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# Application Decision

by **Richard Holland**

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

Decision date: 19 August 2016

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## Application Ref: **COM 3154065**

### **ULDALE COMMON AND DEAD CRAGGS COMMON, CUMBRIA**

Register Unit No: CL 46 & CL 273

Commons Registration Authority: Cumbria County Council

- The application, dated 3 March 2016, is made under section 38 of the Commons Act 2006 (the 2006 Act) for consent to construct works on common land.
  - The application is made by the Lake District National Park Authority (LDNPA).
  - The works comprise: the retention of 2340 m of temporary post and wire fencing covering 10.86 ha to enable scrub and woodland regeneration for a further 15 years. Access will be provided via a number of gates installed in the fencing.
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## Decision

1. Consent is granted for the works in accordance with the application dated 3 March 2016 and the plans submitted with it, subject to the condition that the fencing shall be removed no later than 15 years from the date of this decision.
2. For the purposes of identification only the location of the fencing is shown as a red line and the location of the access points are shown as black circles on the attached plans.

## 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 of the 2006 Act 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 representation made by the Open Spaces Society (OSS).
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;

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<sup>1</sup> Common Land Consents Policy Guidance (Defra November 2015)

- 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 applicant owns Uldale Common. Dead Craggs Common has no known owner. The applicant confirms that a number of graziers exercise their grazing rights as part of a Higher Level Stewardship (HLS) agreement over Uldale Common and argues that removing the fencing will have an adverse economic impact on the graziers by requiring further stock reduction. The only active commoner with rights over Dead Craggs Common agreed, when he was consulted about the works before the application was made, that the fencing is needed to ensure continued livestock management. No commoners have objected to the application. I conclude that the works will benefit the interests of those either occupying or having rights over the commons by continuing to facilitate management of the commons.

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

8. The interests of the neighbourhood test relates to whether the works unacceptably interfere with the way the common land concerned is used by local people. The application seeks to renew consent for fencing originally given in 2000 to facilitate the restoration of upland woodland habitat at two upland gill locations - Stockdale and Dash Falls (also known as Dash Beck). The fencing consists of two enclosures; 710 m at Dash Falls and 1,630 m at Stockdale to exclude stock from the enclosures.
9. The applicant is of the view that the improved ecological integrity, resulting from the works, will be beneficial to tourism and the local economy by improving the interest and pleasure to users of the common. The OSS raises concerns about the number of access points at the Stockdale site. The applicant confirms that additional gates, located at both Dash Falls and Stockdale, form part of the current proposal. In total there will be four gates at Dash Falls, two with a width of 1.525 m and two with a width of 3m, and three at Stockdale, two with a width of 1.525m and one with a width of 2.4m. This will allow adequate access for the public and for graziers should stock stray into the enclosures.
10. I am satisfied that the fencing includes sufficient access points to ensure that the public's ability to access the area will not be unacceptably restricted. I do not therefore consider that the works will harm the interests of the neighbourhood.

### ***Nature conservation***

11. The commons lie within the Lake District National Park and form part of the Skiddaw Group Site of Special Scientific Interest (SSSI) and Lake District High Fells Special Area of Conservation (SAC). The applicant explains that the continued exclusion of grazing stock and deer from the application sites will allow for low density, native woodland and associated ground flora to become better established; this will help return the SSSI to "*favourable recovering condition*". The fencing is considered to be the only practical solution to achieving the nature conservation aims for the sites as, although some growth has occurred, the harsh climatic conditions and shallow soils have suppressed the growth of trees and shrubs in the area.

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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.

12. The OSS questions the continued need for fencing at Dash Falls. It says that during a site visit held by the applicant for stakeholders in August 2015 it observed a good regeneration of heather and trees. The Forestry Commission (FC) also apparently stated at the visit that the density of regenerated trees was probably the optimum they would seek on the site. The applicant in response has provided further written comments from the FC which clarify that, although they would not seek more tree cover as part of an FC grant scheme, this did not take into account the wider objectives for the SSSI and Natural England's (NE) aims for the site.
13. The OSS accepts that more could be done to achieve nature conservation objectives at the Stockdale site, but is of the view that only a five year consent should be given. It adds that the LDNPA has been unable to fully monitor and maintain the fence, a situation which may not improve because of financial cutbacks, which is partly responsible for the lack of success so far. The applicant acknowledges concerns about the management of the fencing, but adds that there are sufficient resources for adequate on-going maintenance through the HLS scheme agreement. It confirms that the graziers have a responsibility through the HLS to maintain the fence and would wish to avoid penalties for non-compliance.
14. NE's review<sup>3</sup> of the scheme at Dash Beck recommends that the fence is retained in order to safeguard the regeneration of trees and ground flora that has already taken place. It adds that the investment of money and effort over the last 15 years would largely be wasted if the fence was removed now. The applicant's review of the Stockdale scheme<sup>4</sup> observes that the woodland has not developed as expected as a result of stock trespass but concludes that, despite the lack of success, Stockdale is a suitable site for woodland/scrub creation. The applicant maintains that a further 15 years is needed to allow for more robust establishment of woodland and to negate the need for fencing beyond this period. The applicant agrees to conduct reviews of the regeneration at 5 yearly intervals and produce a 15 year action plan to address the monitoring, management and the maintenance and removal of the enclosures.
15. I note that the parties agree that there have been difficulties maintaining the integrity of the fence, particularly at the Stockdale site. However I am satisfied from the information provided that sufficient funding is available and safeguards are in place to ensure the future maintenance of the fencing at both sites. I accept that there is a need to retain the fencing in order to achieve the nature conservation aims for the sites, and improve the condition of the SSSI, which have yet to be fulfilled. I therefore conclude that the required benefits for nature conservation justify retaining the fence for a further 15 years, after which the applicant will need to make a fresh application if the restoration is not complete and it wants the fencing to remain for a further period.

#### *Conservation of the landscape*

16. The applicant explains that the fencing is located away from any ridgeline views and the regeneration of vegetation within the fenced enclosures is expected to reduce any visual impact over time. The OSS comments that the fencing, particularly at Stockdale, is an intrusive feature on the landscape. The applicant however says that there have been no complaints about the visual impact of the fencing and NE has not expressed any concerns.
17. I am satisfied that the overall impact of the fencing on the landscape is limited (and will lessen further as the vegetation becomes more established) and is outweighed by the

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<sup>3</sup> Jean Johnston, "Review of Dash Beck Scheme" *Natural England*, August 2015

<sup>4</sup> "Stockdale Enclosure – Assessment by Lake District National Park Authority" (undated)

biodiversity benefits that should arise in line with the HLS. I therefore consider that the proposed works will help conserve the natural beauty of the National Park.

*Archaeological remains and features of historic interest*

18. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest; the cultural heritage of the National Park will therefore be conserved.

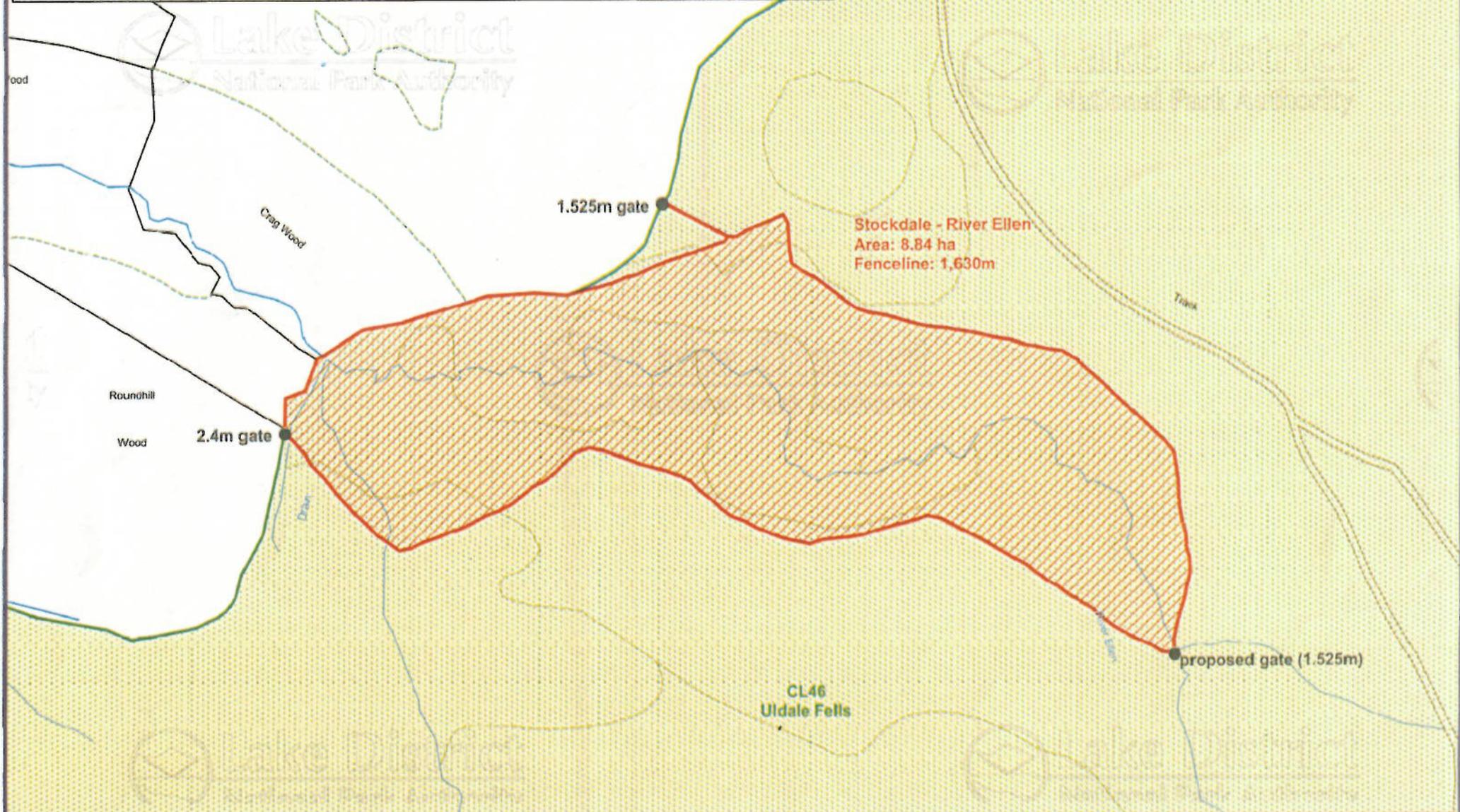
**Other matters**

19. I note that the OSS has raised concerns about the negotiation of environmental agreements and the management of all commons within the Skiddaw Massif. However, matters relating to commons not forming part of this application are not relevant to my decision.

**Conclusion**

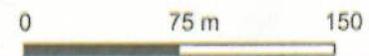
20. I conclude that the proposed works will not unacceptably harm the interests set out in paragraph 6 above. I understand the OSS's misgiving about allowing fencing to remain on the commons for a further 15 years but I am satisfied that this is justified on nature conservation grounds, particularly given NE's support for the proposals. Consent is therefore granted for the works subject to the condition set out at paragraph 1.

**Richard Holland**



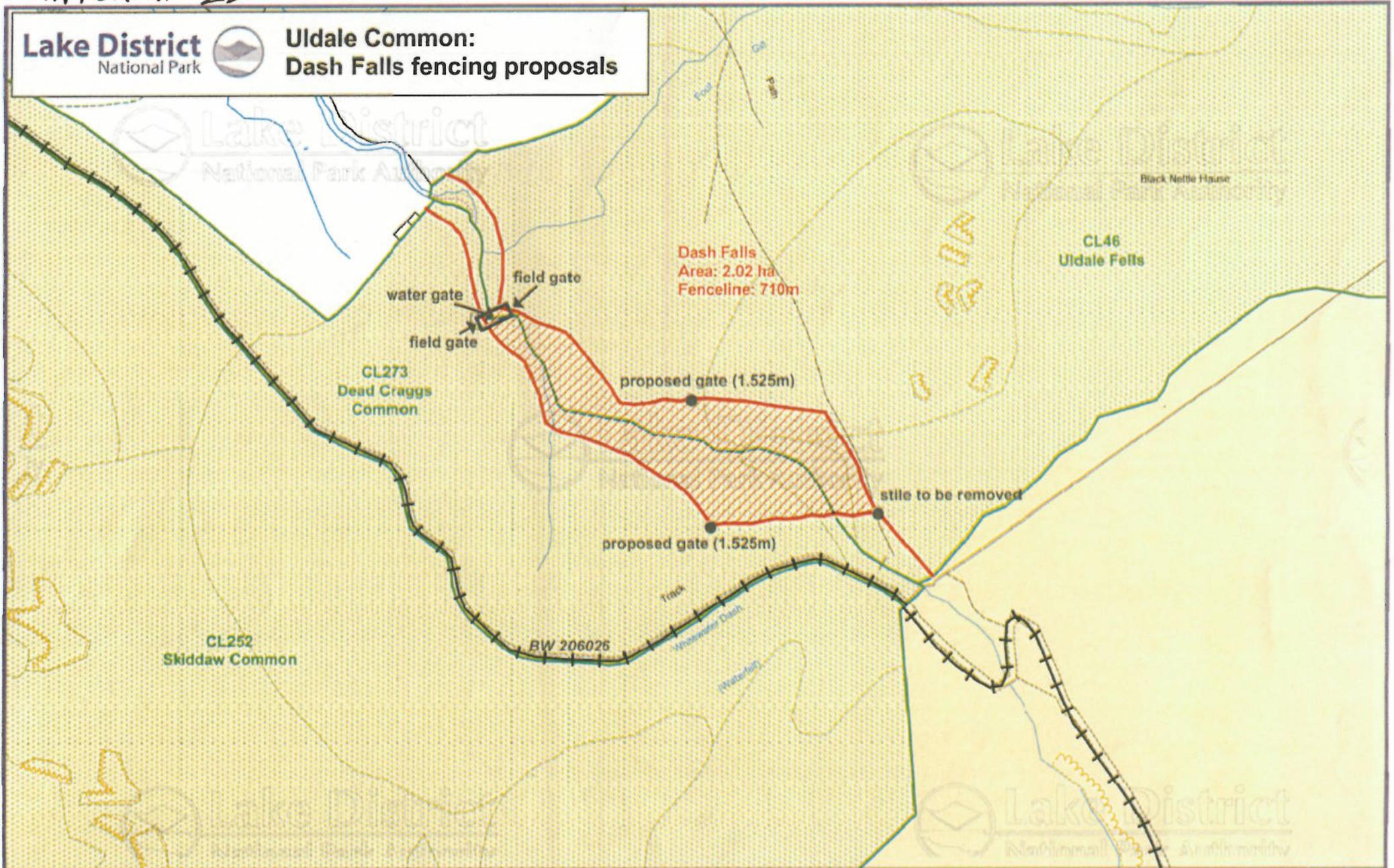
- Proposed fenced area
- Access Point
- Registered Common Land
- SSSI and SAC

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NORTH

NGR for centre of map  
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- Proposed fenced area
- Fence-line
- Access Point
- Public Bridleway
- Registered Common Land
- SSSI and SAC



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