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# Application Decision

**by Richard Holland**

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

Decision date: 20 April 2017

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**Application Ref: COM/3158039**  
**Foulden Common, Norfolk**

Register Unit No: CL 143

Commons Registration Authority: Norfolk County Council

- The application, dated 31 August 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 Foulden Latimer Estate Ltd, Hythe Road, Foulden, Thetford, Norfolk IP26 5AH.
  - The works are to facilitate grazing and comprise 4332 metres of 1.1 metre high wooden post and wire fencing with stock netting, 7 x self-closing pedestrian gates, 4 x field gates and 6 x stiles.
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## Decision

1. Consent is granted for the works in accordance with the application dated 31 August 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; and
  - iii. all fencing shall be removed no later than 25 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 on the attached plan with gates and stiles marked as indicated in the plan key.

## Preliminary Matters

3. The application originally sought consent for permanent fencing. In light of representations received, the applicant subsequently agreed to amend the application to time-limited fencing and requested a retention period of 25 years. The application has also been amended to include 6 stiles on the northern and eastern boundary of the common and the removal of a self-closing pedestrian gate at the boundary with Gooderstone Common. I am satisfied that no interested party has been prejudiced by these changes.
4. 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

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

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Natural England (NE), Historic England (HE) and the Open Spaces Society (OSS).
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>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

8. Foulden Latimer Estate Ltd is applicant, land owner and sole rights holder; the rights being rights of turbary and estovers and to graze 99 head of cattle. I therefore conclude that the works applied for will benefit the interests of the landowner and rights holder.

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

9. Foulden Common is a varied common of broad leaved woodlands, grasslands, swamp and over 300 pingos (natural ponds of post-glacial origin). It is bisected by the Foulden to Oxborough road (the road), which is lined by dense scrub on both sides and effectively splits the common into two separate sections. Due to the shape of the common there is a 300m section of road with common land on both sides and a 600m section with common land on the north east side only. The south western section is internally fenced to form three sub-sections of land. It is the applicant's intention to retain this fencing if the perimeter fencing is not granted consent but to remove it if consent is granted. However, the fencing was erected before 1 October 2007 and an application for consent cannot be made for works carried out before this time; the retention of the fencing cannot therefore form part of the application. The slightly smaller north east section has no internal fencing and contains the majority of the pingos. Around half of the perimeter of the common is already fenced; all at the south west section and mostly on the adjoining land side of the common land boundary.
10. The proposals are to make the common stock proof and to prevent grazing animals from encroaching onto the road. New fencing is proposed along the perimeter to link up with the existing fencing located outside the common; thus enclosing the whole of the common.
11. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people. The applicant has said there are currently four popular points of access onto the common. The relatively small number of access points is due to the common being mainly surrounded by private farm land and to the nature of its topography, with dense scrub and waterlogged pingos dictating routes onto it. The fencing will allow for the introduction of a grazing regime to control and

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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.

reduce the prevalence of scrub. Scrub reduction, together with ongoing pingo restoration work, will open up areas of the common previously unsuitable for recreational use. I consider that the fencing will contribute to opening up the common to greater recreational use, which will be of positive benefit to the interests of the neighbourhood.

12. The proposals include providing additional access points onto the common at various points around the perimeter where public access is possible, practical and desirable. This includes along the northern edge where fencing will be placed a few metres inside the common land boundary leaving an external strip of common land between the fence and the Oxborough drain, which marks the boundary. There is no practical access onto the common from adjoining land here and I consider it unlikely that the public would wish to access this strip of land from within the common. Stiles will nevertheless be provided in the fence line to allow such access.
13. Fencing the road will create an impediment to public access from one section of the common to the other over and above that already caused by the road itself and the thick scrub alongside it. Access across the road will be restricted to self-closing pedestrian gates in the fencing on both sides of the road near each end of the 300m section. The applicant consulted the highways authority about alternatives to roadside fencing; these being the use of cattle grids to reduce animal encroachment onto the road and lowering the speed limit to reduce the likelihood of vehicles striking encroaching animals. The applicant has said that the highways authority does not see this as a feasible option on highway safety grounds due to the number of blind corners on this stretch of road.
14. The application includes two proposals that will benefit public access within the common. Firstly, the internal fencing in the south west section will be removed to open up access within it. Secondly, the northern edge fencing will allow the creation of a safe new cross-common walking route which, using the road crossing points, could link up with new areas opened up around the pingos.
15. I consider that the proposed perimeter fencing will impede public access only negligibly, if at all, as much of it will be against private farmland. Furthermore, a means of public access will be provided at all practical and desirable points and the applicant has said that further access points can be created if requested; however, I give this proposal little weight as I must determine the application as made. Given that existing internal fencing will be removed, I conclude on balance that the perimeter fencing will be in the long term interests of public rights of access.
16. I consider that the proposed roadside fencing will significantly impede public access between the two sections of common as it will channel access across the road to two points only. However, I am satisfied that possible alternatives have been investigated and have been found to be unsuitable. Below ground 'invisible' electric fencing was found to be suitable for internal division of land but not as a final perimeter/control fence. I also give significant weight to the highway authority's position on the alternatives to fencing. I conclude that the restriction of roadside access will be significant but, as access will not be completely prevented and as the grazing scheme cannot be implemented without securing the roadside, consent should not be withheld for this reason alone. The applicant has said that the field gates and self-closing pedestrian gates will be to British Standard 5709; this can be secured by a condition attached to any consent which will also include all stiles.

### *Nature Conservation*

17. Foulden Common is a site of Special Scientific Interest (SSSI) and lies within the Norfolk Valley Fens Special Area of Conservation (SAC). The SSSI is in *unfavourable condition* due to scrub invasion. The fencing proposals have been formulated in conjunction with NE as part of a Higher Level Stewardship Scheme (HLS) agreement to bring the SSSI back into favourable condition. NE considers that the fencing will significantly improve the ability of

the landowner to restore, conserve and enhance the biodiversity value of Foulden Common, especially those features for which it is nationally and internationally important. I conclude that the proposed works are likely to provide long term benefits for the nature conservation interests of the common.

### *Conservation of the landscape*

18. All fencing will be post and high tensile wire, which allows for greater distance between posts. I consider that these measures will minimise the works required and therefore minimise the visual impact.
19. The fencing proposals can broadly be divided into three sections; those at the northern boundary, the eastern boundary and the roadside. The applicant has provided photographs of each site to show the likely visual impact of the fencing. The northern fencing will run alongside the Oxborough drain and will be hidden amongst the tree line. The eastern fencing will run along the outer edge of the line of scrub which forms the common boundary. It will not be visible from within the common and will be set against the scrub, which will soften its outline. The roadside fencing will be set approximately 8 m back so that it is mostly hidden behind scrub. Where the fence line runs through trees rather than scrub, trees will be thinned and allowed to regrow more thickly to provide a greater screen. Thinning will also allow in more light and encourage the regrowth of scrub species.
20. I conclude that the vast majority of the fencing will be hidden from view by existing trees and scrub and that it will not be unduly harmful to the landscape.

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

21. In commenting on the proposals HE stressed the historical importance of commons as open and unenclosed areas of land but did not identify any specific archaeological remains or features of historic interest. There is no evidence to suggest that the proposed works will harm such remains or features.

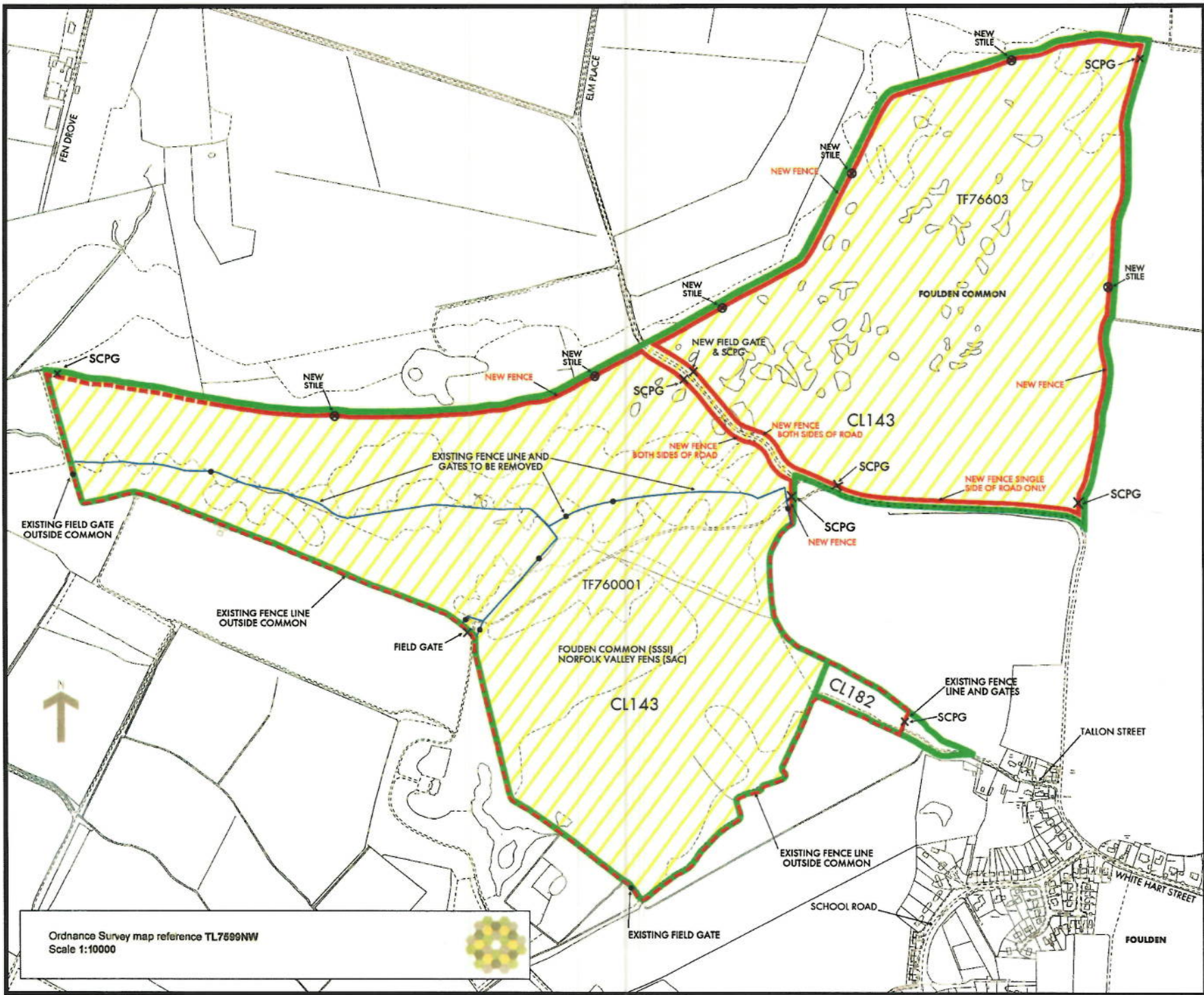
### **Other relevant matters**

22. HE and OSS suggested that in the event of consent being granted there should be a future review of the need to retain the fencing. OSS suggested that such a review would be prudent after 10 years. Whilst I note that the applicant has agreed to this, it has requested that consent for the fencing should be for at least 25 years given the capital cost and to allow for proper long term management. I accept the applicant's contention and consider 25 years to be a reasonable timescale and that it is unnecessary to attach a condition requiring a review.

### **Conclusion**

23. I consider that on balance the proposed works will not materially harm any of the interests set out in paragraph 7 above; indeed, they are likely to benefit nature conservation. Restriction of public access across the road is outweighed by wider and longer term access interests. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



- KEY**
- COMMON BOUNDARY
  - NEW FENCE
  - EXISTING FENCE TO BE REMOVED
  - FENCE OUTSIDE COMMON
  - EXISTING GATE
  - X SCPG SELF CLOSING PEDESTRIAN GATE
  - ⊙ NEW STILE
- FOULDEN COMMON (SSSI)  
 NORFOLK VALLEY FENS (SAC)

Ordnance Survey map reference TL7899NW  
 Scale 1:10000

