaeological and historic features.
3. The EA have advised that numerous options were considered for the KFRMS, with initial assessments being undertaken on each to establish the environmental, technical, economic, and social impacts. Options that resulted in the loss of larger areas of the common or unacceptable visual or landscape impact were discounted. The shortlist of options were then reviewed and considered in more detail, where it was concluded that the proposed scheme was the most feasible. I was provided with a summary of the discounted and less feasible options and it was clear that those discounted would have resulted in the loss of a larger area of common, adverse environmental impacts, greater visual impacts, loss of connectivity and access to the river and damage to properties. Some were also not economically viable or would have had a limited impact on flood risk management. I consider that the flood defence scheme proposed appears to be the most acceptable and feasible option.

***Other matters***

1. FOLD and OSS consider that an application should have been made under section 16 of the 2006 Act to deregister and exchange the common land affected by the proposed works. The EA argue that they are unable to do this as they do not own the common land. However, FOLD points out that a section 16 application has been made by the Council on behalf of the EA for works affecting another common in Kendal.
2. Whilst I note these comments, the application before me has been made under section 38. Paragraph 5.16 of Defra’s policy guidance advises that consent under section 38 rather than an exchange under section 16, can be appropriate when works are temporary, underground or where their physical presence would be so slight as to cause negligible impact on the land in question, and the proposals ensure full restoration of the land affected and confer a public benefit.
3. I have concluded, in accordance with the relevant considerations set out under section 38, that although the works would have some impact on the common, these are outweighed by the public benefit. Most of the proposed works are temporary or underground and once the proposed mitigation works are completed, the land affected by the proposed works would remain as common and be largely available for public use as it currently is; the exception being around 90m2 where the flood defence walls are to be constructed which I consider to have a minimal impact on the common.

Conclusion

1. Paragraph 5.14 of Defra’s policy guidance advises that some works on common land do not benefit the common but nevertheless there is a potential underlying public benefit.
2. I am also required to consider if the works propose the best outcome. Other works to reduce the risk of flooding would have resulted in a greater impact on the common or were not feasible for other economic, social, or technical reasons.
3. I conclude that the proposed works would not significantly harm the interests set out in paragraph 13 above over Gooseholme Common. Any negative impacts on the common are outweighed by the public benefit of the proposed flood defence works. Consent is therefore granted subject to the conditions set out above.

Claire Tregembo

INSPECTOR

