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# Application Decision

Site visit made on 1 November 2016

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 9 December 2016**

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## **Application Ref: COM 763**

### **Blackstone Edge Common, Littleborough, Calderdale**

Register Unit: CL 674

Commons Registration Authority: Calderdale Council

- The application, dated 22 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 Mr David Hargreaves of Moors for the Future, The Moorland Centre, Fieldhead, Edale, Derbyshire on behalf of the Blackstone Edge Commoners' Association.
- The works comprise:
- Approximately 430 metres of post and wire fence above Barratt Farm approximately 3 metres away from the boundary wall to create a stock-proof boundary [see Map 3];
- approximately 40 metres of post and wire fence between Broad Head House and Broad Head Drain along with a field gate and bridlegate to retain cattle on the land to the west of the drain [see Map 5];
- the erection of 4 bridlegates and one field gate at the ends of the four slab concrete bridges over the Broad Head Drain to retain cattle on the land to the west of the drain [see Map 4];
- approximately 15 metres of post and rail fence on either side of Oil Mill Bridge to control stock on Stormer Hill and Blackstone Edge Hill and to prevent stock passing under Oil Mill Bridge [see map 7];
- the construction of two cattle grids and associated gates and approximately 130 metres of post and rail / post and wire fencing on Cowberry Hill to facilitate grazing on Cowberry Hill and to prevent stock straying onto Swaindrod Lane and the A58 [see Map 6];
- Consent for the all fencing and structures other than those associated with the cattle grids is sought for a period of 7 years to tie these fences and structures to the same timescales as the fences constructed under the consent granted under COM 347.

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## **Decision**

1. Consent is granted for the works above in accordance with the application dated 22 April 2016 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) with the exception of the cattle grids and works ancillary thereto, the works shall be removed no later than 7 years from the date they are carried out;
  - (iii) the bridle gates shall comply with BS 5709:2006;

- (iv) the cattle grids shall comply with BS4008:2006.

### **Preliminary Matters**

2. Following advertisement of the proposal, objections or representations were received from Ms Dunn, from Mr Durham, from NFU Clitheroe on behalf of Mr Green, from the Open Spaces Society and from Natural England all of which I have taken into account.
3. I carried out an accompanied site visit on 1 November 2016 in the company of Mrs Steer (Secretary, Blackstone Edge Commoners' Association), Mr Shepherd, (Chairman, Blackstone Edge Commoners' Association) and Mrs Shepherd.
4. This application has been determined on the basis of the written evidence, the comments submitted, and my own observations of the site.

### **Procedural Matter**

5. The application consists of the written application form and seven maps. Of these maps, Map 4 relates to the proposed works in the vicinity of Broad Head Drain, the man-made channel that feeds Hollingworth Lake. The Drain bisects Blackstone Edge Moor and is crossed at four points by slab concrete bridges which facilitate pedestrian and equestrian access between the two parts of the moor but which also permit livestock to cross the Drain. The eastern part of the moor is subject to a vegetation restoration programme and the Commoners' Association wish to restrict access to grazing livestock by erecting gates at one end of each of the bridges.
6. Although the application seeks consent for the erection of a bridle gate at four locations along the Drain and the erection of a field gate at one of those locations, the copy of Map 4 submitted only shows the location of three of those gates. It was evident at the site visit that there were four points at which it was possible to cross the Drain and that erecting gates at only three locations (as per the submitted Map 4) would not achieve the result the Commoners' Association sought as an unrestricted means of crossing the Drain would remain. There was therefore an inconsistency between the written description of the works for which consent was sought and the plan which accompanied that part of the application.
7. I raised this matter with Mr Hargreaves in post site visit correspondence as Mrs Steer and Mr Shepherd were unsure as to whether the fourth crossing had been deliberately or accidentally omitted from the plan. Mr Hargreaves responded that the omission of the fourth crossing from the map had been a cartographic error and supplied a corrected version of the application map. The revised Map 4 is attached to this decision.

### **Background**

8. Blackstone Edge Common (approximately 667ha) lies to the north-east of the town of Littleborough and forms part of an extensive area of common land to the east of the town with Walsden Common (CL763) abutting Blackstone Edge Common to the north and Butterworth Common abutting it to the south.
9. Grazing rights are registered over the common and are exercised by five common rights holders who have entered into a Higher Level Stewardship

(HLS) agreement with Natural England (NE). This agreement includes measures to allow better control of grazing, to limit grazing to 0.26 head of cattle per hectare and to improve the condition of the SSSI<sup>1</sup> and SAC<sup>2</sup> habitats on the common. Consent for the construction of 5760 metres of post and wire fencing, 4 field gates, 21 stiles, 9 bridle gates and 5 kissing gates was granted on 16 November 2012 (COM 347) as part of the extensive grazing of the common envisaged by the HLS scheme. Consent is now sought for additional short lengths of fencing and other structures to allow the projected grazing scheme to be fully implemented.

10. The Commoners' Association has already received consent under s147 of the Highways Act 1980 from Rochdale Borough Council ('the Council') for the construction of bridle gates and the Council has also confirmed that prior approval for the construction of cattle grids under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) was not required.

### **The Main Issues**

11. 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>3</sup>
  - (d) any other matters considered to be relevant.
12. In determining this application I have had regard to the latest edition of Defra's Common Land Consents Policy<sup>4</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***

13. The register records that 15 persons hold grazing rights over Blackstone Edge Common although only 5 registered commoners actively graze the common and have entered into the HLS agreement with NE; by entering into the agreement it follows that the active graziers generally support the proposed works on the common.
14. Blackstone Edge Common is owned by the Manor of Rochdale. The Lord of the Manor has confirmed that he has no objection to the scheme on condition that

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<sup>1</sup> South Pennines Site of Special Scientific Interest

<sup>2</sup> Special Area of Conservation

<sup>3</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>4</sup> Common Land Consents Policy, Defra November 2015

- the Manor would not be liable for the ongoing maintenance and repair of any structures erected on the common as part of the proposal.
15. Clitheroe NFU submitted that the grazing scheme would have an adverse impact upon the owner and occupier of Higher Swaindrod Farm and three other domestic properties in the vicinity as the area to be fenced formed the catchment area for the private water supply to the four properties. It was argued that the fencing works would concentrate livestock within the water catchment area, intensify the poaching of the ground surface and contaminate the water supply by the deposition of surface soils and animal manure.
  16. The applicant submitted that the common had been grazed by cattle and sheep for many hundreds of years and that livestock has always had free use of the water resources on the common. Any private arrangement which the owners or occupiers of neighbouring properties have with the freehold owner of the common have to draw water from the common does not take precedence over the registered grazing rights of the commoners.
  17. There are no registered rights to draw water from the common and any arrangement that the owner of Higher Swaindrod Farm has with the Manor of Rochdale is not a matter within my remit. The grazing of cattle on the common will necessitate livestock making use of the water supply present on the common. Although the NFU submit that the abstraction of water from the common has taken place for over a hundred years, it is likely that the water supply has always been subject to the possible contamination by soils, peat and animal waste due to the common having been grazed over a similar if not longer period.
  18. The stocking rate of 0.26 head per hectare permitted under the HLS scheme is considerably lower than it would be if all the registered rights were to be exercised. Although there may be some risk to the contamination of the water supply to the four properties at issue, the risk of contamination would have always been present and is likely to be less with the permitted stocking rate than it would if there were no agreement in place which limits grazing numbers.
  19. Given that the rights holders have entered into a scheme which aims to maintain the historic of management of the common for the benefit nature conservation and that the freehold owner of the common has given his consent to the scheme, I consider that the proposed works would not have any adverse impact upon those occupying or having rights over the land.

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

20. 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*

21. Natural England confirms that Blackstone Edge Common is in a Higher Level Stewardship (HLS) agreement which has been designed to improve the condition of the SSSI and SAC habitat and to enhance the breeding conditions for those birds for which the SPA is designated. The proposed works are part of a programme designed to bring the common into a favourable scientific and environmental condition. Currently the areas of the common which form part of the SPA/SAC are designated as 'unfavourable'; the works undertaken under consent COM 347 and the proposed works aim to bring the common into a 'recovering' condition with the aim that at the end of the consent period, the common will be in a 'favourable' condition. I consider the proposed works to be part of a scheme which in the fullness of time is likely to bring about an improvement in the condition of the SSSI which will have a positive benefit both for the neighbourhood and the public.
22. The installation of cattle grids on Swaindrod Lane at the boundaries of the common will prevent livestock from straying west along the lane to the A58 or north towards Leach Farm. The Applicant states that the gates over Swaindrod Lane are regularly left open which allows livestock to stray from the common. As the proposed cattle grids would prevent the escape of livestock onto a busy main road, the proposed works would have a positive impact upon the safety of road users.
23. The first phase of works carried out to enable extensive grazing of the common was undertaken under the consent granted under COM 347. Following the completion of the works carried out under that consent, it is necessary to supplement those works to effectively control and restrict the movement of livestock on the common. Additional gates are required at those existing crossing points of the Broad Head Drain to prevent livestock from entering that part of the common subject to a peat restoration programme.
24. The proposed works are unlikely to have any adverse impact upon how the common is used by those resident in the neighbourhood. The Common is predominantly moorland with areas of blanket bog and is primarily accessed by pedestrians or equestrians using the existing public rights of way network which cross the common. The least restrictive infrastructure in terms of gates as opposed to stiles will be erected and where it is proposed to construct cattle grids, there is sufficient space for the construction of by-pass gates.
25. I consider it unlikely that the proposed works would have a significant adverse effect upon the ability of residents in the neighbourhood to enjoy the area for informal outdoor recreation or that the interests of the neighbourhood would be unduly harmed by the proposals.

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

#### *The protection of public rights of access*

26. 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.

27. The public has a right of access to the common on foot and on horseback under the provisions of section 193 of the Law of Property Act 1925. There are numerous public rights of way which cross the common including a section of the Pennine Way. The common is also registered as Open Access Land under the Countryside and Rights of Way Act 2000. I consider that the proposed works are unlikely to have an adverse effect upon those with rights of access to or over the land.
28. The proposed works would place some restrictions upon the public's ability to freely access the common although where such restrictions are required the proposal is to install gates as opposed to stiles to provide the least restrictive form of structure which would remain stock-proof. As noted above, where it is proposed to install cattle grids, there is sufficient land for by-pass gates to be erected to one side. I consider that the proposed works would not unduly restrict access to the common on foot or on horseback.

#### *Nature conservation*

29. Some of the objectors take issue with the common being grazed extensively as they consider such management to be at odds with the protection of the rare ground nesting species of bird for which the land has been designated and SSSI and SAC; the objectors concerns appear to be that livestock will have an adverse impact upon the numbers of birds nesting on the common.
30. The stocking density on the common has been agreed with Natural England under the HLS agreement and a stocking rate of 0.26 head per hectare is much lower than if the commoners were to exercise the full extent of their individual grazing rights.
31. The Applicant submits that wildfires on the common pose a greater risk to ground nesting species than grazing livestock. One of the benefits of extensive grazing would be the reduction of the dry litter layer on the common thus reducing the risk of a build up of flammable material and thereby reducing the risk of disturbance to ground nesting species through habitat loss due to fire.
32. The initial application to fence the common was supported by the RSPB as a means of bringing the SSSI into favourable condition to benefit the population of Twite (*Cardelis flavirostris*) which breed on the common. The Twite is a UK Priority Biodiversity Action Species, which in England is restricted to the South Pennines. The projected works will enable the extensive grazing of the common which in turn will lead to a mosaic of moorland vegetation which will be of benefit to the Twite along with other ground nesting moorland species.
33. The commoners wish to exclude livestock from the land to the west of Broad Head Drain as part of a peat restoration programme. The gates proposed to be erected at the existing crossing points of the drain would prevent livestock from accessing this area. The exclusion of livestock from the land to the west of the drain is likely to be of benefit to the nature conservation value of the common.
34. I consider that the proposed works will supplement and complement the works already undertaken under consent COM 347 and will enable the traditional management of the common to deliver environmental benefits which will support the interests of nature conservation.

### *Conservation of the landscape*

35. The visual impact of the proposed fencing will be minimised by using post and wire fencing and the fencing will be positioned where it is least visually intrusive; the fences proposed to be erected in the vicinity of Oil Mill Bridge for example will only be seen by looking over the parapet of the bridge. The cattle grids proposed for the boundaries of the common on Swaindrod Lane will not be readily visible from the A58 and will only be apparent to those who travel along the lane. The erection of additional gates and fencing will have some adverse impact upon the landscape; however I do not consider that the impact would be unacceptable.
36. The responsibility for maintenance and repair of the structures for which consent is sought will remain with those commoners who have entered into the HLS agreement with NE. In an area where there is extensive public access via the public rights of way network in existence over the common, it is important that any necessary repairs would be undertaken in a prompt and workmanlike manner. I am satisfied that the proposed works would be properly maintained for the duration of the consent.

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

37. The proposed works are unlikely to interfere with the current or future use of the common by residents, commoners or visitors. Although gates are proposed at the existing access points over Broad Head Drain they would not prevent access over the Drain. There are no internal fences proposed which sterilise any part of the common or prevent access by the public or the commoners.
38. I consider that the proposed works will enable the traditional management of the common to continue and that the extensive grazing of the common will deliver environmental and amenity benefits which are enjoyed by both residents and visitors to the common.

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

39. Blackstone Edge Roman Road, which is a Scheduled Ancient Monument, follows the southern boundary of the common where it borders Butterworth Common. I note that it is proposed to install a bridlegate in the vicinity of the Roman Road where it is crossed by the Broad Head Drain. I also note that English Heritage has been consulted about the proposal and has raised no objection to it.
40. Although the proposed works have the potential to impact upon the Roman Road, the physical evidence on site is that the road has been disturbed in the past by the construction of Broad Head Drain. Other than this, no evidence has been submitted to demonstrate that the proposed works would unacceptably harm any archaeological remains or features of historic interest.

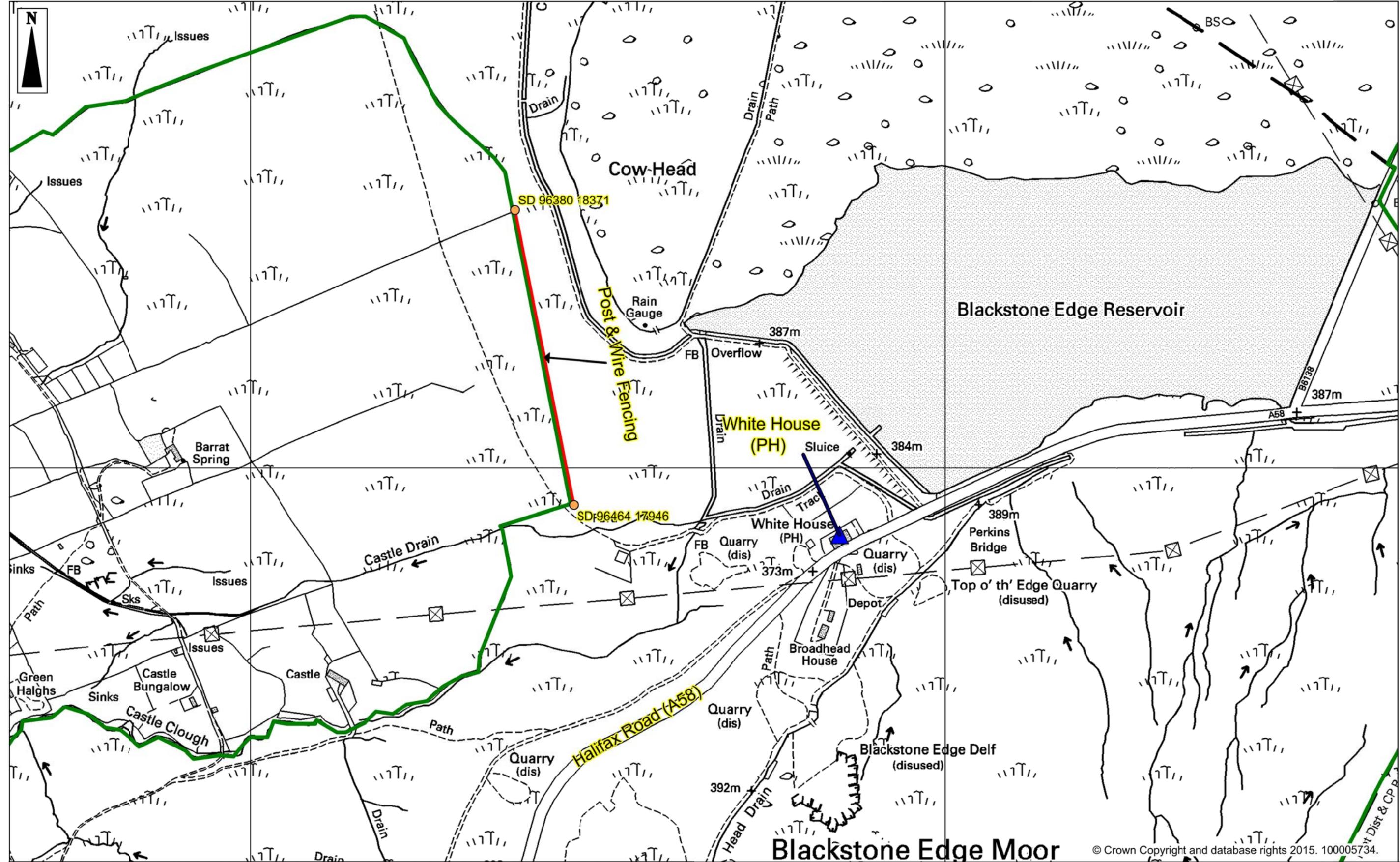
### **Conclusions**

41. Having regard to the interests set out in paragraph 11 above, I find that the works would not adversely affect those interests and that it is expedient that consent for the works should be given, subject to the conditions set out in paragraph 1 above.

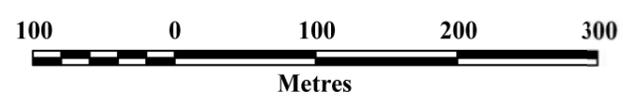
42. For the purposes of identification only, the locations of the works are shown on the attached plans: Map 3, Map 4, Map 5, Map 6 and Map 7.

*Alan Beckett*

Inspector



 Blackstone Edge Common Boundary  
 Post & Wire Fencing works



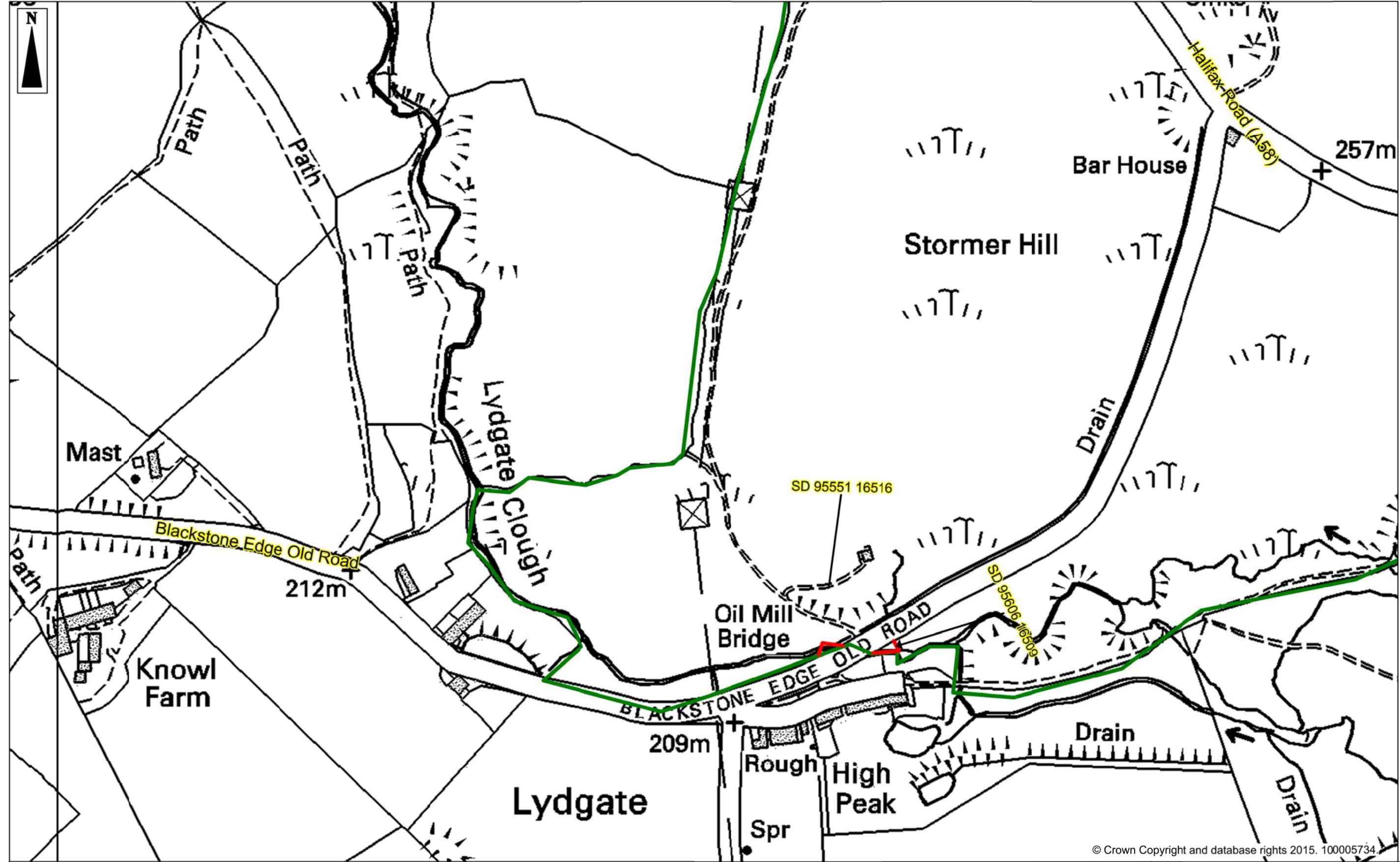
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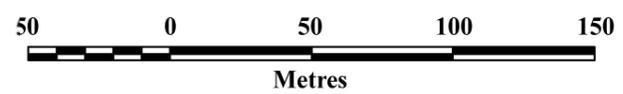
Drawing Name:  
**Map 3**  
**Barrat Farm Fence**  
  
 Drawn by: JA Date: 28/10/2015

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 Blackstone Edge Common Boundary  
 Fence

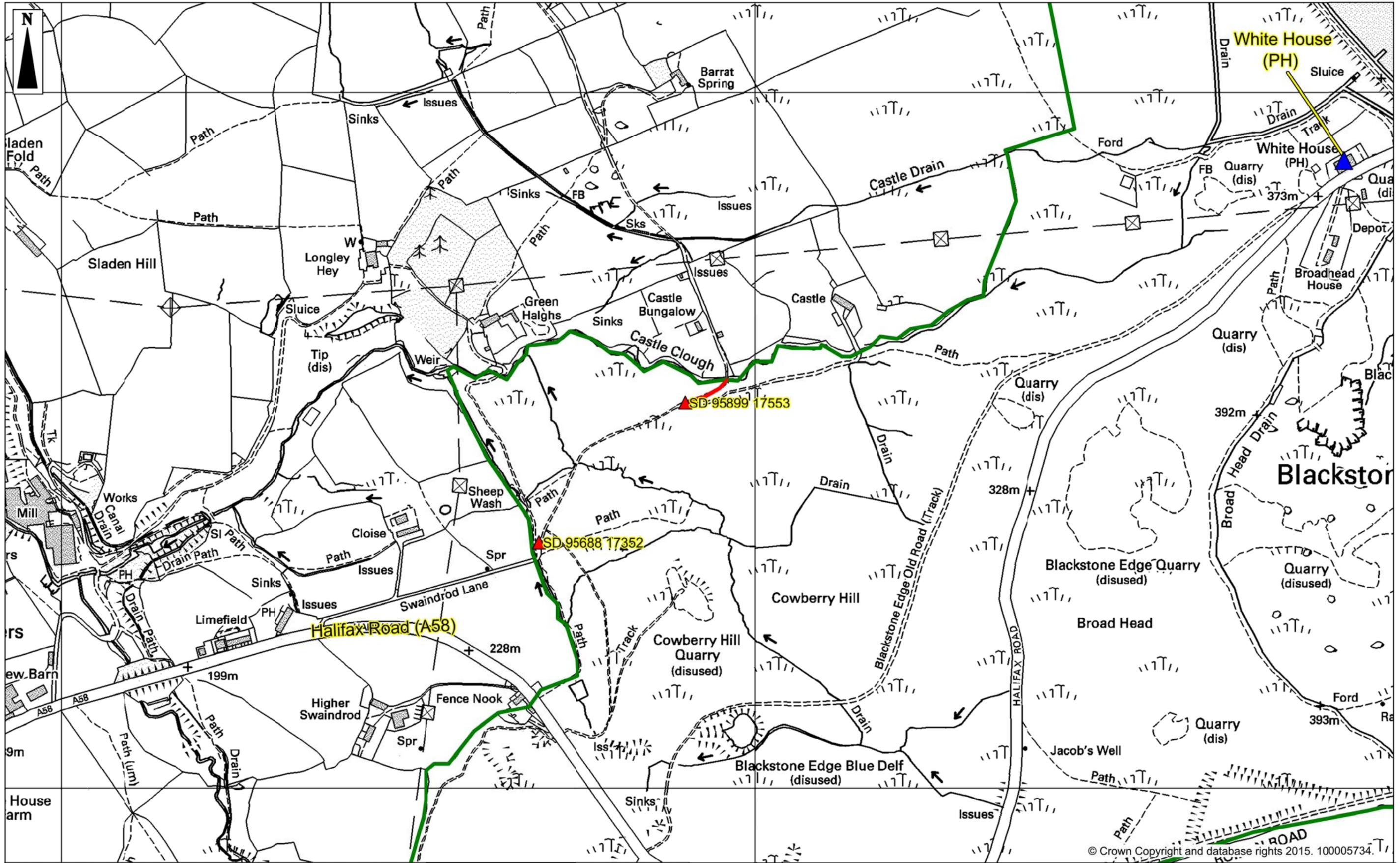


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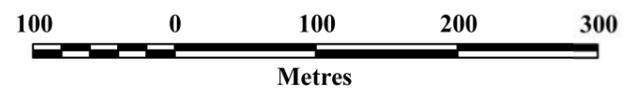


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Drawing Name:  
**Map 7**  
**Oil Mill Bridge**  
 Drawn by: JA  
 Date: 29/10/2015



-  Blackstone Edge Common Boundary
-  Bridlegate incorporated within Cattle grid infrastructure (including passing gate (bridlegate))
-  Fence



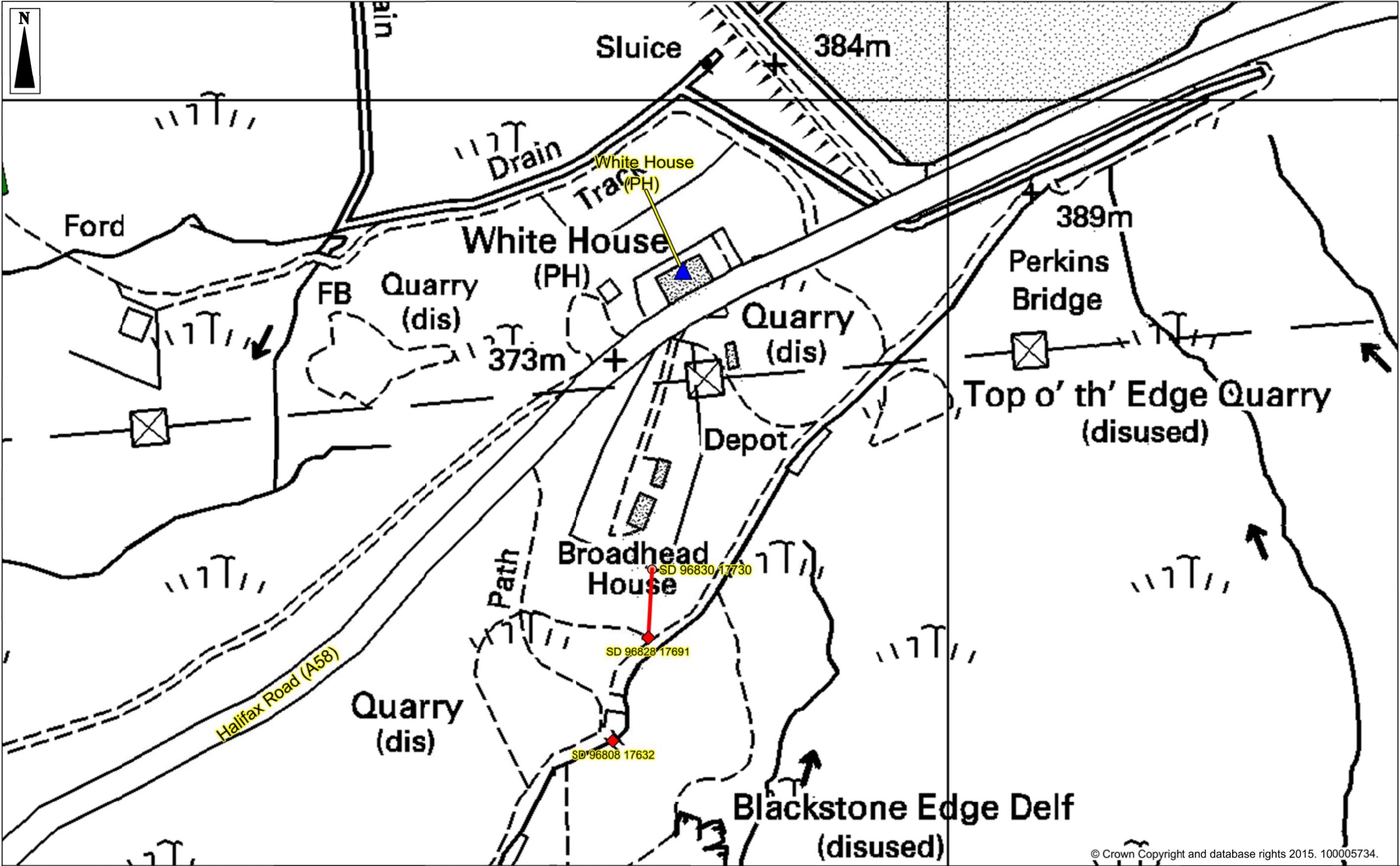
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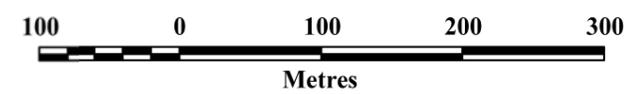
Drawing Name:  
**Map 6**  
**Cowberry Hill - Cattle Grids**  
 Drawn by: JA  
 Date: 22/02/2016

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 Blackstone Edge Common Boundary  
 Fence  
 Field Gate + Bridlegate



Scale: 1:5,000



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Drawing Name:  
**Map 5**  
**Broadhead House Fence**  
 Drawn by: JA  
 Date: 19/02/2016

