
Application Decision

by **Richard Holland**

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

Decision date: **5 October 2015**

Application Ref: COM 711 Common Moor at Croxley, Hertfordshire

Register Unit No: CL36

Commons Registration Authority: Hertfordshire County Council

- The application, dated 2 June 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 Three Rivers District Council.
 - The works comprise:
 - i. the installation of two areas of timber post and plain wire fencing, 1.05m in height, 456m and 287m in length, enclosing 13158m² and 5224m² respectively. Timber straining posts: 175mm top diameter, 2.1m in length. Timber intermediate posts: 75mm top diameter, 1.7m in length, placed at approximately 2.7m intervals;
 - ii. each area will have two wooden field gates and a minimum of two squeeze gaps, to enable permanent public access.
 - The fencing is temporary for 10 years.
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Decision

1. Consent is granted for the works in accordance with the application dated 2 June 2015 and the plan 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. all gates shall meet British Standard 5709;
 - iii. the fencing shall be removed no later than 10 years from the date it is erected;
 - iv. 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 with a solid red line on the attached plan.

Preliminary Matters

3. 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.

¹ Common Land Consents Policy Guidance (Defra July 2009)

4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by Mr Barry Grant (Chairman, Croxley Green Residents' Association), Mr Colin Knight (Footpath Secretary for the Ramblers), Mr John Watton (Treasurer of the Friends of Croxley Common Moor), Ms Amanda Taft, the Open Spaces Society and Natural England.
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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

7. As the applicant, Three Rivers District Council (the Council), is also the landowner, and the rights holder and the grazier have been consulted about the proposals and have not objected, I conclude that the works will not harm the interests of persons occupying or having rights over the land.

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

8. Although the fencing may have some effect on free access across the Moor, it will not affect the Right of Way across it and each of the fenced areas will have two field gates and a minimum of two squeeze gap entrances. Public access to the application areas will therefore be maintained at all times. The field gates will be locked open when the cattle are not on site for approximately seven months each year and at times when the cattle are required to graze the vegetation within the fenced areas. I consider therefore that there will be sufficient opportunity for people to enter the fenced areas, and that public rights of access and local people's enjoyment of the Moor will not be unacceptably harmed.

Nature conservation

9. The Council has a duty to conserve biodiversity under Section 40 of the Natural Environment and Rural Communities Act 2006 (the NERC Act) and a further duty to conserve the section 41 Species of Principal Importance, one of which is the Slate Sober Moth. The Slate Sober Moth is also a UK Biodiversity Action Plan Priority Species. The Council has advised that Croxley Common Moor (the Moor), which is a Site of Special Scientific Interest and a Local Nature Reserve, is the only known location of the Slate Sober Moth in the UK; its numbers are perilously low and it is in danger of becoming extinct if no action is taken.
10. The Moor is grazed each year from around June to October; this is an essential part of the management that helps to prevent encroaching scrub. The Council has been working

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.

closely with Butterfly Conservation (BC) and Natural England (NE) to help conserve the moth; this has involved drawing up a 10 year management plan for the site which includes actions relating to the moth's conservation. The site is now part of a 10 year Higher Level Stewardship Scheme (HLS). As such, the Council proposes to have fencing on the site for the course of the management plan and the HLS. The fencing is the minimum required to enclose the two main areas of the moth's larval food plant - Petty Whin - and prevent cattle from grazing it at key stages during the moth's development. The grassland species found on the site benefit from cattle grazing. However, it has been found that Penny Whin does not become mature enough to support the moth when grazed at the usual beneficial stock density during specific times of the year. The desired outcome of excluding grazing for a period of the year is an increase in moth numbers. The Council believes that controlled grazing will lead to a better habitat for the larval stage of the moth.

11. Mr Grant has provided a letter from Mr Colin Plant, County Moth Recorder for Hertfordshire & Middlesex. Mr Plant considers that the proposed fencing is unlikely to be effective. However, he feels that it would do no harm and provided that it is done on an experimental basis and monitored yearly (with facility to change the approach if appropriate) fencing off small areas is worth a try.
12. The Council advised that it has worked extensively with NE, BC and the Countryside Management Service to formulate the most appropriate plan of action, and it believes that fencing is the least intrusive and most practical method of trying to save the moth from extinction and, therefore, helping to maintain the biodiversity and conservation value of the Moor. The two areas selected for fencing are the two strongholds of Petty Whin on the Moor and the fenced areas will provide the moth and its larval food plant with protection from the effects of grazing cattle when it is at a vulnerable development stage.
13. There is clearly a difference of opinion amongst the parties about whether controlled grazing facilitated by the proposed fencing will help safeguard the Slate Sober Moth. However, having considered the evidence before me, including the fact that the site is part of a HLS and that a management plan, which includes the erection of fencing, has been drawn up designed to conserve the moth, I consider on balance that controlled grazing may result in a better habitat for the moth helping it to survive and increase in numbers. The works should therefore benefit nature conservation interests.

Conservation of the landscape

14. Mr Grant is also concerned that the works will compromise the openness and permanence of the Moor, and for a long period; he considers that ten years is not temporary. He comments that one of the areas to be fenced off is in an area that is most visible to, and used by, visitors to the Moor.
15. I acknowledge that the fencing will have some impact on the openness of the Moor, although less so if it is no more than 1.05 metres high. However, as I have said, the Council has a statutory duty to conserve biodiversity and I agree that immediate action, although it may be experimental, is needed if the extinction of the Slate Sober Moth is to be prevented; doing nothing is not an option and risks contravening the NERC Act. Less than 5% of the Moor will be fenced and wooden fence posts and plain wire will be used to minimise any intrusiveness. I accept that ten years is a reasonable period to evaluate whether the fencing is having a positive effect on the moth's status. The effectiveness of the fencing will be reviewed throughout this period; if it does not produce the desired results it will be removed as soon as possible.

16. I consider therefore that the works are necessary and proportionate and that any adverse impact on the openness of the Moor will not be significant and is in any case outweighed by the benefits to nature conservation which the works should help bring about.

Archaeological remains and features of historic interest

17. 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

18. I conclude that the proposed works will not unacceptably harm any of the interests set out in paragraph 6 above. Indeed, by helping to protect the endangered Slate Sober Moth by controlling grazing on the two selected areas of the Moor, the works should benefit nature conservation. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland