
Application Decision

by Richard Holland

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

Decision date: 29 February 2016

Application Ref: COM 754

Whiteleigh Meadow, Holsworthy, Devon

Register Unit No: CL133

Commons Registration Authority: Devon County Council

- The application, dated 11 November 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 the Whiteleigh Meadow Commoners Association.
 - The works applied for is the retention of fencing along each side of Whiteleigh Water comprising:
 - (i) 1800 metres of three strand barbed wire fencing;
 - (ii) 4 x 12 feet wide wooden gates; and
 - (iii) 4 x pedestrian stiles
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Decision

1. Consent is granted for the works in accordance with the application dated 11 November 2015 and the plan submitted with it, subject to the condition that they shall be removed no later than 10 years from the date of this decision.
2. For the purposes of identification only the location of the works is shown by solid orange lines on the attached plan.

Preliminary Matters

3. The applicants seek to retain the fencing, gates and stiles for which they were given Secretary of State Consent on 2 June 2005 under section 194 of the Law of Property Act 1925 (application reference CLI 14). The consent was valid for 10 years and expired in June 2015.
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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS).

¹ Common Land Consents policy (Defra November 2015)

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. In implementing Commons Commissioner Decision 209/U/61 of 7 July 1981 the common land register shows part of the common land unit is owned by the former Ministry of Agriculture, Fisheries and Food (MAFF). However, the applicants say that this land is now owned by the Forestry Commission. The Forestry Commission was consulted but did not comment on the retention of the fence. Decision 209/U/61 records that the Commissioner was not satisfied that any person was the owner of the remainder of the common land unit.
9. The fencing runs the length of Whiteleigh Common on both sides of Whiteleigh Water; a narrow but deep watercourse with steep banks that bisects the common from east to west. Rights to graze cattle over the common land unit are exercised yearly from May to the end of August. As the Commoners Association, the applicants represent the interests of those with rights to graze the land. The fencing splits the common land in two and is intended to serve the interests of the graziers by protecting livestock from falling into Whiteleigh Water, which appears to me to be a very real risk, and to provide a T.B. barrier between different herds of cattle grazing the north and south sections.
10. I conclude that there is no evidence to suggest that the fence will harm the interests of persons occupying or having rights over the land. Indeed, I consider that it serves the interests of those with registered rights over the common land.

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

11. A further reason for the fencing is to protect the public from falling into Whiteleigh Water. This is as much of a risk to people as it is to grazing livestock and I consider that it is in the interests of the neighbourhood to retain the fencing for reasons of public health and safety.
12. Section 193 of the Law of Property Act 1925 gives a public right of access for air and exercise over the land. The fencing has some effect on free access across the common in as much as it channels access from one side of Whiteleigh Water to the other to specific crossing points. However, access on foot will not actually be prevented and the applicants have advised that the gates and stiles are positioned at each accessible point across Whiteleigh Water so the fencing only restricts access across it where dense scrub makes such crossing hazardous. The applicants have confirmed, at the request of OSS, that the works conform to British Standard BS5709.

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.

13. Section 193 access rights apply generally to access on horseback as well as on foot. I note from the 2005 decision that the meadow surface is generally unsuitable for mounted riders and there is no evidence to suggest that this has changed. However, neither is there evidence before me from horse riding interest groups or individual riders to suggest that horse riders could not use one of the four gates provided should they wish to cross Whiteleigh Water.
14. I am satisfied that public rights of access will not be unacceptably harmed by the retention of the fence and that the interests of the neighbourhood in terms of public safety are served by its retention.

Nature conservation

15. Whiteleigh Meadow is designated as a Site of Special Scientific Interest (SSSI) for its unimproved Culm grassland. NE says that Culm grassland is traditionally managed by grazing as this supports a rich and varied flora; other forms of management would not produce such a species rich vegetation. Although it has not said as much, I infer from this that NE supports the application. This is borne out by the fact that Whiteleigh Meadow is subject to an NE Higher Level Stewardship scheme, which requires the separation of the common into two sections to encourage uniform grazing over both and to provide a T.B. barrier. I consider that the required controlled grazing is served by the retention of the fence and it is therefore likely to benefit nature conservation interests.

Conservation of the landscape

16. The fence has been in place for 10 years and, from the lack of objections to the application on visual grounds, seems to have become an accepted part of the landscape. Furthermore, the visual impact of the fence is limited by the presence of dense scrub directly behind it. Consequently, I consider that its retention will have no detrimental impact on the conservation of the landscape.

Archaeological remains and features of historic interest

17. There is no evidence before me of any archaeological features within the application site or nearby. Furthermore, no new works are proposed that could impact on such features should there be any present. I am content, therefore, that the retention of the fence will not harm any such remains or features.

Conclusion

18. I conclude that the proposed retention of fencing for a further period will not unacceptably harm any of the interests set out in paragraph 7 above. Indeed, by facilitating grazing, the fence should benefit nature conservation interests and serve the interests of the neighbourhood in terms of public safety. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland