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# Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **22 July 2015**

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## Application Ref: **COM 660**

### **Whitwell Common, Reepham, Norfolk**

Register Unit No: CL 148

Commons Registration Authority: Norfolk County Council

- The application, dated 8 January 2015, 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 Norfolk County Council.
  - The works comprise:
    - i. the erection of 1224 metres of fencing enclosing 5.08 hectares of the common and the erection of 95 metres of fencing to enable grazing of the fen habitat by livestock. The fencing will be 1.05 metres high consisting of wooden posts with 3 – 5 strands of plain wire. A kissing gate and field gate will allow access onto the common at the existing entrance point. There will be an additional kissing gate on the western side of the fencing and there will be four additional gates to allow access through the fence line within the site. A 12ft field gate will also allow access for walkers into the remaining area of the common;
    - ii. the erection of 5 simple timber livestock bridges across internal drainage ditches; and
    - iii. the erection of one timber post and rail "Coral" approximately 10m x 10m for handling livestock at the main site entrance.
  - The 1224 metres of fencing is temporary for 15 years. The 95 metres of fencing at the East end of the site is temporary for 3 years.
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## Decision

1. Consent is granted for the works in accordance with the application dated 8 January 2015 and the amended plan received on 21 May 2015, subject to the following conditions:
  - i. the works shall begin no later than 3 years from the date of this decision;
  - ii. all gates shall meet British Standard 5709;
  - iii. the 1224 metres of fencing shall be removed no later than 15 years from the date it is erected and the 95 metres of fencing shall be removed no later than 3 years from the date it is erected;
  - iv. all fence posts shall be driven into the ground instead of using excavated post-holes;
  - v. the fencing shall be no more than 1.05 metres high.

2. For the purposes of identification only the location of the works is shown on the attached plan.

### **Preliminary Matters**

3. Since making the application, the applicant has confirmed that temporary consent of 15 years, rather than permanent consent, is sought for the 1224 metres of fencing and that there will be an additional kissing gate. I do not consider that any interested party has been prejudiced by these amendments.
4. I have had regard to Defra's Common Land Consents Policy Guidance<sup>1</sup> 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Mrs M A Sayer, the Open Spaces Society, English Heritage and Natural England.
7. 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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

### **Reasons**

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

8. The application is being made in conjunction with Whitwell Common Trustees, whom the applicant advised owns the common; there are no active commoners. There is no evidence before me therefore that the works will harm the interests of persons occupying or having rights over the land and I am satisfied that they will not.

#### ***The interests of the neighbourhood and nature conservation***

9. Historically the site was grazed by cattle, however the decline of grazing in subsequent decades has resulted in the common being taken over by willow, alder and dense fen vegetation. The proposed fencing will allow grazing within the centre of the common, and in those areas that are too wet to manage mechanically, to enable more sustainable and traditional management of the

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<sup>1</sup> Common Land Consents Policy Guidance (Defra July 2009)

<sup>2</sup>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.

vegetation which will also have a beneficial effect on the diversity of the habitat.

10. Natural England advised that Whitwell Common is one of the last remaining fragments of spring-fed valley fen in Norfolk and is highly valued for its rare and interesting flora as well as a wide range of habitats which attract a large number of mammals, birds and invertebrates. As such, the common is designated a Site of Special Scientific Interest (SSSI) for its fen meadow and swamp vegetation communities and is currently in unfavourable recovering condition. The reason for only fencing the southern part of the common is that it contains the most botanically interesting fen meadow vegetation. Valley fen sites were traditionally managed by grazing and it is probable that this management technique will help to create the mosaic of vegetation structures required to move the site into favourable condition, thus contributing to the Government's Biodiversity 2020 targets.
11. I accept that action is needed to aid the recovery of this nationally important site and I consider that the proposed works will further nature conservation interests by facilitating improvements to the ecological condition of the common, which in turn will enhance local people's enjoyment of it.

### ***The public interest***

#### *The protection of public rights of access*

12. The Open Spaces Society (OSS) was concerned that there would be a lack of access points, especially along the road on the western side, that any structures should be to British Standard 5709, and that the fencing should be limited to 15 years.
13. Following the applicant's assurance that all proposed structures will meet British Standard 5709, its acceptance of a 15 year time limit instead of permanent fencing, and the inclusion of an additional kissing gate on the western side of the fencing, the OSS withdrew its objection.
14. Mrs Sayer raised concerns that the introduction of cattle to the common would mean that the public would be excluded and that the area is not suitable in places for mature cattle.
15. The applicant has advised that it intends to use two or three Highland cattle in the first instance, selected for their docile nature and noted for their extreme hardiness, relatively lightweight and willingness to eat coarse forage particularly on wetter sites. However, it is possible that other grazing animals such as ponies may be used at a later date. Furthermore, the dangerously boggy parts of the common have not been included in the proposed area to be fenced.
16. A wooden kissing gate will allow access to the site at the existing main entrance point to the common and, as mentioned above, there will be an additional kissing gate on the western side of the fencing. There will be four galvanised "crush type" stiles to provide access into the ungrazed areas of the common. In addition, there will be two field gates to allow access by vehicles/machinery for management: the gate at the main entrance will be locked with a key available on request and the internal field gate will be unlocked and usable by the public. The proposals will affect approximately one third of the common leaving the remaining two thirds with unrestricted public access.

17. In view of the above, I am satisfied that the provisions for access are sufficient and that public rights of access to the affected area of the common will not be unduly harmed.

*Conservation of the landscape*

18. By its nature, fencing will have some impact on the landscape. However, the proposed fence line will be around the perimeter of the site, the majority of which is wooded and the rest has hedgerow or scrub, and the fence would be positioned inside of the tree line to make it less visible from outside the site. The applicant has said that the vegetation along the inside of the fence line can be left un-trimmed to further minimise the impact. So long as the fencing is no more than 1.05 metres high I am satisfied that any adverse visual impact will be minimal and will be outweighed by the benefits to the landscape which the proposals will help bring about by facilitating managed grazing to control the rank vegetation thereby improving the common's appearance.

*Archaeological remains and features of historic interest*

19. English Heritage advised that the proposed works are unlikely to result in a high impact or harm to potential below ground archaeological evidence, but recommended that any fence posts are driven in instead of using excavated post holes, as this is generally a less intrusive method of installation. The applicant has confirmed that this method of installation will be used. I am satisfied therefore that the works are unlikely to harm any such remains or features.

**Conclusion**

20. I conclude that the proposed works will not materially harm any of the interests set out in paragraph 7 above; indeed, by facilitating the grazing management of the common they will benefit nature conservation, as well as the landscape and the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**