



# Application Decision

**by Richard Holland**

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

Decision date: 21 July 2017

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## Application Ref: COM/3176136

### Coniston, Dunnerdale, Seathwaite Fells and Torver High Common, Cumbria

Register Unit No: CL 29

Commons Registration Authority: Cumbria County Council

The application, dated 10 May 2017, is made under Section 23 of the National Trust Act 1971 (the 1971 Act) for consent to carry out restricted works on common land.

The application is made by the National Trust (NT).

The works of approximately 12 months duration to construct a 100kw hydropower scheme at Greenburn Beck comprise:

- installation of an intake structure comprising a weir approximately 2m x 2m and an underground concrete/steel chamber approximately 2m x 2m; and
  - underground installation of 580m of 355mm plastic pipe.
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## Decision

1. Consent is granted for the works in accordance with the application dated 10 May 2017 and accompanying plan, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision; and
  - ii. the common shall be restored within one month of completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining this application under section 23, 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.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE) and Historic England (HE), none of which object to the application.
6. The site lies within the Lake District National Park. Planning permission for the hydro scheme was granted by the Lake District National Park Authority (LDNPA) on 23 November 2016 (Reference No: 7/20/16/5576).

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

7. I am required by section 39 of the Commons Act 2006 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. NT, as owner of the area of the common concerned, consents to the proposed works. It considers that the works are desirable for the purpose of improving opportunities for the enjoyment of the property by the public and considers that the works are in the interests of visitors to the common.
9. The common land register records numerous rights of grazing, turbury, estovers, herbage and common in the soil. NT has advised that there are 17 commoners actively grazing the common, only one of which grazes the area of the common in NT ownership. The above ground works will be entirely in/across the beck and the corridor of land to be excavated for the underground pipe will be re-instated so there will be no permanent loss of grazing land. I am satisfied that the works will not harm the interests of those having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it).

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

10. 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 and is closely linked with interests of public access. A works period of up to 12 months along a pipe route of 580m suggests significant interference with these interests. However, NT has confirmed that there will be no temporary fencing erected over the period of works and that signage will instead be used to alert common users to the presence of works machinery. Furthermore, on completion of the works no obstructions will remain on the common.
11. OSS sought an assurance that a public right of way directly affected by the pipe route will remain open throughout the works. The closing of the public right of way is a matter controlled by separate legislation but NT confirmed that it will remain open subject to a minor diversion on the day that pipe laying works cross it.
12. I am satisfied that although the works will interfere with neighbourhood use of the common land and public access over it to a certain extent, the interference will not be significant.

### ***Nature conservation***

13. The Little Langdale Tarn Site of Special Scientific Interest (SSSI) lies less than 500m downstream from the scheme site. NE considers that the works method statement submitted with the planning application addresses management of sediment such that it can be confident that the works will not adversely affect the SSSI. NE further considers that the public interest in nature conservation will not be affected by the works.

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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.

14. A condition of the planning permission requires that an Ecological Clerk of Works shall be appointed to oversee the works in order to protect the biodiversity of the site and the surrounding area. A condition also requires that specific mitigation measures are put in place to ensure the development does not result in pollution of the water course or harm ecological interests. I am satisfied that adherence to these conditions will protect nature conservation interests.

### **Conservation of the landscape**

15. The land will be fully restored on completion of the works, which can be ensured by attaching a suitable condition to this consent. In order to ensure a satisfactory standard of appearance the planning permission includes a condition requiring that the weir and outfall are faced in natural local uncut stone and that any exposed grilles, pipework and metalwork shall be finished in black unless otherwise agreed. I am satisfied that adherence to these conditions will ensure that the natural beauty of the National Park is conserved.

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

16. Scheduled Monument consent has been obtained for the proposed works as the weir will abut the Greenburn Copper Mines Scheduled Ancient Monument site. HE has advised that it therefore has no objection to consent being granted for the works under the 1971 Act. I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

### **Other matters**

17. The application is made as part of a wider NT aspiration to deliver renewable energy to the National Grid. This particular scheme will provide enough power for the equivalent yearly use of 140 houses. Nevertheless, there is no evidence to support NT's statement that the proposed works will improve opportunities for the enjoyment of the property by the public or that they are in the interests of visitors to the common.
18. However, Defra's policy guidance advises that that "*works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses..... consent may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit*". As the proposed works are consistent with the description above and confer a public benefit through the provision of renewable energy, I am satisfied that they accord with this policy objective.

### **Conclusion**

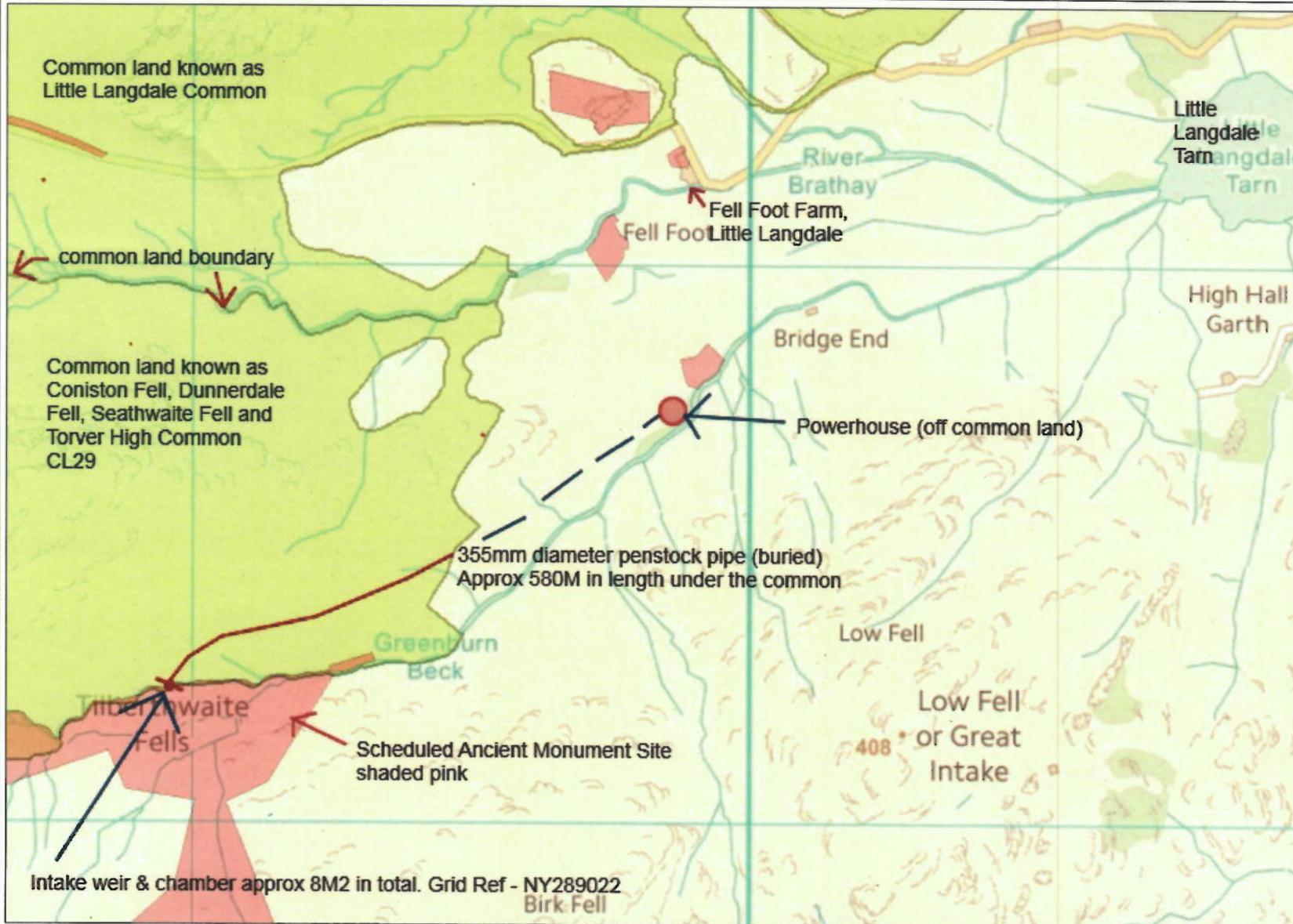
19. I conclude that the proposed works will not significantly harm the interests set out in paragraph 7 above and will confer a public benefit by generating renewable energy. I therefore conclude that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



# Greenburn Hydro Project 1:10000

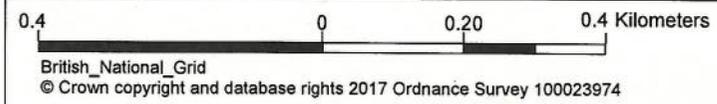
## Points of note for commons consent



### Legend

- Scheduled Monuments (England)
- Registered Commons (Eng)

1: 10,000



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### Notes

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