
Application Decision

by **Richard Holland**

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

Decision date: 15 December 2015

Application Ref: COM 709
Oughtonhead Common, Hitchin, Hertfordshire

Register Unit No: CL51

Commons Registration Authority: Hertfordshire County Council

- The application, dated 14 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 North Hertfordshire District Council.
 - The works comprise:
 - (i) replacement and extension of 1m high wooden post and wire/stock netting fencing and erection of about 50m of 1m high wooden post and rail fencing (total length about 2100m enclosing 9.8ha of land);
 - (ii) Installation of 2 timber vehicle access gates, 12 medium mobility kissing gates and 2 RADAR large mobility kissing gates;
 - (iii) relocation outside of the fencing of two sections of perimeter path.
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Decision

1. Consent is granted for the works in accordance with the application dated 14 May 2015 and the plan submitted with it, subject to the following conditions:
 - i. the fencing shall be removed no later than 15 years from the date it is erected; and
 - ii. the works shall begin no later than 3 years from the date of this decision;
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. Although the application form says that permanent consent is sought, the applicants have since said they are content to amend the application to time limited fencing for a period of 15 years.
4. I have had regard to Defra's Common Land consents policy¹ 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 policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

¹ Common Land Consents policy (Defra November 2015)

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Ms Rosemary Freestone, Drs Jill and Chris Langley, the Open Spaces Society and The Chilterns Conservation Board.
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. The applicant, North Hertfordshire District Council (the Council), is also the landowner. There are no registered rights of common. 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

9. Oughtonhead Common is an area of wetland and grassland habitats situated close to the residential area of Westmill. The applicant has advised that the common is used regularly by walkers, dog walkers, joggers and cyclists. An unrestricted byway at the northern fringe of the common, which is outside of the proposed fencing, is used by horse riders. Two extensive areas in the centre of the common, which are linked at a single point, are already fenced off to facilitate existing grazing by three cattle. The application proposes new fencing to expand the grazing area outwards in all directions towards the common boundary and to fully conjoin the two separate grazing areas. This will have the effect of reducing public access outside of the grazing area to a corridor between the fencing and the common boundary around much of the eastern and western fringes of the common.
10. It has been suggested by opponents of the proposals that the extended fencing may present a psychological barrier to those wishing to access the grazing area and also that the corridor between the fencing and the common boundary will be too narrow in places to allow for comfortable passing of users approaching from opposite directions. I understand why there are these concerns. However, I consider that there will be sufficient access points in the proposed fencing for people to enter the fenced area and, as the corridor will need to be wide enough to cater for a service vehicle and trailer, that there will be sufficient passing space for pedestrians and cyclists.
11. Section 193 of the Law of Property Act 1925, which applies as the common lies within the former Trawden Urban District, gives a public right of access for air and exercise over the land. The fencing will have some effect on free access across the common in as much as it will restrict points of access to the grazing area. However, access on foot will not actually be prevented and once inside the area the public will be free to roam within it.

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.

12. Section 193 access rights apply generally to access on horseback as well as on foot. However, bye-laws made under a scheme of management for the common under the Commons act 1899 restrict the riding of horses to recognised bridle paths. No such paths are present within the fenced area so facilitating access on horseback is neither proposed nor necessary. Applicable rights under s193 will therefore remain exercisable.
13. I am satisfied that public rights of access, and local people's enjoyment of the common, will not be unacceptably harmed by these proposals.

Nature conservation

14. Oughtonhead Common is a Local Nature Reserve and identified in the Hertfordshire Biodiversity Action Plan as one of the best examples of fen or marsh and wet grassland in the county. The purpose of the fencing is to facilitate grazing to control scrub encroachment and increase biodiversity. The applicant contends that encroachment of scrub is a wholly predictable outcome if the site is not grazed and that the existing grazing regime has been successful in this regard. The proposals seek to extend the grazing area so that a wider area of the common may benefit. It has been suggested by opponents that as some scrub is still removed from the existing grazing area by hand the presence of the cattle has not sufficiently controlled it and therefore there is no evidence that grazing is achieving the desired outcome. Further, there is no evidence of improvement in the grassland flora and grazing is actually damaging some species of wild orchid.
15. The applicant accepts that some scrub removal by hand is necessary and that grazing is not a perfectly controllable solution as cattle may graze individual plants of less common species within the grassland. However, the wider picture must be taken when undertaking management of the common and grazing remains the primary preferred approach as it allows for a more natural, varied result than can be achieved by mowing and creates small areas of open ground within the sward where specialist plants can find a footing.
16. There is clearly a difference of opinion as to whether controlled grazing facilitated by the proposed fencing will achieve the desired outcome. However, I do not think Natural England would continue to support the grazing regime on the common (through its Environmental Stewardship scheme), nor would it have offered further grant aid to enable extended grazing which the application seeks to facilitate, if it were not satisfied that it has had, and will continue to have, a beneficial effect on biodiversity. I consider on balance therefore that controlled grazing is likely to benefit nature conservation interests.

Conservation of the landscape

17. I acknowledge that there has been stock fencing on the common for a number of years so the proposed additional fencing will not introduce an entirely alien feature into the landscape. I also acknowledge that there is a need for any consented fencing to be robust enough to prevent unintentional encroachment by walker's dogs as well as to retain the stock within the grazing area. A less visually intrusive form of fencing (invisible or virtual fencing for example) would therefore not be appropriate for the purpose. Furthermore, I note that although Oughtonhead Common lies just outside the boundary of The Chilterns Area of Outstanding Natural Beauty (AONB), the Chilterns Conservation Board has chosen to comment on the proposals and has indicated its support for them.
18. Notwithstanding the above, I consider that the proposed fencing will impact negatively on the already diminished openness of the common by bringing the fence line closer to the common land boundary and producing a corridor effect at some fringes of the common.

In this way the fencing will have an adverse visual impact on the openness of the common and will not conserve the existing landscape. However, I accept that in order to prevent eventual succession of the site from grassland to woodland there is a need to control grazing stock. I consider that the negative impact the proposed fencing would have on the landscape is outweighed by its contribution to the protection of the dry and wet grassland landscape from succession to scrub and woodland.

Archaeological remains and features of historic interest

19. 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

20. I conclude that the proposed works will not, on balance, unacceptably harm any of the interests set out in paragraph 7 above. Indeed, by facilitating grazing, the works should benefit nature conservation and protect the dry and wet grassland landscape whilst allowing public access to the whole of the common land. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland