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# Application Decision

by **Richard Holland**

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

Decision date: **14 August 2015**

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## **Application Ref: COM 708 Clilburn Moss, Penrith, Cumbria**

Register Unit No: CL 116

Commons Registration Authority: Cumbria County Council

- The application, dated 21 May 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 Natural England, Solway and West Coast Team, Unit 2, Kirkbride Airfield, Wigton CA7 5HP.
  - The works comprise: the installation of two fences, measuring 290 metres and 330 metres in length, totalling 620 metres, running broadly north to south, meeting existing boundaries at either end, to create an enclosure in the middle of the site. The area enclosed within the common boundary will be 5 hectares. The fence will be 1.2 metres high with wooden posts at 5 metre intervals and two strands of high tensile wire. Four 2 metre wide gates will be installed where the fences cross the footpaths.
  - The fencing is temporary for fifteen years.
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 21 May 2015 and the plans submitted with it, subject to the following conditions:
  - i. the works shall begin no later than 3 years from the date of this decision;
  - ii. the fencing shall be removed no later than 15 years from the date it is erected.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## **Preliminary Matters**

3. 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.
4. This application has been determined solely on the basis of written evidence.

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

5. I have taken account of the representations made by the Open Spaces Society.
6. 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***

7. The landowners have been consulted about the proposed works and have not objected. There are no rights of common registered. 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.
8. Natural England (NE), the applicant, has a 99 year lease on the common which includes a covenant with the Landlord: "To use and manage the property hereby demised as a National Nature Reserve and for the conservation of fen bog heath and other wildlife communities which shall include the undertaking of any works or course of action for such purposes". The works will therefore enable NE to meet its obligations in accordance with the terms of the lease.

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

9. Cliburn Moss Common is part of a larger unit managed by NE, known as Cliburn Moss National Nature Reserve, and is designated as a Site of Special Scientific Interest for its assemblage of fen, bog and heath communities, that is being threatened by woodland regeneration. NE's broad management policy is to link up areas of these communities, and to achieve Favourable Condition Status, by reversing their decline where this has occurred, through the control of willow, birch and pine. It has advised that as well as creating a larger and more robust area which will be less susceptible to negative influences, this will also aid the movement of species associated within these habitats. Areas of trees have been felled and woodland regeneration now needs to be controlled, which NE aims to do by introducing controlled grazing by ponies on some of the habitats during the summer months. NE has advised that grazing is a traditional management tool that will suppress the regeneration of birch and also provide an age diversity and structure to the field layer of heather. The proposed fences will confine the ponies to grazing the appropriate habitat whilst ensuring their safety and welfare.
10. I consider therefore that, by facilitating restoration of this nationally important site's ecological condition, the proposed works will enhance nature conservation interests and, in doing so, will also increase local people's enjoyment of the common.

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<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.

## ***The public interest***

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

11. Gates will be installed at the four locations where the fences cross the footpaths, three of which are on common land. These informal footpaths are provided by NE to take visitors through the main habitat and landscape types of the reserve. I am satisfied therefore that public rights of access will be not be unduly restricted.
12. The Open Spaces Society has no objection to the proposal.

### *Conservation of the landscape*

13. By its nature, fencing will have some impact on the landscape. However, most of its length will be hidden in woodland and scrub. In addition, the enclosure has been designed to use existing fences as its northern and southern boundaries, to minimise the amount of new fencing required. I am satisfied therefore that any adverse visual impact will be minimal and the works will not unacceptably harm the landscape.

### *Archaeological remains and features of historic interest*

14. There is no evidence before me of archaeological features within the application site or nearby and I am content, therefore, that the works will not harm any such remains or features.

## **Conclusion**

15. I consider that the proposed works will not materially harm any of the interests set out in paragraph 6 above; indeed, by facilitating grazing management of the common they will benefit nature conservation and the local community. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**