



Application Decision

by **Richard Holland**

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

Decision date: 24 September 2015

Application Ref: COM 704
Farleton Knott, Cumbria

Register Unit No: CL31

Commons Registration Authority: Cumbria County Council

- The application, dated 12 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 Dallam Tower Estate for Farleton Knott Commoners Association.
- The works comprise: 550m of 1.1m high post and wire stock fencing with a timber gate and 3 kissing gates.

Decision

1. Consent is granted for the works in accordance with the application dated 12 May 2015 and the plans submitted with it subject to the following conditions:-
 - i. the fencing shall be removed no later than 10 years from the date it is erected;
 - ii. the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown in red on the attached plans.

Preliminary Matters

3. Although the application form says that permanent consent is sought, the applicant has since confirmed that it is content to amend the application to time limited fencing for a period of 10 years. The application has also been amended, on the recommendation of Cumbria County Council's Countryside Ranger, by the substitution of a kissing gate for a stile where the main pedestrian access point crosses the fence, the substitution of kissing gate for a timber gate at the eastern end of the fence line and the addition of a kissing gate next to the timber gate at the western end of the fence line. The location of these access points is shown on the map entitled "*S38 Fencing Application – Puddlemire Lane Recommended Access Point Locations.*"; this is the map referred to at paragraph 2 above. I am satisfied that no interested party has been prejudiced by these amendments.

4. I have had regard to Defra's Common Land Consents Policy Guidance¹ 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 Historic England, Cumbria Local Access Forum, Natural England, Friends of the Lake District and the Open Spaces Society.
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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. There are various registered common rights for the grazing of sheep, cattle, horses and pigs; and rights of estovers, turbary and the taking of stone. Only one grazier is active and is permitted initially to graze six native breed cattle under a recently commenced Higher Level Stewardship Scheme. Dallam Tower Estate owns the land and represents the applicant Farleton Knott Commoners Association. I therefore conclude that the proposed fencing will not harm the interests of those with rights over the land.

The interests of the neighbourhood and the protection of public rights of access

9. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people but also relates to wider neighbourhood interests. The common is used for sports and recreation by walkers, cyclists and horse riders and the proposed fencing will restrict their access to the western side of the common from Puddlemire Lane, alongside which the proposed fencing will run, to some degree. However, the right of public access over the common is primarily access on foot.
10. Although it is not the primary reason for the proposed fencing, the applicant hopes that it will also deter unauthorised access by mountain bikes and trials bikes, the use of which is causing erosion on regularly used routes. Whilst I accept the view of

¹ Common Land Consents Policy Guidance (Defra July 2009)

²Section 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.

some of the parties objecting to the application that enforcement against such unauthorised access is a matter for the police in the first instance, it is clearly in the interests of the neighbourhood that any unauthorised and damaging use of the common is discouraged; this issue is therefore a relevant consideration when deciding the application. On balance, I consider that as the proposed fence will include 3 kissing gates and a timber gate for vehicular access public rights of access over the common will not be unacceptably restricted. Furthermore, the fence will deter unauthorised access and will be in the interests of people from the neighbourhood wishing to use the common.

Nature conservation

11. Farleton Knott is designated as a Site of Special Scientific Interest (SSSI) and is currently recorded by Natural England (NE) as in "unfavourable, recovering" condition. NE supports the fencing proposal as it will, through the Higher Level Stewardship Scheme which the common has recently been entered into, allow for appropriate grazing by cattle, which is essential to allow the area to recover. The fencing will keep the cattle within the desired grazing area and also stop them from straying onto the public highway. I consider that the fence, by restricting the cattle to the common, will facilitate grazing which will help restore the biodiversity of the common and thus benefit nature conservation interests.

Conservation of the landscape

12. The site lies between the Lake District and Yorkshire Dales National Parks and to the east of the Arncliffe and Silverdale Area of Outstanding Natural Beauty. It therefore lies outside designated landscape conservation areas. I note that the proposed fencing, positioned at the bottom of a slope, could only be seen from Puddlemire Lane and that grey netting and wire would be used to mitigate its visual impact against the backdrop of existing scrub and bracken. Its positioning at the bottom of a slope means it could never be seen against the skyline. This being the case, I am satisfied that whilst it will be, as with any new fencing, an intrusive feature to a certain extent the fencing will not have an unacceptably adverse impact on the landscape.

Archaeological remains and features of historic interest

13. There is no evidence before me of archaeological features within the application site or nearby and I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

Conclusion

14. Having regard to the interests set out in paragraph 7 above, I conclude that the works will benefit the SSSI and the neighbourhood without seriously harming the other interests in the common and that therefore consent should be granted subject to the conditions in paragraph 1 above.

Richard Holland