



# Application Decision

by **Richard Holland**

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

Decision date: **31 August 2016**

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## **Application Ref: COM 791**

### **Ravenstonedale Common, Cumbria**

Register Unit No: CL 39

Commons Registration Authority: Cumbria County Council

- The application, dated 18 April 2016, 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 Ravenstonedale Common Graziers Association.
  - The works comprise temporary post and wire fencing with sheep netting of 21 areas of the common (total area of 187ha) to allow for a scrub woodland planting scheme. The total length of proposed fencing is 32.1km. The fencing will be taken down and removed from the common within 15 years.
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 18 April 2016 and the plan submitted with it, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. all gates and stiles shall meet British Standard 5709;
  - iii. there shall be no fencing or planting within 20m of any public paths; and
  - iv. all fencing shall be removed no later than 15 years from the date it is erected.
2. For the purposes of identification only, the location of the works is shown as a red line and gates and stiles are shown respectively as parallel blue lines and pink circles on the attached plan.

## **Preliminary Matters**

3. This is a revised application. A previous application for a greater amount of fencing enclosing more of the common (application reference COM 700) was made in April 2015 and withdrawn in October 2015.
4. All the land subject of this application became part of the Yorkshire Dales National Park on 1 August 2016. The National Park Authority (YDNPA) was consulted in March 2016 at the pre-application stage and said it supported the proposals in general terms. YDNPA has since offered no further comments and I have seen no evidence to suggest that their view has changed.

5. I have had regard to Defra's Common Land consents policy<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 policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by Steve and Karen Hopps, who support the application, the Open Spaces Society (OSS) and Mr R Metcalf-Gibson.
8. 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*

9. The Trustees of the Hewetson 1976 Settlement are the legal owners of the common and have confirmed their support for the scheme. As applicant, the Graziers Association represents 22 commoners with registered grazing rights over the common. This includes four tenant farmers who, through Mr Metcalfe-Gibson, raised concerns about loss of grazing land to the scheme. The applicants have said that some of the common is good land for grazing and some is not and the poorer grazing land often coincides with the best land for scrub introduction. The areas proposed to be fenced have been designed in close consultation with farmers, including the four tenant farmers, who know their best grazing land and gathering routes and do not wish to give them up. Whilst the area of common available for grazing will be reduced by 187 hectares, the number of sheep, flocks and grazing rights are not proposed to be reduced and the scheme represents no loss of value to the farms. The proposals are linked to a ten year Environmental Stewardship Scheme (see paragraph 14 below), through which tenant farmers will receive payments to supplement their farm income.
10. I conclude that the proposed works will benefit the interests of the landowners and the interests of the rights holders on whose behalf the application is made.

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

11. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The works are proposed to exclude grazing animals, but not people, from the enclosed areas for up to 15 years to allow the establishment of wildlife supporting scrubland. Once the fencing is removed the

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<sup>1</sup> Common Land consents policy (Defra November 2015)

<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.

areas of scrubland will become part of the open common. The scrub planting will help to stabilise the soil structure and slow rain water run-off, which will assist in reducing flood risk.

12. The proposals seek to enclose 187ha of land, in 21 separate enclosures, using 32.1km of fencing. Whilst this is clearly a large scale project, its significance should be seen in the context of the total area of the common. The common extends to 2511.54ha, leaving some 92% of the common land outside the scope of the proposals. To facilitate public access each enclosure will have between 2 and 7 access gates, according to its shape and size, and some will have additional stiles. The OSS, which does not object to the application in principle, has asked that all gates and stiles are to British Standard 5709 and for there to be no fencing or planting within 20 metres of any public paths. The applicant has agreed to this and compliance can be secured through suitable conditions on any consent.
13. The applicant has said that if no further Environmental Stewardship scheme is offered when the current scheme ends the fencing will be removed at that point. Thus, the fencing may actually be removed and unrestricted public access restored well before the end of the proposed 15 year period. However, I conclude that even if the proposed works remain for the whole period for which consent is sought they will not unduly harm the interests of the neighbourhood as local people will be able to carry on using and enjoying the common (the establishment of scrubland areas may enhance their experience of the common) and there will be no undue interference with public rights of access.

#### *Nature Conservation*

14. The proposals have been formulated and amended in conjunction with Natural England (NE) as part of a Higher Level Stewardship Scheme (HLS) agreement and following concerns raised about the proposals in the COM 700 application. NE is working with the graziers to achieve the aim of the scheme, which is to create a mosaic of habitats to suit birds such as red grouse, skylarks and various waders (such as curlew and golden plover), but more specifically hen harrier and black grouse. The wooded ghylls within the scheme provide extra habitat for red squirrels which is a species the scheme seeks to encourage as the population is declining in Cumbria.
15. The tree and shrub species proposed for the enclosures are a mix of locally occurring species, some of which have previously been present in the area in much greater numbers. The enclosures will allow the establishment of scrub, which provides diversity and food and shelter for mammals, birds and insects, by protecting the plants from grazing animals. Other flowering plants, lichens and fungi will also have the opportunity to become established. I conclude that the proposed works are likely to provide long term benefits for nature conservation interests of the common and the National Park.

#### *Conservation of the landscape*

16. The scrub woodland has been designed to look natural and in keeping with the landscape. Most of the enclosures will be set around the edges of the common and follow stream valleys. They have been designed to follow contours and sit well in the landscape where possible. Planting will feather out towards the edges so that there will be no hard lines. In order to further reduce any potential for hard lines or edges to the scrub woodland the planting will rarely use the fencing to form its edge. The fencing will be standard livestock fencing with sheep netting positioned below the skyline to reduce its visual impact and it will also follow contours where possible.

17. Mr Metcalfe-Gibson raised concerns that the initial fencing and planting work and subsequent maintenance of the wooded areas will generate a substantial amount of vehicular and pedestrian traffic over the common land. In consequence, as much of the land is wet or boggy, wheel-marking and rutting could create a major eyesore. The applicant has said that routes to transport materials and contractors across the common will be planned to ensure minimum disruption. The work will be carried out in late summer or early autumn if possible when the ground is drier to reduce rutting damage to the soil and to wildlife. I conclude that whilst there may be some temporary damage to the landscape when the fencing is erected this harm is outweighed by the conservation (and potential enhancement) of the landscape and the natural beauty of the National Park which the works will help bring about in the long term.

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

18. The applicant consulted YDNPA on the basis that the land concerned would become part of the National Park when boundary changes took effect on 1 August 2016. In response YDNPA advised that it had not yet seen the Historic Environment Record but endorsed comments it attributed to Cumbria County Council about the carrying out of an archaeological survey before any works begin. However, the applicant consulted Cumbria County Council's archaeology service and Historic England about the application and neither commented on the proposals. There is no evidence to suggest that the proposed works will harm archaeological remains and features of historic interest or that the cultural heritage of the National Park will be harmed.

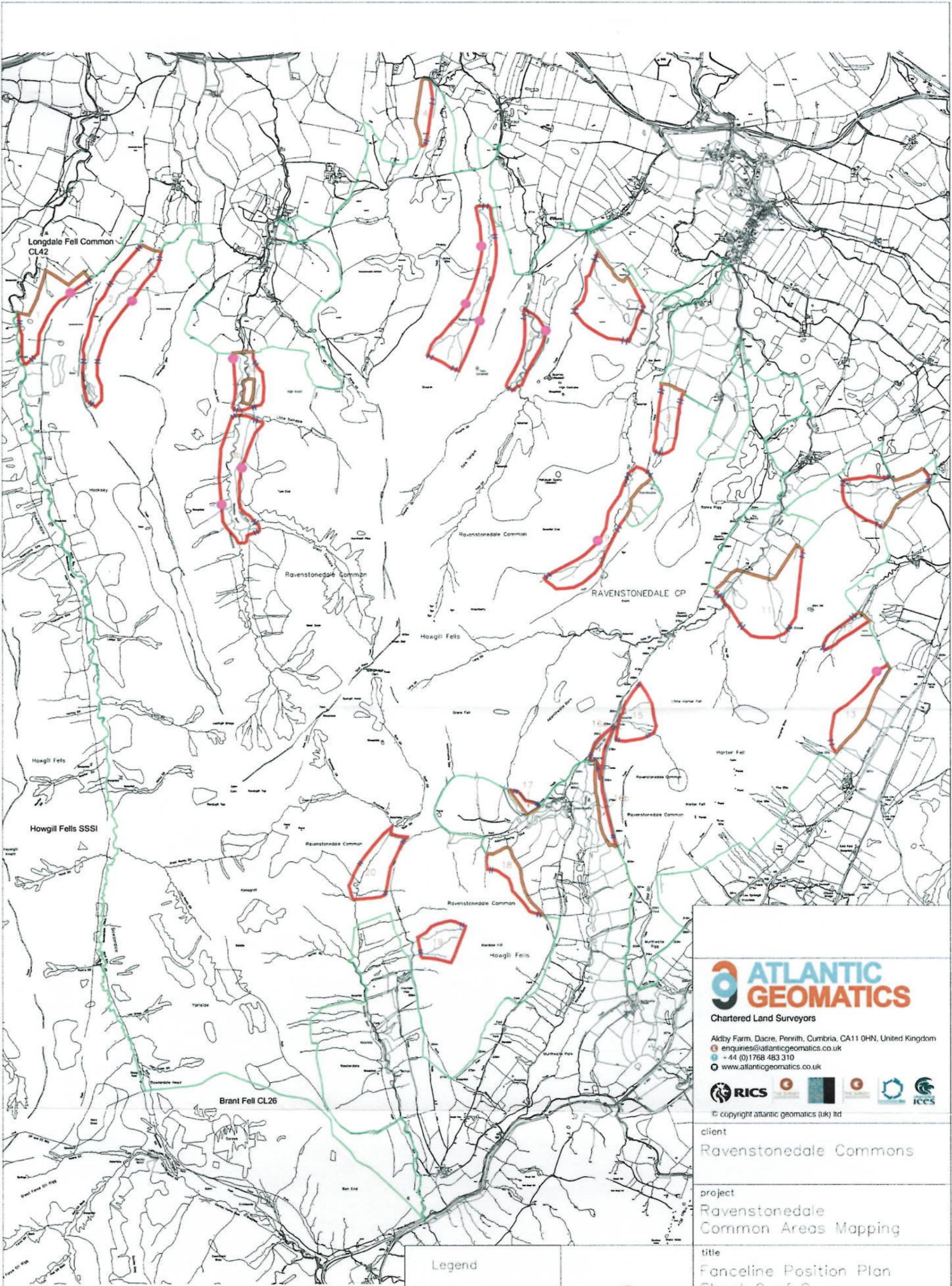
#### **Other relevant matters**

19. In response to concerns raised by Mr Metcalf-Gibson the applicant has confirmed that maintenance of the fence by the graziers is a condition of the HLS agreement and that appropriate funds will be reserved from the HLS scheme budget to ensure that the cost of removing the fence at the end of the proposed period is met. Mr Metcalfe-Gibson also raised concerns about the impact once the fenced is removed; for example, livestock could stray into the unfenced wooded areas and be injured, lost or killed. The trees, shrubs, other plant life and soil might be damaged or destroyed by livestock. In response the applicant has said that the scrub will by that time be established sufficiently not to suffer damage from grazing; indeed, grazing may help to bring further habitat improvements. Livestock will be deterred from entering any scrub thick enough to cause injury by its dense and low-growing nature. Mr Metcalf-Gibson's representations seem somewhat contrary as he objects both to the erection of the fencing and to its removal. Nevertheless, I am satisfied that the applicant has sufficiently addressed these concerns.

#### **Conclusion**

20. I consider that the proposed works will not materially harm any of the interests set out in paragraph 8 above; indeed, they are likely to benefit nature conservation and conservation of the landscape interests in the long term. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



Notes:  
 1. For plot scale of 1:25000 plot to A3 layout.  
 2. Ordnance Survey (c) Crown Copyright 2011. All rights reserved. Licence number 100020449

Legend

-  Proposed Fenceline
-  Stile
-  Gates
-  Ravenstonedale Common Boundary



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client  
 Ravenstonedale Commons

project  
 Ravenstonedale Common Areas Mapping

title  
 Fenceline Position Plan  
 Sheet 9 of 9

surveyed by	date	checked
IN	March 2015	ADM
dwg no.	cod file	scale
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