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# Application Decision

Site visit made on 24 February 2016

**by Alan Beckett BA MSc MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 5 April 2016**

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## **Application Ref: COM 722**

### **New Buckenham Common, New Buckenham, Norfolk**

Register Unit: CL 29

Commons Registration Authority: Norfolk County Council

- The application, dated 23 July 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 Mr Brendan Joyce on behalf of the Norfolk Wildlife Trust, Bewick House, 22 Thorpe Road, Norwich, Norfolk, NR1 1RY.
  - The works comprise:
  - the retention of 4165 metres of fencing enclosing 35 hectares of New Buckenham Common. The fencing comprises a mixture of temporary electric fencing on permanent posts, post and rail fencing and stock fencing with netting and two strands of plain wire. The location of the various types of fencing is shown on the plan appended to this decision.
  - The retention of 9 self closing pedestrian gates, 4 self closing kissing gates, 5 field gates and a stock corral enclosing 153 square metres of the common for use in connection with the grazing of the common.
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## **Decision**

1. The application is granted consent subject to the condition that (i) the works are removed no later than 10 years from the date of this decision and (ii) the pedestrian and kissing gates comply with BS 5709:2006.

## **Preliminary Matters**

2. Following advertisement of the proposal, objections or representations were received from the Open Spaces Society, Mr Ian Witham and Natural England all of which I have taken into account.
3. I carried out an accompanied site visit on 24 February 2016 in the company of Mr David Tallentire of Norfolk Wildlife Trust ('the Trust').
4. This application has been determined on the basis of the written evidence, the comments submitted, and my own observations of the site.

## **Description of the site**

5. The site lies to the east of the village of New Buckenham and is bisected by the B1113 Norwich Road. The common is one of the largest areas of common land in south Norfolk and consists predominantly of semi-natural grassland with small areas of scrub and boundary hedgerows. The Trust states that the grassland on the common is botanically rich with over 150 species of plant

having been recorded on site. The common is particularly noted for its population of green-winged orchid (*Orchis morio*) which is found on the common in greater numbers than anywhere else in Norfolk. That part of the common north of the B1113 is designated as a Site of Special Scientific Interest for its species rich unimproved neutral grassland which has a history of light grazing by cattle; that part of the common which lies to the south of the B1113 is a County Wildlife Site.

6. As noted above, the B1113 Norwich Road bisects the common, whereas the former Wymondham Road which passed through the SSSI was stopped up to vehicular traffic around 2004. I saw from my site visit that the former road was being used by a number of people as part of a recreational walk with their dog. A public footpath (part of the Tas Valley Way) runs north-west to south-east over that part of the common to the south of the B1113. The common is predominantly open grassland with scattered areas of woodland and scrub on its boundaries. A pond (Spittle Mere) is located to the north of Mill House and a drain runs generally north-south through both parts of the common.

### **The Main Issues**

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;<sup>1</sup>
  - (d) any other matters considered to be relevant.
8. In determining this application I have had regard to the latest edition of Defra's Common Land Consents Policy<sup>2</sup> ('the 2015 Guidance') which has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

### **Assessment**

#### ***The interests of those occupying or having rights over the land***

9. The register records that 27 persons hold grazing rights over New Buckenham Common. With one exception, the rights are held in gross and none of the rights holders personally exercises their grazing rights. Seasonal grazing of the Common is carried out by a grazier under a licence granted by the rights holders.
10. The Trust works closely with the rights holders with regard to the management of the common and submits that the rights holders recognise that the

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<sup>1</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.

<sup>2</sup> Common Land Consents Policy, Defra November 2015

continuation of seasonal, extensive grazing of the common is part of the history and character of the village. The rights holders wish to maintain the grazed open character of the common for the benefit of the wildlife found on the site and to enable the public to continue to enjoy access to the common. The number and location of the gates within the existing fence were determined in consultation with village residents and the rights holders.

11. The Trust argues that the interests of the rights holders are served by the retention of the fencing as prior to 2006 it had proved increasingly difficult to attract and retain a grazier as the temporary electric fencing which had been employed previously did not prevent cattle from straying onto the B1113. It is submitted that the rights holders would be unwilling to continue grazing the common without the retention of the stock-proof fence.
12. I saw that the Common is set within otherwise arable farmland; livestock farming in this part of Norfolk is therefore likely to be a highly specialised activity and individuals willing to take on the grazing of the common are likely to be few and far between. Whilst taking the grazing of a parcel of land which is fully fenced may be economically viable as it would not require the daily attendance of a stockman, the viability of such a proposition is likely to be greatly reduced if the land was open and the cattle were free to roam onto the B1113. I consider that the removal of the fencing, particularly along the B1113 is likely to reduce the viability of grazing as an economic proposition for any potential grazier.
13. The proposed retention of the existing works is unlikely to have any negative impact upon the ability of the rights holders to exercise their rights or their ability to let the grazing to a third party. No evidence has been submitted to demonstrate that the rights holders would suffer any financial loss as a result of the proposal. It may be that the removal of the fence would lead to a financial loss if the grazing proved hard to let.
14. Given that the rights holders wish to preserve the historic form of management of the common for the benefit of both wildlife and other villagers, and that the access points to the common have been determined in consultation with those who seek to access the common for recreation and exercise, I consider that the retention of the fence and its ancillary structures would not have an adverse effect upon those individuals who have rights over the land.

### ***Interest of the neighbourhood***

15. The 2015 guidance indicates that the issues to be considered in this context include whether or not the proposal will offer a positive benefit to the neighbourhood, whether or not the works would prevent local people from using the common in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the common, whether by commoners, the public or others. For example, would the fencing sterilise part of the land rendering it inaccessible.

### ***Positive benefit***

16. The Trust argues that the existence of the fence and the grazing regime made possible by it has over the past 10 years had a positive effect upon the nature conservation interest of the common by maintaining the biological interest in

the grassland and by reducing the encroachment of scrub. In addition, the common has an amenity value for residents and visitors which has been enhanced by the reduction in scrub cover and the maintenance of the open grassland areas for recreation.

17. Natural England is of the view that the maintenance of grazing is essential to maintaining the nature conservation interest of the unimproved grassland found on the common, and that the continued use of livestock fencing is paramount to the successful management of the habitats for which the site was notified.
18. Although there was little by way of empirical evidence submitted to demonstrate what are otherwise anecdotal claims as to the success of the grazing regime, the Trust did submit some records regarding the numbers of green-winged orchid (*Orchis morio*) which had been counted on site. The population has risen from 700 plants in 2006 to 2300 in 2015. The increase in the absolute numbers of the plants and their distribution through the site may be due to a number of reasons, but the maintenance of a habitat conducive to the species through extensive seasonal grazing is likely to be a contributory factor.
19. Although the grazing of the common may be only one factor among many which has led to an increase in the numbers of a locally rare species, the grazing regime which has been followed over the past 10 years appears to have had a positive impact upon the nature conservation interest of the common which is of benefit to both the interests of the neighbourhood and to the wider public.

#### *Loss of existing use or interference with future use*

20. The retention of the fence and its associated structures is unlikely to interfere with the current or future use of the common by residents or visitors. During my site visit I observed numerous people out taking air and exercise on the common (with or without a dog) and who either made use of the access gates or who accessed the common from Wymondham Road. The existence of the fence did not appear to interfere with anyone's enjoyment of the common and the submissions made demonstrate that there is local support for its retention. The fence which has been constructed follows the perimeter of the common; there are no internal fences within the common which sterilise any part of the land or prevent access by the public, the rights holders or their grazier.
21. The Trust and the rights holders indicate that if consent for the fencing was not granted, then grazing of the common would not be viable due the risk of collisions on the B1113. The removal of the fencing and the cessation of grazing would represent a loss of existing use, with the consequent loss or reduction in the ecological and amenity benefits which flow from the extensive grazing of the common.

#### ***The public interest***

##### *Nature conservation*

22. I have already noted above the increase in the number of green-winged orchids found on the common over the 10-year period during which grazing has been

facilitated by the fence. The increase in numbers of a locally rare species of plant is of positive benefit to the public interest in nature conservation. Also noted above are the views of Natural England who fully support the retention of the fencing around the common to enable extensive grazing and the traditional management of the species rich grassland of the SSSI. Letters of support for the proposal submitted by local residents also note the positive impact that grazing has had upon the flora and fauna found on the site and on the number of photographers and naturalists who visit the site.

23. I consider that the fence has enabled the traditional management of the common to continue and that the extensive grazing of the common is delivering environmental and amenity benefits which are enjoyed by both residents of the village and visitors to the area.

*Conservation of the landscape*

24. The published guidance expects consideration to have been given to alternative methods of preventing livestock from straying. Paragraph 4.3 sets out potential alternatives to fencing such as temporary speed limits to mitigate the risk of an accident whilst preserving the open nature of the land or for the introduction of warning signs or other traffic calming measures.
25. The objectors contend that the fencing is an eyesore, that it restricts the ability of people to walk freely over the common and that it bisects the common allowing motor vehicles to speed along the B1113. The objectors submit that alternative methods were being successfully used on commons elsewhere in the country; underground electric fencing was being successfully used at Epping Forest and Burnham Beeches for example. Furthermore, speed restrictions, warning notices and cattle grids had been installed at Litcham Common in Norfolk to facilitate grazing without the need to fence the common. The objectors argue that the introduction of similar measures at New Buckenham would reduce the likelihood of collisions between motorists and grazing cattle.
26. The Trust had given consideration to the possibility of seeking a reduction in the speed limit on the B1113, but during the initial application in 2005 the highway authority had indicated that it would not extend the speed restriction on the B1113 beyond the village envelope. In addition, the Trust would have to bear the cost of the installation of cattle grids and signs and fund the process of seeking a reduction in the speed limit; as a charity which grazed its land for conservation benefits, these costs could not be justified. Furthermore, the rights holders would not contemplate grazing on the common without the road being fenced irrespective of the speed limit as permitting cattle to graze over the road at will was considered to pose unacceptably high risk to both human and animal life.
27. The Trust had considered other means of grazing the common without fencing the B1113 but all were considered impractical. Tethering cattle would be inappropriate and may lead to selective poaching of the ground and would be highly labour intensive. The seasonal employment of a stockman would be economically prohibitive and as there was no infrastructure to house the cattle at night, they would have to be removed on a daily basis. Mechanical cutting of the vegetation would be labour intensive and may result in the enrichment of

the soil if all cuttings were not removed. The Trust and the rights holders contend that extensive grazing is the only effective means of delivering conservation and amenity benefits on the site and that the retention of the fence is the only practical way of containing livestock on the common.

28. Alternatives to physical fencing are becoming available due to advances in technology and the use of underground electric fencing at sites such as Epping Forest and Burnham Beeches is noted. The Trust has explored this innovative technology and whilst recognising its use, notes that it remains fallible as cattle can still cross the 'invisible' fence. In Epping Forest where the cattle are grazed within a larger woodland block this may not be a significant problem, but the risk to life from a cow 'escaping' onto the B1113 would be as significant as if there was no fencing at all.
29. I am aware that animals are successfully grazed on many unfenced commons, some of which have major roads running through them. No evidence of the cost of the installation of cattle grids or signage has been submitted by the Trust, although such infrastructure is unlikely to be inexpensive. As Wymondham Road has been stopped up to through traffic, the B1113 is the sole means of access to the village from the east and from my observations the road appears to be subject to a considerable amount of traffic. I consider that the risk to both animal and human life arising from grazing would not be removed if the speed limit along the B1113 was reduced and the fence along side the road were removed, although it is likely to lower the risk of a collision occurring. A balance has therefore to be struck between a continuation of the traditional manner of managing the common, the ecological and amenity benefits which arise from that management and the distinctiveness of a traditional common which is unenclosed.
30. In seeking to strike an appropriate balance, I bear in mind that it would be unlikely that a grazier could be found and retained if the fence were to be removed; grazing without a fence likely to be uneconomic if a stockman was required to manage the livestock on a daily basis. I also bear in mind that the fencing is supported by both the rights holders and the local community as grazing on the common is considered to be an important aspect of the historic and landscape character of the village. From my observations on site, the presence of the fence does not deter the villagers from venturing onto the common for air and exercise.
31. I consider that the existence of the current fence has brought some positive benefits to both the rights holders and to the neighbourhood and I do not share the objector's contention that the fence is an eyesore. I saw from my site visit that the fencing on the perimeter of the common has been placed so that it is either hidden behind woodland or scrub or so that it blends in to the existing boundary features. The only points at which the fence is immediately visible are alongside the B1113 and at the southern end of Wymondham Road where there are permanent posts which support the seasonal electric fence. When standing within either part of the common and looking towards the B1113 although the fence posts remain visible the fencing material itself (due to its colour) blends into its surroundings.
32. The objector submits that if consent is to be granted for the retention of the current fence then it should be time limited to 10 years by which time further

technological advances may improve the efficacy of current 'invisible' fencing systems. The Trust considers that 10 years is too short a period for viable alternatives to arise and suggests that if consent is to be time limited it should be for a period of 20 years.

33. I do not share the somewhat pessimistic view of the Trust regarding possible advances in technology and consider that 10 years would be likely to be a sufficient period of time for a robust and effective system of 'invisible' fencing to be developed which could be considered for use on the common and which would permit the removal of the fence along the B1113. Equally, within ten years some other, currently unforeseen technology may become available. Accordingly, if consent for the renewal of the existing works is to be granted, I concur with the objector's suggestion that it should be limited to a period of 10 years.

#### *Public access*

34. In relation to public rights of way, the preferred means of access through any boundary is a gap. In the absence of the possibility of a gap (because of the need for stock control) a gate is preferable to a stile in the light of the requirements of the Equality Act 2010. There is no reason why the same principles cannot apply to access to common land.
35. The common is registered as Open Access Land under the Countryside and Rights of Way Act 2000. I consider that the proposed retention of the fence is likely to have little adverse effect upon those with rights of access to or over the land. The public footpath which forms part of the Tas Valley Way is accommodated by pedestrian gates at the boundaries of the common and access to the common during the grazing season is facilitated by 11 other pedestrian gates. At the time of my site visit the temporary fencing along Wymondham Road was not present and access to the common was freely available along that section. I understand that the location of pedestrian gates was determined through consultation with the rights holders, the parish council and the village residents as part of the initial fencing project and that the number of access points currently provided exceeds by some margin the number of access points which had been present in the former temporary electric fence.
36. Access to the common is principally from the west where the common abuts the village. As my site visit was outside the grazing period, the temporary electric fence alongside Wymondham Road was not present and the northern part of the common was freely accessible. When the temporary electric fence is present access to the northern part of the common from the west is via three pedestrian gates on Wymondham Road and via four other pedestrian or kissing gates. No details have been provided by the Trust as to the standard to which these gates have been built but if consent is given, I will specify that they should comply with British Standard BS 5709:2006 as that was the relevant standard at the date of the application.

#### *Archaeological remains and features of historic interest*

37. Of local historic interest is a Second World War observation post in the northern part of the common which overlooks the B1113. Other than this, no

evidence has been submitted to demonstrate that there are any archaeological remains or features of historic interest in the vicinity of the land at issue which would be adversely affected by the proposed works.

*Other relevant matters*

38. There are no other relevant matters.

**Conclusions**

39. Having regard to the interests set out in paragraph 7 above, I find that the works would not adversely affect those interests and that it is expedient that consent for the retention of the existing works should be given, subject to the consent being limited to a period of 10 years from the date of this decision. Furthermore, the pedestrian and kissing gates which exist as part of the works should be compliant with BS 5709:2006 if they are not already so compliant.
40. For the purposes of identification only, the location of the works is shown on the attached plan.

*Alan Beckett*

Inspector

