
Application Decision

by Richard Holland

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

Decision date: 22 February 2016

Application Ref: COM 732

Barnham Cross Common, Thetford, Norfolk

Register Unit No: CL 76

Commons Registration Authority: Norfolk County Council

- The application, dated 3 September 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 Thetford Town Council.
 - The works comprise:
 - i. 4635 metres of 1050 mm high perimeter stock fencing around the boundary of the 67.3 hectare area designated as a Site of Special Scientific Interest;
 - ii. seven field gates on existing vehicular entry points for management and emergency services; and
 - iii. fourteen kissing gates on existing pedestrian entry points.
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Decision

1. Consent is granted for the works in accordance with the application dated 3 September 2015 and the plans 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. the fencing shall be removed no later than 10 years from the date it is erected; and
 - iii. all kissing gates shall incorporate an internal manoeuvring space which allows at least a 1 metre diameter cylinder to pass through the gate.
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 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.
4. This application has been determined solely on the basis of written evidence.

¹ Common Land Consents Policy (Defra November 2015)

5. I have taken account of the representations made by the Open Spaces Society, Natural England, Historic England, Lady Denise Waterbury and Mr David Woods.
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. The applicant, Thetford Town Council (TTC) is also the landowner. There are no rights of common registered. I conclude therefore 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. Concerns have been raised over enclosing and bisecting the common land with permanent fencing which would be a physical and psychological barrier to access for riders and walkers, including dog walkers. Natural England (NE) considers that kissing gates are inadvisable as they do not comply with the relevant equalities legislation and therefore should be replaced with 2 way bridle gates. The OSS asks that all gates are suitable for horse riders.
9. The common is subject to section 193 of the Law of Property Act 1925 which gives a public right of access, on horseback as well as on foot, for air and exercise. However, as there are bylaws revoking the right under section 193 to ride horses on the common, it is not necessary for the fencing to facilitate access on horseback. Whilst I appreciate NE's concerns about access for the disabled, I note that seven field gates will be installed along the fence line some of which are adjacent or close to the kissing gates. TTC has advised that the design of the kissing gates will allow access for the disabled (a condition to this effect can be attached to any consent) and the proposals will limit the significant damage to the common caused by users of wheeled vehicles and unauthorised grazing. All existing desire lines will be maintained. Further, scrub removal from perimeter areas should help to improve access and the safety of those using the common.
10. There are also concerns that grazing livestock will pose a threat to the safety of those wishing to access the common especially those walking dogs. TTC is discussing with local livestock owners about the availability of suitable livestock. However, it has said that it will do all it can to comply with Good Agricultural Practice and the Information Sheet issued by the Health and Safety Executive (Agriculture Information Sheet No 17EW(rev1)) to minimise potential for conflicts between livestock necessary to graze land to which the public has access.

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.

11. I am satisfied therefore that there will be sufficient provisions for all legitimate users to access and enjoy the common and therefore the interests of the neighbourhood and public rights of access will be safeguarded.

Nature conservation

12. The application site is designated as a Local Nature Reserve and forms part of the Breckland Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Special Area of Conservation (SAC). TTC has advised that due to the lack of grazing, the common has lost 11 of its key Brecks plant species over the last 50 years, with areas of scrub and trees developing on a previously open site. The area is now part of a 10 year Higher Level Stewardship Scheme (HLS) with capital works to restore the site to favourable condition in conjunction with a PlantLife project to restore conditions for the vascular plants lost from the site. TTC maintains that the costs of restoration will be lost if a follow up grazing regime is not put in place to control and reduce the prevalence of scrub and tree species as well as provide suitable sward conditions. However, it is concerned that any limitation on the lifespan of the fencing would mean that the current management aims would be extinguished at the end of that lifespan.
13. NE has advised that the area needs constant management in order to prevent the invasion of large scrub and trees. The habitat is Breckland grass heath which will be overshadowed and outcompeted by these invasive species. Grazing is a traditional way of managing such commons and resulted in a rich grassland sward with associated fauna. However, since such management ceased a number of species have been lost and the biodiversity severely reduced. Mowing as a management tool on this particular site is not considered to be effective.
14. I consider that re-introducing this traditional method of managing the common through controlled grazing will help to restore this nationally and internationally important site's ecological condition, thereby helping to meet obligations under SSSI, SPA and SAC designations. The proposed works will therefore benefit nature conservation interests. However, I disagree that any limitation on the lifespan of the fencing would mean that the current management aims would end at the expiry of the time limit. I consider that the aims of the scheme may equally be achieved with time limited fencing. When the time limit expires it should be clear whether or not the grazing regime is succeeding; if it is, then it would be for TTC to review the continued need for the fencing and make a further application if appropriate. A time limited consent is also consistent with Defra's policy objective to ensure that the special qualities of common land, including its open and unenclosed nature, are properly protected.
15. I conclude therefore that the consent should be limited to ten years.

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

16. Historic England (HE) feels that a widely spaced post and wire fence would be less intrusive than a large wooden one, and recommends that any fence posts are driven in instead of using excavated post-holes, as this is generally a less intrusive method of installation. If there is a need for groundworks on the common, the Norfolk Historic Environment Service (NHES) should be consulted to define the need for, and scope of, any archaeological works or mitigation which may be required.
17. TTC has responded that the field gates will be installed with large section posts that will require digging but this will be carried out in consultation with NHES. However, due to the prevalence of vandalism in the area, metal gates and posts will be used as these are

resistant to fire damage. Such gates and posts are smaller in cross section than their wooden equivalent and, with an appropriate finish, are less intrusive visually.

18. There are concerns that enclosing the common land with permanent fencing will bisect it and harm its open nature and historic character. However, the common is already split in two by a major heavy goods route (the A134). By its nature, fencing will have some impact on an open landscape. However, in this case it will be placed alongside ditches and bunds, close to perimeter vegetation and at the base of the levy on which the A134 sits atop, to minimise any visual impact. I am satisfied that any adverse impact on the openness of the common will be minimal, that it is unlikely that any archaeological remains or features will be harmed, and the works are justified by the benefits to nature conservation which they will help to deliver.

Other matters

19. Concerns have been raised that the proposals are unnecessary and that alternatives to fencing have not been fully addressed. However, I have considered the application as made and on its individual merits and I am satisfied that the proposals are an appropriate way to facilitate restoration of the ecological condition of the site. Concerns have also been raised about litter on, and travellers' unauthorised use of, the common but these are matters dealt with under other controls and I am unable to take them into account when deciding the application. A concern was raised about the lack of advertising of the application. However, I am satisfied that the advertising requirements have been met.

Conclusion

20. I consider that the proposed works will not materially harm any of the interests set out in paragraph 6 above; indeed, by facilitating grazing management of the common they will benefit nature conservation. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

Richard Holland