



## Application Decision

Site visit made on 5 April 2017

by **Susan Doran** BA Hons MIPROW

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

Decision date: 2 May 2017

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### Application Ref: COM/3160859

#### Common Land, Kirkby Moor, Cumbria

Register Unit No. CL52

Registration Authority: Cumbria County Council

- The application, dated 7 October 2016, is made under Section 16 of the Commons Act 2006 to deregister and exchange part of Kirkby Moor Common.
  - The application is made by Trustees of Holker Estate Trust.
  - **The release land** comprises 32,000 square metres (3.2 hectares) of land adjoining the south east boundary of Kirkby Slate Quarry.
  - **The replacement land** comprises 32,000 square metres of land adjoining the western boundary of Kirkby Moor.
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### Decision

1. The application is granted. For the purposes of identification only a plan showing the location of the release land and the replacement land is attached to this decision.

### Preliminary matters

2. Section 16(1) of the Commons Act 2006 ('the 2006 Act') provides, amongst other things, that the owner of any land registered as common land may apply for the land ('the release land') to cease to be so registered. If the area of the release land is greater than 200 square metres a proposal must be made to replace it with other land to be registered as common land ('the replacement land').
3. I carried out an inspection of the release land and the replacement land accompanied by Rachel Bagshaw, a representative of the applicant the Trustees of Holker Estate (together with Paul Mason), and Ian Brodie, objector, a representative of the Friends of the Lake District ('FLD') and the Open Spaces Society ('OSS').

### Main Issues

4. I am required by Section 16(6) of the 2006 Act to have regard to the following in determining this application:
  - (1) The interests of persons having rights in relation to, or occupying, the release land;
  - (2) The interests of the neighbourhood;

- (3) The interests of the public<sup>1</sup>; and
  - (4) Any other matter considered to be relevant.
5. I will also have regard to published guidance<sup>2</sup> in relation to the determination of applications under Section 16.

### **The application**

6. This application has been made further to an application for planning permission, reference 5/16/9002, to extend Kirkby Slate Quarry ('the Quarry') onto registered common land. Planning permission was granted by Cumbria County Council on 16 November 2016.

### ***The release land***

7. The release land lies on the south east boundary of the Quarry and comprises mainly heather moorland with a stone access track running through part of it. It lies within a designated Site of Special Scientific Interest ('SSSI').

### ***The replacement land***

8. The replacement land, part of Out Park, adjoins the western boundary of Kirkby Moor and comprises moorland pasture presently used for sheep grazing. Its existing habitat and plant species are described as similar to those of the Common.

### **Representations**

9. Objections were made by the FLD and the OSS. However, further to the applicant's response to these, the OSS withdrew their objection but the FLD has not expressly withdrawn its objection. Representations were received from Historic England and Natural England.

### **Reasons**

#### ***Interests of persons having rights in relation to, or occupying, the release land***

10. The land is owned by the applicant. There are grazing rights for sheep which are exercised by six active commoners. Rights to graze cattle are not exercised. Two graziers exercise rights to cut bracken. Other rights include the right for one commoner to take stone and slate, and for commoners to cut and take peat.
11. As the replacement land and the release land comprise the same area (3.2 hectares), there would be no loss of common grazing and therefore no impact on stocking levels. The current graziers have been consulted about the proposal and have raised no objections, indeed they support the proposal.
12. I find there is nothing to indicate that any relevant party would be adversely affected by the proposal.

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<sup>1</sup> Section 16(8) 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>2</sup> Common Land Consents Policy Guidance, November 2015, Defra

### ***Interests of the neighbourhood***

13. Material from the Quarry is utilised in the vernacular architecture of the area. The development is said to be essential to maintain the stability and safe working conditions in the Quarry and to maintain slate production, and in turn local jobs. The Quarry, a significant feature in the local economy, employs 118 people.
14. GG and MA Long, who lease and farm the replacement land, support the proposal as it will enable the expansion of the Quarry site to proceed. They cite the benefits of the Quarry to the local area, local people and businesses as a local employer.
15. There are no obvious detrimental effects to the neighbourhood arising from the proposal, and arguably some positive effects in terms of the neighbourhood and local economy should the proposal go ahead.

### ***Public interest***

#### *Nature conservation*

16. The release land falls within the Kirkby Moor SSSI, designated for its dry dwarf shrub heath, alkaline fen/flush, wet heath, blanket bog and valley mire, springhead rill and flush, dry heath, mire and wet flushes. The release land comprises dry dwarf shrub heath (heather moorland) (1.78 hectares), grassland (0.04 hectares) and part of a mire complex (0.25 hectares). As a whole, Kirkby Moor SSSI covers an area of 780 hectares, the release land representing 0.27 hectares of the SSSI.
17. The replacement land, moorland pasture currently used to graze sheep, adjoins the SSSI. It has the potential to be restored to heather moorland, but currently is of poorer value in terms of biodiversity and is of limited benefit in terms of nature conservation.
18. As Natural England points out, dwarf shrub heath habitat is restricted on an international basis to Northern Europe and is a scarce habitat within South Lakeland and Barrow. Kirkby Moor represents the largest area of this habitat type in the locality. Furthermore, I note that the area of mire affected by the proposal (a type of transition mire) is an important rare plant community. Natural England considers that the Quarry extension proposed will damage or destroy features for which the SSSI has been designated: in the case of the transition mire, an irreplaceable habitat. Natural England advises that this type of habitat cannot be re-created. Accordingly, the permanent loss of the mire habitat in my view is undesirable and of particular concern.
19. However, as it is not possible to replace this mire type on or immediately adjoining Kirkby Moor, mitigation and compensation measures have been agreed between the applicant and Natural England as part of the planning process through a Section 106 Agreement. These measure include the restoration of 10 hectares of land within the common to dry dwarf shrub heath; works to safeguard the remaining valley mire (part of which would be lost to the Quarry extension), improvements to the hydrological connectivity at Brunt Riggs Mire (located on the common to the south east of Kirkby Quarry) which has similar habitat and ground conditions to the mire to be lost; and translocation of turves from the habitat to be lost to suitable locations; as well as restoration of 7-10 hectares of degraded mire habitat on a separate site at

Whiteoak Moss, near Loweswater, some 23 miles away from Kirkby Moor Common. In addition, the infilling of Winnow End Quarry will result in restoration of another 2.1 hectares of dry dwarf shrub heath.

20. As regards the loss of heather moorland, it is envisaged that the replacement land is capable of reverting naturally to this dwarf shrub habitat given time and, or, with intervention. The applicant's management proposals for the replacement land include removing and replacing the existing dry stone wall; restricting sheep grazing through an Uplands Entry Level Stewardship Agreement; no application of fertiliser, organic manures or waste materials; no new drainage work, modification or improvement of existing drainage systems; no ploughing, levelling, rolling, re-seeding or chain harrowing; and, should heather regeneration not occur in 5 years, to spread heather seed on the land, and control invasive species.
21. In terms of the release land and replacement land I consider there would be an overall loss as regards the public interest in nature conservation. I recognise that alternative schemes were considered but that extending the Quarry to the south east was found to be the safest and most suitable option, although this would result in the loss of rare habitat. Nevertheless, whilst not a replacement for the loss at Kirkby Moor, the mitigation measures described above in my view go some way to redressing the balance, furthering the conservation and enhancement of Kirby Moor (and other local sites) as a whole. Indeed, the mitigation to be undertaken by the applicant exceeds in terms of area and extent that which would be lost as a result of development for which planning permission has now been granted.

#### *Conservation of the landscape*

22. The proposal as made is to fence off the replacement land from the existing common and to create access points within the existing dry stone wall that forms the current boundary with the common. However, to meet concerns raised, the applicant has agreed to remove the existing dry stone wall and rebuild it along the new boundary of the common in place of the proposed fence. Whilst this may require further consent, I consider it would be more in keeping with the landscape, be visually more acceptable, and would avoid any potential fragmentation of the replacement land from the remainder of the common.
23. The release land is heather moorland whereas the replacement land is moorland pasture. Nevertheless, although not currently equivalent in landscape terms, the replacement land will not detract overall from the character of the upland open moor, and it is anticipated that it will revert to heather moorland given time, and, or intervention.
24. The replacement land provides views over the common as well as towards the Lake District fells and the Duddon Estuary. Its character is more undulating on sloping ground compared to the release land.
25. Given the willingness of the applicant to re-position the existing dry stone wall, I conclude no detrimental impacts will arise from the proposal.

#### *Recreation and access*

26. The release land is open access land under the Countryside and Rights of Way Act 2000. A public footpath runs through it, however, it is proposed (as part of

the planning application<sup>3</sup>) to permanently divert the affected section outside the release land to link with a nearby existing public footpath. This is unlikely to have any significant impact on the enjoyment of recreational users of the common. An unclassified county road, U5097, also accesses the land, and this is proposed to be stopped up as part of the planning process.

27. Currently, the replacement land is not subject to public access although there are existing public footpaths along its eastern and northern boundaries. However, if part of the common, it would be subject to open access as well as continue to be served by the existing footpaths and other access tracks that lead to and from it. Although the proposal is to provide gaps within the existing dry stone wall, its repositioning to the new boundary of the common, as agreed by the applicant, would mean that access between the replacement land and the remainder of the common would be unimpeded. I consider this would have a positive effect on recreation, access and overall amenity.

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

28. Historic England has confirmed that there are no designated heritage assets, Scheduled Ancient Monuments or other archaeological or historical features of interest affected by the proposal.

#### *Other relevant matters*

29. FLD raise concerns that there will be further incremental development on the common resulting from quarrying activity. However, this is speculation and I have not attached weight to it.
30. Both FLD and NE wish to see the release land returned to common land status once the quarry workings cease. Whilst this is not a matter for this decision, I note that the applicant proposes to undertake restoration work on the quarry after 2050, the date given when workings cease, and has no objection to the release land being re-registered in the future once quarrying ceases.
31. No other relevant matters have been raised that require my consideration.

### **Conclusions**

32. The overriding factor is to protect and maintain commons and village greens and to ensure the overall stock of such land is not diminished. The main objective in reaching my conclusions is to ensure the adequacy of the proposed exchange in terms of the statutory criteria. I have had regard to the duty to conserve and enhance the features by which the land is designated as an SSSI, and in view of my findings above, I conclude on balance that in this case the application should be approved.

*S Doran*

**Inspector**

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<sup>3</sup> Paragraph 6

## Order

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17(1) and (2) of the Commons Act 2006, **I HEREBY ORDER** Cumbria County Council, as commons registration authority for the area in which the release land and the replacement land are situated:

- (a) to remove the release land from its register of common land, by amending register unit CL52 to exclude the release land;
- (b) to register the replacement land as common land, by amending register unit CL52 to include the replacement land; and
- (c) to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL52) any rights of common which, immediately before the date on which the release land is removed from the register, are registered as exercisable over the release land and the remainder of the land comprised in register unit CL52.

### First Schedule – the release land

Colour On Plan	Description	Extent
Edged red	Land forming part of common land known as Kirkby Moor Common, register unit CL52, alongside the south east boundary of Kirkby Slate Quarry, forming the area of proposed quarry extension (Planning application reference 5/16/9002).	3.2 hectares

### Second Schedule – the replacement land

Colour On Plan	Description	Extent
Coloured light green	Land at Out Park, Kirkby Moor abutting the western boundary of Kirkby Moor Common, register unit CL52.	3.2 hectares

*S Doran*

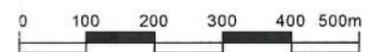
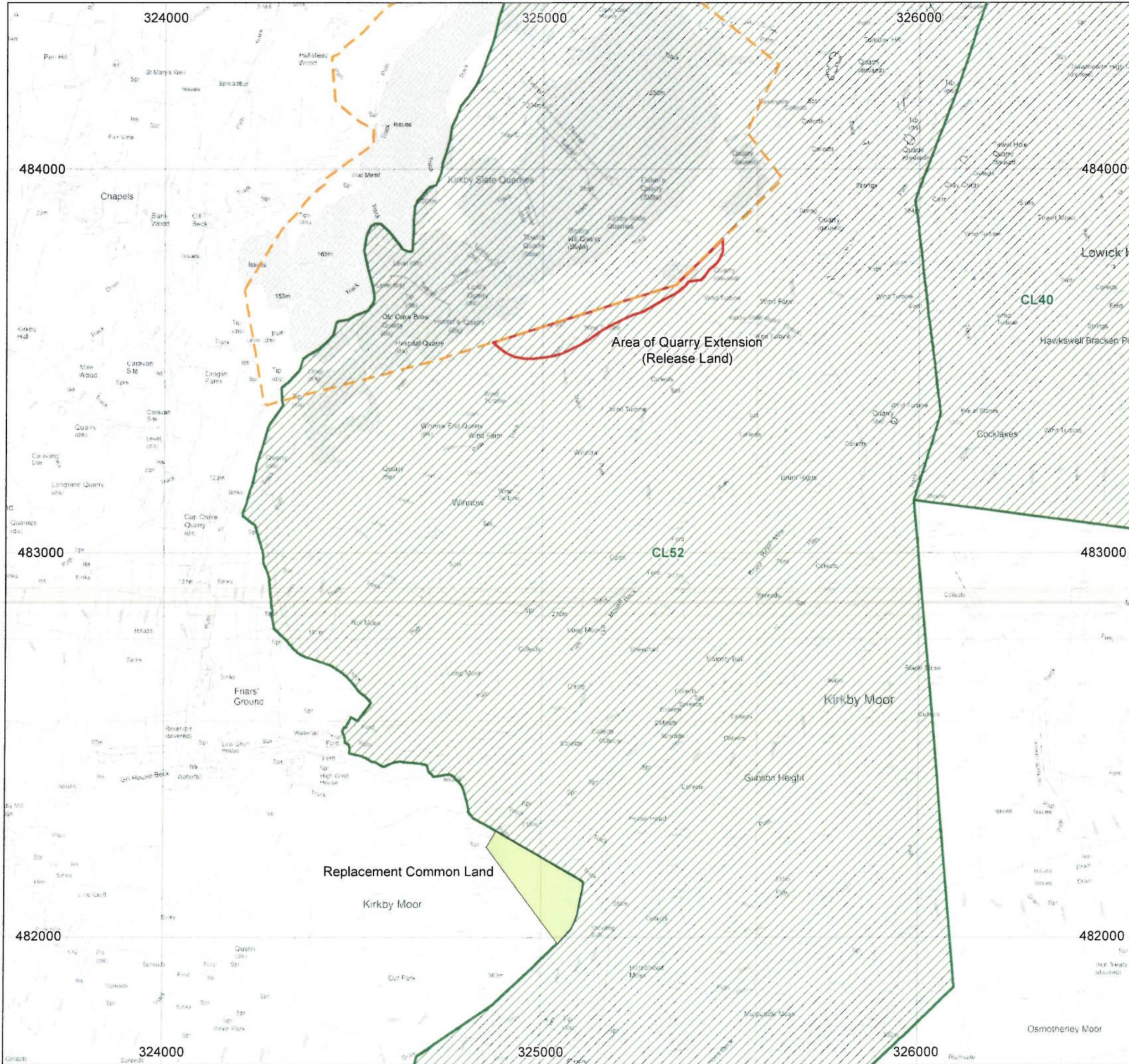
**Inspector**

# Kirkby Moor Common

**FIGURE 1**  
Section 16 Application

**KEY**

-  Release Land Subject of the Section 16 Application
-  Replacement Land
-  Registered Common Land
-  Kirkby Quarry



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SEP 2016	CA	A3	1:10,000	LL	-