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# Application Decision

**by Richard Holland**

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

Decision date: 25 January 2016

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**Application Ref: COM 742**  
**Far Moor, West Riding of Yorkshire**

Register Unit No: CL317

Commons Registration Authority: North Yorkshire County Council

- The application, dated 6 October 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 Ribble Rivers Trust.
  - The works comprise:
    - i. the erection of 395m of 1.2m high sheep netting fencing, including two 12 ft. galvanised gates, along the top of the very steep slope that goes down to the River Ribble banking. The area between the fence line and the river's edge (1 ha) will then be planted with native deciduous trees.
  - The fencing will be located in the south east corner of the common.
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## Decision

1. Consent is granted for the works in accordance with the application dated 6 October 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.
2. For the purposes of identification only the location of the works is shown 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.
5. I have taken account of the representations made by The Yorkshire Dales National Park Authority, the Open Spaces Society and Natural England.

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

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 Ribble Rivers Trust (RRT), the applicant, has advised that Mr Gavin White owns and farms the land and he is the sole rights holder. Mr White has been consulted about the proposals and has not objected. In fact, the applicant has stated that the fencing will exclude stock from the embankment and prevent the farmer losing further stock on the steep slope. I conclude therefore that the works will benefit the interests of the occupier of the land and the rights holder.

### ***The interests of the neighbourhood, the protection of public rights of access and nature conservation***

8. RRT has advised that the proposed tree planting along the steep river bank will help combat the severe erosion that is taking place and stop the bank slipping further down into the river. Tree planting will also aid the delivery of the Water Framework Directive and Flood Risk Directive the objectives of which are to reduce diffuse pollution, mitigate climate change impacts, and slow the river flow by reducing overland flow run off rates associated with flooding. The trees will help mitigate the effects of climate change by keeping the waters cooler. The applicant has not explained what benefits this will bring but I assume rising temperatures as a result of climate change are harmful to fish populations. Fencing is needed to keep grazing stock away from the growing trees. In addition, cattle and sheep graze the steep banking and a number have perished recently. The applicant has not made clear the reasons for the deaths but presumably stock has fallen into the river and drowned.
9. Far Moor lies within the Yorkshire Dales National Park. The Yorkshire Dales National Park Authority (YDNPA) has advised that the project will have significant benefits for the River Ribble in providing much needed shade and reducing diffuse pollution. It also submitted comments from the Yorkshire Dales Access Forum (YDAF) which referred to its guidelines on the fencing of commons. The YDNPA has no objection to the scheme if YDAF's guidelines are followed. RRT has confirmed that it will comply with the guidelines.
10. Natural England supports the scheme as it will positively affect the biodiversity within the area and improve the River Ribble's water quality.
11. The Open Spaces Society considers the proposals to be in the public interest and therefore has not objected. However, it would like the fencing to be for a limited period as it considers that once the trees are established they are likely to form a sufficient barrier to render the fencing unnecessary. The need for the fencing should anyway be reviewed after a fixed period to see if it is having the desired effect or whether alternative

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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.

measures should be taken. The access gates should be to British Standard (BS) 5709, suitable for use by walkers and horse-riders.

12. RRT has confirmed that the gates will comply with BS 5709 but does not recommend that horse-riders enter the site due to the steepness of the embankment. However, it has considered time limiting the fencing to a period which would allow the trees time to mature but concluded that cattle would damage an unfenced woodland and both sheep and cattle would rapidly destroy the woodland's special ground flora and shrub layer.
13. Whilst I consider that some of the aims of the proposals might be achieved within a specific timeframe, the risk of stock destroying the woodland habitat and the danger posed to livestock by the steep banking are on-going problems which are best solved by permanent fencing.
14. Although the fencing may have some effect on free access across this part of the Moor, the gates will enable public access and they will be indicated as such. I consider therefore that there will be sufficient access provision for those who wish to enter the fenced area, including horse riders, and that local people's enjoyment of the Moor will not be unacceptably harmed. Indeed, by helping to meet the objectives of the Water Framework Directive and Flood Risk Directive and by increasing the biodiversity of the site the works will benefit the interests of the neighbourhood and nature conservation.

### ***Conservation of the landscape and archaeological remains and features of historic interest***

15. By its nature, fencing will have some impact on the openness of the Moor. However, I accept that as the trees mature, the visual impact of the fencing will diminish. Furthermore, I believe the proposals will in time prevent further erosion of the riverbank and therefore help to conserve the landscape. I consider therefore that any adverse impact on the openness of the Moor will not be significant and is in any case outweighed by the benefits which the works will help bring about by helping to conserve the landscape.
16. YDNPA, the Local Authority Archaeological Service, has advised that there is no known archaeological interest. I am satisfied therefore that the works are unlikely to harm any such remains or features.
17. The proposals will therefore conserve the natural beauty and cultural heritage of the National Park.

### **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 meet the objectives of the Water Framework Directive and Flood Risk Directive, increasing the site's biodiversity, preventing further erosion of the riverbank and safeguarding stock, the works will benefit the interests of the occupier of the land and the rights holder, the interests of the neighbourhood and nature and landscape conservation interests. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**