



## Application Decision

Site visit held on 26 June 2018

**by Sue M Arnott FIPROW**

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

Decision date: 20 August 2018

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**Application Ref: COM/3187941**

**Little Arrow Moor, Walna Scar, Coniston, Cumbria**

**Register Unit No.: CL 29**

**Registration Authority: Cumbria County Council**

- The application, dated 14 November 2017, is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
- The application is made on behalf of R H F Le Fleming of the Rydal Estate.
- The works consist of landscaping in and around a disused quarry area to form a 58-bay pay and display public car park including construction of grass bunding, re-surfacing of parking areas with crushed slate, two 'Kent Carriage Gap' barriers to restrict motorised vehicular traffic on the common, installation of a pay machine, and temporary fencing to make safe the site during the works.

**Summary of Decision:                    The application is granted.**

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### Preliminary matters

1. I visited the land referred to in the application on Tuesday 26 June 2018 accompanied by Mr R Bowyer (representing the applicant, the Rydal Estate), Ms M Traynor for the Open Spaces Society (OSS), Dr J Darrall of Friends of the Lake District (FLD) and Mr R Graham (a member of the British Mountaineering Council (BMC) who submitted representations in respect of the proposal).
2. For the purposes of identification, the location of the works is shown outlined in red on the plan attached (at Appendix A). A further plan is attached for reference (at Appendix B) showing the layout of the proposed works.

### Main Issues

3. In general terms Section 38 of the Commons Act 2006 (the 2006 Act) prohibits the carrying out of certain restricted works on common land without the appropriate consent. Restricted works consist of (a) works which prevent or impede access to or over land (including fencing, buildings, ditches, trenches and embankments) and (b) the re-surfacing of land which may consist of laying concrete, tarmacadam, coated roadstone or similar material on the land.
  4. In determining this application made under Section 38 which includes such works, Section 39 of the 2006 Act requires that I have regard to the following:
    - (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
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- (b) the interests of the neighbourhood;
  - (c) the public interest;<sup>1</sup> and
  - (d) any other matter considered to be relevant.
5. I must also have regard to Defra's Common Land Consents Policy<sup>2</sup> which has been published for the guidance of both the Planning Inspectorate and for applicants. However, every application is considered on its merits and a determination will depart from the policy only if it appears appropriate to do so. In such cases, a decision should explain why it has departed from the policy.

### **The application**

6. This application is made on behalf of by Mr R H F Le Fleming of the Rydal Estate. It proposes the landscaping of a disused quarry area to form a 58-bay pay and display public car park including the formation of grass bunds and a stone wall to confine vehicular access to the parking areas, and the installation of a pay and display machine with associated signage. In addition temporary 'Heras' fencing is proposed to protect the public whilst the works are carried out, this being for a period of approximately 3 months.
7. Restoration of damaged grassland surrounding the site is also proposed but this falls outside the scope of the consent regime.
8. To put this application into context, it is accepted that car parking in this location has been regarded as an informal and free facility for many years. Outdoor enthusiasts have been able to park unrestricted whilst heading into the surrounding hills to enjoy fell walking and running, rock climbing and scrambling. The site's convenient location, below the Coniston Fells, has made it a popular base from which to enjoy the common, particularly as it avoids a mile long steep uphill walk from the village of Coniston along a narrow road.
9. The proposal has four primary objectives: to formalise the public's ad hoc use of Little Arrow Moor as a car park; to restrict vehicular access to resolve the long term erosion of the common; to restore the common to its former beauty, and to inform the public about ownership of the land and the status of Walna Scar Road (a restricted byway which passes through the site).
10. In addition it seeks to address the problems resulting from uncontrolled parking on the fell including damage to the common itself, unauthorised vehicular access by the public along Walna Scar Road, anti-social behaviour and the visual scars in the landscape caused by numerous vehicles parking on the fell.
11. A public notice was published in the Westmorland Gazette on 14 November 2017 and on the site giving brief details of the proposal. The application was available for public inspection at the applicant's agent's office in Kendal for the statutory 28 day period and on request. Consultation letters were sent to interested parties as required, including the commons registration authority (Cumbria County Council), the Lake District National Park Authority (LDNPA),

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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> Published November 2015

Coniston Parish Council (CPC), Natural England, Historic England, the Open Spaces Society (OSS) and the Coniston, Dunnerdale, Seathwaite Fell and Torver Commoners Association.

### **Representations and objections**

12. A total of 601 representations were submitted in response to notice of the application. The majority of these were in support of the British Mountaineering Council (BMC)'s opposition to the proposal, mostly in the form of a standard email with or without additional comments. In addition to this correspondence from these many individuals, objections were submitted by the Friends of the Lake District (FLD), the OSS and CPC.
13. Historic England confirmed it has no objections to the proposal. The LDNPA submitted documents relating to the grant of planning permission for the development proposed in this application and a lawful development certificate; the Authority made no comment on the merits of this application.
14. The objections raise a number of (sometimes competing) issues which can be summarised briefly as follows:
  - Opposition to any parking in this location in principle and concern over the precedent it could set for similar locations, especially this being in a national park and World Heritage Site;
  - Opposition to any reduction in the number of available parking spaces;
  - Opposition to any change on the site;
  - Opposition to charging for parking and concern about the hours when charges are to be levied and the level of fees set;
  - Concern over the knock on effects on Coniston village and its residents and likely traffic congestion on Walna Scar Road leading up to the site;
  - Concern over the 'urbanising' effect of the proposed car park;
  - Concern over the impact on the pond and its associated wildlife;
  - Concern over the adverse effect on people's enjoyment of the common;
  - Rejection of the existence of problems on the site, including damage, anti-social behaviour or visual intrusion caused by cars on the fell;
  - Submissions that the proposal will make problems of anti-social behaviour worse.
15. In determining this application, I have taken full account of the information submitted on behalf of the applicant, by the objectors and by all other interested parties in the written representations.

### **The application site**

16. The total area of land registered as Coniston, Dunnerdale, Seathwaite Fells and Torver High Common (CL 29) extends to some 4552.5 hectares (11,249.47 acres), essentially consisting of upland grazing although rights of estovers, turbury and to take stone are also registered. The site lies on the eastern boundary of the common with the village of Coniston a little over a mile to the north east and Coniston Water broadly to the east and south.

17. The road from Coniston reaches the fell gate (located to the north east of the site) and initially proceeds south westwards before turning to the west and heading towards Seathwaite in the next valley. Known as Walna Scar Road, this retains its status as a full vehicular road from Coniston as far as the fell gate; thereafter it was the subject of a definitive map modification order in 2012 which recorded this highway in the category 'restricted byway'. Consequently the public has a right of way over this road on foot, on horseback, on a bicycle or horse-drawn carriage but mechanically propelled vehicles driven by the public have no right to continue beyond the fell gate.
18. Nevertheless, from the information provided, it is clear that people have, for a great many years, driven along Walna Scar Road and onto the fell in order to park and, in some cases to continue along the road itself.
19. Aside from any deterioration of the road surface as a result of vehicular use, regular parking has resulted in a significant loss of grass cover over a wide area within and around the site. In addition there are areas where it appears some have used the land for 'dough-nutting', driving vehicles in circles and exacerbating the erosion occurring in this location. Also, on my site inspection I was shown the remains of fires, deposited litter and other debris associated with unlawful and inappropriate vehicular activity on the fell.

## **Reasons**

### ***Relevant considerations:***

20. Before considering the main issues to which I must have regard in determining this application I shall firstly address the fundamental question raised by a number of objectors: whether parking in this location has had, and in future should have, any lawful basis.
21. Objections are polarised insofar as a great many argue that as a matter of fact parking in this location has taken place for 50 years or more and that any interference with this tradition should be resisted, whilst others contend that such parking has been unlawful throughout that time and as a matter of principle should not now be granted consent.
22. On 12 May 2017, in its capacity as the local planning authority, the LDNPA issued a Lawful Development Certificate acknowledging the use of land at this location for the parking of cars after it accepted evidence which showed such use had been occurring since 2007 at least. Indeed it is not disputed that people have parked here over a period of many more years than this. Whilst this Certificate effectively exempts the change of use from any enforcement action by the planning authority, it does not alter the legal basis on which the activity has taken place on a registered common.
23. Consent has not been granted at any time under Section 38 of the 2006 Act (or any earlier legislation) for the establishment of a car park on the common. Neither is there evidence of an application to the County Court by any party to require the cessation of parking here.
24. A large number of the representations submitted confirm that parking has always been enjoyed free of charge. There is no evidence of the landowner providing express permission for any or all the vehicles which have parked here

- over the years, although neither is there any evidence that the Rydal Estate has actively resisted parking in the past.
25. It is an offence under Section 34 of the Road Traffic Act 1988 (the 1988 Act) to drive a vehicle onto a common unless the driver has the permission of the landowner and intends to park it within 15 yards<sup>3</sup> of a public road (being a road on which a motor vehicle may lawfully be driven). Since 2012, Walna Scar Road has been classified as a restricted byway, thereby providing no possible legal basis for the public to drive a motor vehicle beyond 15 yards of the fell gate. Prior to that, the situation is debateable.
26. It is therefore reasonably clear that most people who have parked here in the past have probably done so unlawfully, albeit without challenge. Although the long-standing nature of the activity has been judged sufficient in planning terms to justify immunity from enforcement, it cannot establish any right to park on the common, particularly if in contravention of the 1988 Act.
27. Both FLD and OSS argue that to grant consent for the proposed works to physically form a car park in this location (and charge for it) would be unacceptable in terms of the precedent this would set and as a matter of policy. Both organisations (and BMC) argue that this site is not unique; there are similar sites in the Lake District where the formalisation of informal free parking would have a detrimental effect when parking in such locations is not appropriate at all. OSS submits that in the wild beauty and grandeur of this World Heritage Site (WHS) car parking on the fell degrades its intrinsic value. In its view, the proposed works will simply make matters worse; the solution is to close the existing facility altogether.
28. Whilst it is the common itself that is the focus of concern in this process, I acknowledge the importance of maintaining the essential qualities of both the LDNP and the WHS. I shall consider below the implications in terms of the matters required to be considered under Section 39 of the 2006 Act, but on the particular question of policy, I refer to Defra's Common Land Consents Policy which states (at paragraph 5.7) that "*commons should be maintained or improved as a result of the works being proposed on them. The Secretary of State sees Section 38 as conferring additional protection on common land, rather than enabling common land to be used for purposes inconsistent with its origin, status and character. In other words, consent under Section 38 should be seen as a gateway, which enables the construction of works which are sympathetic to the continuing use and enjoyment of common land, but which reinforces controls on development which are inappropriate or harmful.*"
29. There is no policy statement which specifically precludes the establishment of car parks on commons. Neither is there any particular policy reason to rule out charging for parking. It is a question of whether the works proposed are *inappropriate or harmful* or *sympathetic to the continuing use and enjoyment*. If all other criteria are satisfied, having regard to the matters listed in Section 38, there are no policy grounds for rejecting the proposal.
30. On the question of precedent, paragraph 5.19 of the Consents Policy continues: "*... this policy note explains the Secretary of State's policy in relation to consents generally. It should not be assumed that, where this policy indicates*

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<sup>3</sup> 13.72 metres; however the 1988 Act expressly refers to '15 yards'.

*that a consent might be appropriate in the circumstances specified, an application in those circumstances will necessarily be granted. Such applications will be considered on their merits in relation to the context, this policy, and the criteria set out in the relevant legislation."*

31. It follows from this that a decision taken in respect of the site at Walna Scar would not necessarily be applicable to similar proposals at other sites within the LDNP or elsewhere.

***The interests of those occupying, or having rights in relation to, the common***

32. The application is made by the owner of the land. Rights of pasturage are exercised over the common as a whole by members of the Coniston, Dunnerdale, Seathwaite Fell and Torver Commoners Association but one commoner in particular exercises his rights over the site of the proposed scheme. All have been notified of the proposal; none have objected.
33. FLD argues that, if consent is granted, no traditional ways of exercising common rights could be practiced on this land.
34. That may be true insofar as land covered by crushed slate and on which cars are parked does not provide grazing. However, the grassland restoration work that is proposed alongside the parking scheme would result in a net increase in grazing land of 5 acres (approximately 2 hectares) over and above what is available now as a direct result of erosion caused by parking.
35. It could be argued that removal of all car parking from the site would enable an even greater area to be restored but that is not proposed here and it is submitted by the applicant that the anticipated parking charges would be necessary to cover the cost of the scheme; restoration work alone is not proposed as an option.
36. Burlington Stone has a right of way to the quarries at Bursting Stones and Brady Crag via the tracks leading from the fell gate, and the Mountain Rescue teams and graziers likewise take access onto the fell with vehicles when required. In these instances the 'Kent Carriage Gap' barriers intended to prevent public vehicular access could be unlocked to facilitate passage.
37. There have been no objections submitted from any of the graziers and I conclude that the proposal would have no substantive adverse effect in terms of the overall availability of common land capable of being grazed, nor on any other party having rights in relation to the common.

***The interests of the neighbourhood***

38. There is no definition within the 2006 Act of the term 'neighbourhood'. In a situation such as this, the neighbourhood is probably best interpreted as the Parish of Coniston although the common as a whole spans several parishes. Coniston Parish covers an extensive area that is popular with tourists, including both village and fell, and in this context it is difficult to differentiate between the interests of local people from 'the neighbourhood' and the public visiting the area.

39. I note that Coniston Parish Council has objected to the proposal, expressing concern over the reduction in available car parking spaces and the impact this may have on use of the single track road leading to the site. It submits that the general feeling of local people and visitors is that the present situation should remain unchanged.
40. Both OSS and FLD take the view that the neighbourhood would be better served by people parking in the village or by using public transport. Parking would thereby be contained and local businesses would benefit from people using local services.
41. Others are concerned that there will be increased pressure for car parking within the village itself where such facilities are already in high demand and costly; most are pay and display car parks and few are free. Overflow car parks are often opened up at peak periods but these are always chargeable. Not only is it feared by some objectors that this will add to the burden on residents but also that it will discourage visitors who find they have to walk up to the common before starting their activities. One correspondent objects to the exclusivity that would result from people with disabilities being deterred from accessing the fell because they are unable to walk up the hill (although 2 parking bays are to be allocated specifically for disabled people). Some suggest that people will look for spaces alongside roads and in gateways where they can park for free, thereby causing other problems.
42. The principle aspect of the proposal affecting the neighbourhood is likely to be the displacement of vehicles unable to find parking space on the common or unwilling (or unable) to pay the cost of parking. It is reported that up to 150 cars have been observed on and around the site at busy times. Reducing the available of spaces to 58 will undoubtedly result in many others being unable to park here.
43. Representations suggest that many local people do drive up to the site, some in the early morning for recreation or dog-walking, others in the evening. The application explains it is not intended that parking charges will apply between 9pm and 9am so that local people who park here outside these times will not be affected by the charges.
44. There is clearly a tension between the need to protect the integrity of the common whilst still allowing it to be enjoyed by local people and the public. The knock-on effect on traffic management and parking in the locality are matters which will have been addressed when the planning application was determined and permission granted for the car park development. What is at issue here are the implications for the common and those who use it.
45. It is difficult to conceive of a way car parking might be restricted only to those with the greatest need of assistance to access the fells, but in my view the proposal would achieve an acceptable balance between the legitimate expectations of local people to be able to continue to enjoy the common in the way they have done for many years whilst also protecting the common itself from further encroachment by vehicles and the resulting desecration of its essential fabric.

46. In conclusion, it seems to me that the application proposes to recognise the interests of local people living within the neighbourhood to a degree through its intended charging regime although some may be disadvantaged if competing for parking space during busy day times. This is may be a factor to be weighed in the balance when determining the present application but the numbers of residents affected have not been established.

***The public interest***

*Archaeological remains and features of historic interest*

47. There is no evidence to suggest that any archaeological remains or features of historic interest would be affected by the proposed works and there are no substantive submissions to the contrary. I am satisfied that there is no evidence before me to indicate that the works will harm any such interests.

*Nature conservation*

48. Following consultation with FLD, the applicant engaged consultants to carry out an extended Phase One Habitat Survey in March 2015 on and around the existing car park area. The aim was to identify protected and/or notable habitats and species which may be affected by the proposed scheme.
49. A total of 13 broad habitat types were recorded including basin mire, acid flush, standing and running water, acid grassland and mosaic habitats of acid grassland /mire/bracken. It also identified significant numbers of toads and tadpoles in the car park pool.
50. As a result of this initial survey work a further detailed ecological survey was recommended, specifically in relation to amphibians and reptiles in the vicinity of the site. This was carried out in July 2015 and resulted in modification of the proposal to retain the pond so as to ensure the continuing viability of the local common toad population.
51. Although some representations raise concerns about the effect of the proposal on the pond, it is not clear whether these objectors have seen the survey reports and appreciate that the pond is to be retained and protected on one side by a new stone wall.
52. Aside from the pond and its associated wildlife, I note also that it is intended that the grassland around the proposed parking area will be restored using a native grass mix approved by Natural England to match existing sward species covering the open fell.
53. Overall, I am satisfied that the works will not harm nature conservation interests; in fact it is likely that natural habitat for both flora and fauna would be protected and improved as a result of the proposed works.

*Landscape conservation*

54. The application proposes ground excavation to level the car parking area together with re-profiling of the land around it, thereby ensuring that the banked elevations to the north and south act as natural screening to reduce the impact of cars in the landscape.



55. Cars parking at this location can be seen from across the valley at ground level as well as from high up on the surrounding fells. Following the site visit I stood on the road on the eastern side of Coniston Water and could see the glint of car windscreens reflecting the sun, but mostly those parked at a higher level.
56. With the slightly raised height of the intended grass bunds, especially that proposed around the southern side of the former quarry, and lowered ground level, it is likely that parked cars would be less intrusive in the landscape when viewed from lower levels. No amount of bunding would enable the site to be wholly screened from the higher fells. However reducing the number of parked vehicles and containing them within a more closely confined area would limit its impact in the wider landscape.
57. Viewed at close quarters, the proposed works would result in a relatively natural appearance, the parking area being constructed of local slate with timber poles to demarcate parking spaces. A new 600mm high dry stone wall would be constructed to separate the pond from the parking area.
58. However it is primarily the new signs, ticket machine and 'Kent-Carriage Gap(s)<sup>4</sup>' which are viewed as 'alien' to this landscape and the subject of most criticism from objectors. Many refer to the 'urbanisation' of the fell, contending that such features are wholly out of place in such an environment.
59. Whilst I have some sympathy with that view, as I noted above, the Consents Policy recognises that "... consent under Section 38 should be seen as a gateway, which enables the construction of works which are sympathetic to the continuing use and enjoyment of common land..." Approval for both the signs and ticket machine is sought to support the car parking scheme and grassland restoration work which are intended to facilitate the continued use of the common whilst protecting it against future damage. Similarly, the positioning of two vehicular barriers allow private access but prevent the public driving beyond the designated car parking area, thus facilitating access for all non-motorised users whilst protecting the common from the damaging effects of unauthorised use. At least in principle, signs, charges and barriers are capable of fitting the criteria for consent.
60. However the Consents Policy also sees the Section 38 procedure having a role which "reinforces controls on development which are inappropriate or harmful". Although it is relevant to take into account that the planning authority has granted consent for the works (the effect on the local landscape having been a consideration), the issue here is whether the works would be inappropriate or harmful to the common.
61. FLD argues that the "presence of commercial pay and display machines will have a significant impact on the perception of wilderness and remoteness of this landscape". The site lies within the Area of Distinctive Character 70: Coniston Fells in the LDNP Landscape Character Assessment; the relevant guidelines for managing change in this landscape state that "visitor pressure must be managed to reduce impact on vegetation and development of scars and erosion".
62. The site is very open and exposed with no vegetation to provide natural screening. It sits on a high plateau above the village with an open panorama of

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<sup>4</sup> These consist of two short and two longer removable vertical posts installed across the carriageway.

the Coniston Fells and has a feeling of being remote and tranquil. Both OSS and FLD submit that the car park will introduce an urban element to this remote landscape, compounded by the presence of signs and clutter, and which will have a significant impact on the rural character of the common whilst eroding the current tranquillity. Another objector observes that "parking is already urbanisation of some form".

63. These are powerful arguments, yet the design of the car park itself is at the least formal end of the scale in terms of the planned surface materials and the grass bunds intended to define its boundaries. Signs are not by any means an unusual feature in this landscape; those proposed are subtle in design albeit their message would describe the terms on which parking may take place.
64. However it is the pay station that cannot be reconciled as anything other than an urban feature in a relatively wild location. There is little that can be done to disguise that fact, although the machine proposed would be a discrete green colour and be positioned close to the fell wall near the entrance gate. It would therefore be as unobtrusive as possible whilst still performing its purpose, yet it would undoubtedly be an incongruous feature in this landscape.
65. In reaching a conclusion on this aspect of the public interest I am satisfied that the proposed landscaping of the car park will have a beneficial effect in terms of lessening the impact of cars on the common, and that the signs and 'Kent Carriage Gap(s)' will have a minimal effect on the landscape of the common as a whole. It is the introduction of a pay station onto the site that is of most concern, despite its sensitive positioning, and which will need to be weighed carefully against other aspects of the proposal in reaching a final conclusion.
66. I have considered the application for 'Heras' fencing around the work site separately as it is intended as a temporary measure only whilst works are taking place. This is expected to continue for three months at maximum. The fencing would enclose two areas extending to approximately 413.75m<sup>2</sup> and 1146.98m<sup>2</sup> (but not at the same time). Whilst undoubtedly 'urban' in character, it was chosen over other types of site security fencing as it the most invisible from a distance and therefore least intrusive in the landscape.
67. In my view this is a relatively short but necessary despoilment in order to bring about the changes proposed and is outweighed by the potential benefits of the grassland restoration planned.

*Public rights of access*

68. The application does not propose development that is intended to restrict legitimate access to the common by the public. At present members of the public enjoy a right of access on foot over the whole of the common. In addition there is a right of way on foot over the public footpath which approaches the fell gate over the common from the south and continues northwards. Since 2012 it has been clear that Walna Scar Road is a restricted byway and therefore carries a public right of way on foot, horseback, bicycle and horse-drawn carriage. The proposed development will not interfere with any of these rights.
69. However the measures proposed are intended to prevent mis-use of the common. The two 'Kent Carriage Gaps'<sup>5</sup> proposed are designed to prevent

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<sup>5</sup> These may require the agreement of the Highway Authority under Section 66(2) of the Highways Act 1980

- unauthorised motorised vehicles proceeding northwards or westwards along the two tracks which pass through the site, thereby preventing the public from driving on the definitive footpath or restricted byway<sup>6</sup>.
70. The proposed 'Heras' fencing will temporarily prevent general access within the area of working but should not affect the public rights of way and will not be a permanent feature.
71. The grass bunds which would surround the parking area are intended to prevent (as far as possible) vehicular encroachment onto the surrounding common. However this should not prevent access on foot over any part of the land, other than when and where cars are actually parked.
72. The concern of most objectors is centred on the effect of the proposal on vehicular access to the site. It is anticipated that the number of people gaining access to the fell by driving to the site would be reduced substantially, partly by the unavailability of parking spaces and partly (if the representations are correct) as a result of the introduction of parking charges.
73. FLD recognises that some walkers and climbers may wish to use a car park in this location but given the distances and terrain most will be walking over, having to walk up from Coniston village is not any great burden. Further, it argues that forming a car park will take away open access land.
74. However, as pedestrians, the public would not be excluded from the common and legitimate users of public rights of way would not be deterred in any way. As I have already noted, there is no right to drive onto the common or to park there. In my view, the proposal is a proportionate response to the escalating extent of the damage to grazing land on the common caused primarily by unlawful car parking, whilst still providing a parking facility to enable some to reach the common with the assistance of a vehicle.

### ***Other matters***

75. Two particular issues have been raised in many of the representations which are not matters directly covered by this jurisdiction. The first is the intended parking charges and the second concerns the management of vehicular traffic on the approach road to the site from Coniston village.
76. Many people have expressed concern over the introduction of charges, the fees which would be levied, the timing of charging (intended to be 9am – 9pm) and the possible consequences for management of the site. OSS says that the lack of monitoring overnight could result in an increase in anti-social behaviour and misuse of the site, a view also endorsed by FLD. Others deny that any anti-social behaviour takes place there at all, whilst one correspondent states that she regularly cleans up after others, having collected one-use BBQ sets, glass, ground sheets, abandoned tents and other litter. Several people (including BMC) comment on the high cost of parking at various places in the Lake District and fear the price charged here would be prohibitive for disadvantaged visitors, one suggesting that a parking tax be set to avoid social injustice. Such concerns go beyond the scope of the Section 38 consent regime.

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<sup>6</sup> Other than with horse-drawn carriages

77. As I noted above, there is no policy reason to oppose charging for car parking on common land as a matter of principle. However the details of how charging should operate cannot be prescribed through this process.
78. Many people express great concern over the anticipated chaos that could result from people driving up the Walna Scar Road to the site in a morning, only to find they cannot park and must drive back down to the village. Both OSS and FLD submit that the solution is to restrict traffic using the road and remove the car park altogether. Others point to the narrowness of the road and the difficulties of accommodating two-way traffic. (It is said that at present most people drive up in a morning for a day on the fells and down again in the late afternoon so that vehicles are largely moving in the same direction.) Alternative suggestions include traffic-sensitive barriers on the site linked to signs at the bottom of the road to indicate when the car park is full but this has been ruled out.
79. These are clearly matters of concern to people living in the locality, to car-borne visitors to the site and to the traffic authority, and will have been taken into consideration when the planning application was determined by LDNPA. However this does not directly affect the common and its usage.

### **Conclusions**

80. I consider there to be no substantive adverse effect in terms of the overall availability of common land capable of being grazed in the context of the common as a whole, or on any other party having rights over it.
81. As regards the interests of the neighbourhood, I recognise that local people who regularly park at the site may be disadvantaged if competing for spaces given the proposed reduction in capacity. However there is no information from which to assess the numbers who may be affected or deterred from getting to the fell and therefore to determine how much weight this impact deserves.
82. In terms of the public interest considerations, I find historical and archaeological features are not affected to any significant extent by the proposed works and that steps have been taken to ensure that nature conservation interests on and around the site will be fully protected. I have concluded that the landscaping of the car park will lead to benefits in terms of lessening the visual impact of parked cars on the open fell, and that the signs proposed and the two Kent Carriage Gaps will not have a significant impact in terms of landscape conservation.
83. I have noted particular concerns over the proposed pay station, both in principle and its incongruity with the wildness of the landscape. However the benefits of the grassland restoration work that will run alongside the proposed works would be funded from the car park revenue. Although this suggests a finite sum would need to be raised to cover costs, I do not consider it practical to consider a temporary permission for this element of the scheme.
84. FLD has highlighted what it sees as a fundamental conflict here between national park purposes, those being firstly the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the area and secondly the promotion of opportunities for the understanding and enjoyment of the special qualities of the area by the public. FLD argues that, in line with the 'Sandford Principle' enacted in the Environment Act 1995, greater weight should be attached to the conservation element.

85. The Environment Act 1995 s62 (1) (2) states:

*"In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park."*<sup>7</sup>

86. The precedence of conservation over enjoyment by the public arises only where the two purposes cannot be reconciled. Here I recognise the conflicts but do not find them wholly irreconcilable. Given the representations made by objectors on both sides of the argument, it seems to me that the proposal offers a reasonable compromise between accepting the longstanding use of the land for parking and its value to many who enjoy use of the common whilst making provision for the restoration and future protection of the fabric of the common.

87. On the basis of the submissions, from my observations on site, and taking into account also the reasonable needs of people with disabilities who use the common, and having weighed the likely benefits of the scheme against its disadvantages, I conclude that the works proposed would (a) have little effect on the interests of persons having rights in relation to the land and no substantive adverse effect in terms of the overall availability of common land capable of being grazed; (b) not be detrimental to the interests of the neighbourhood; and (c) not cause significant harm to historical, archaeological, nature or landscape conservation interests or to public access. I am satisfied that the works would not be wholly inconsistent with the origin, status and character of the common or that overall they would be inappropriate or harmful. I conclude that consent should be granted for the works proposed.

### **Formal Decision**

88. Consent is granted under Section 38 of the Commons Act 2006 for the works sought by the application (COM/3187941) dated 14 November 2017 and the plans submitted with it, subject to the condition that the works shall begin no later than three years from the date of this decision.

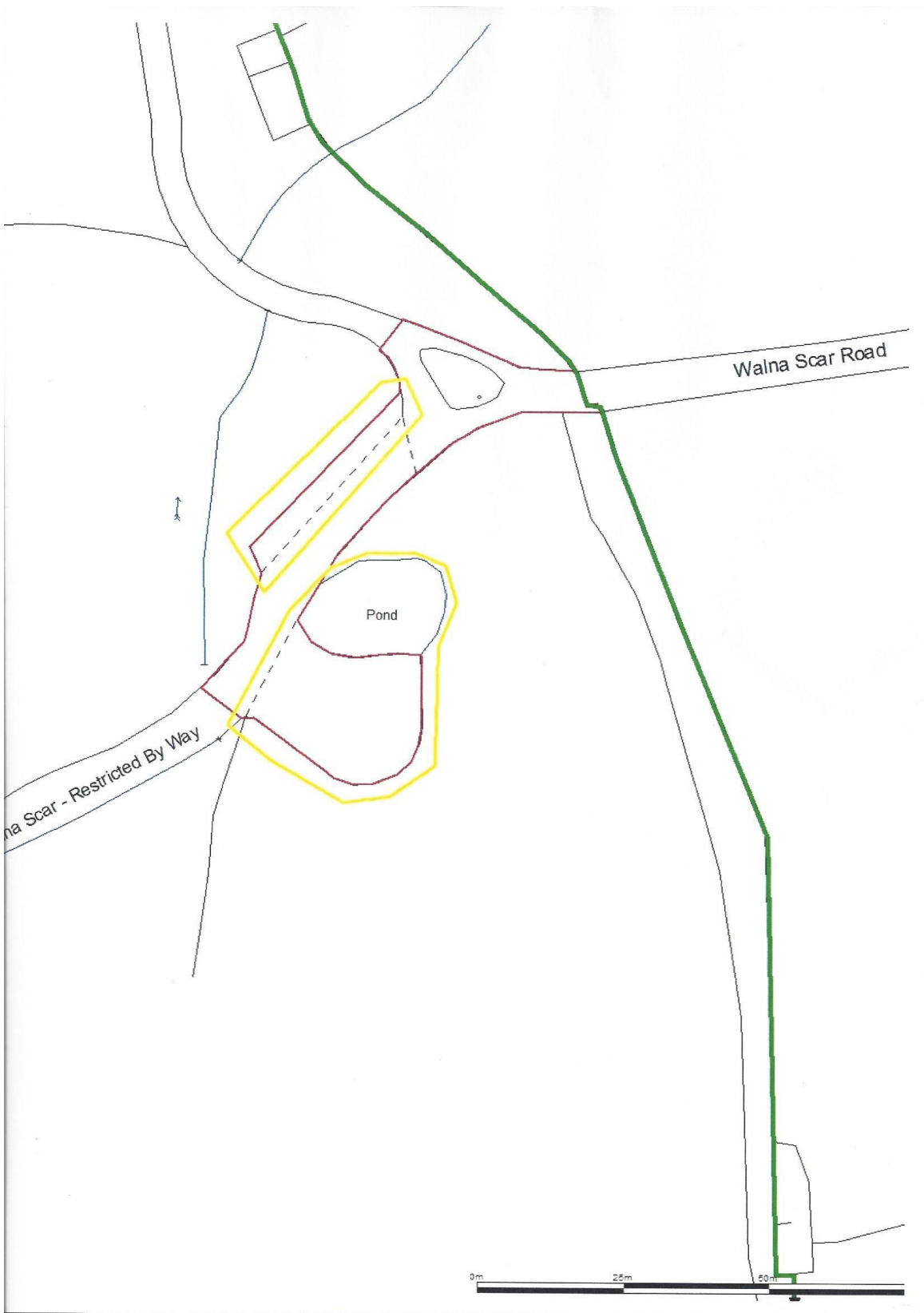
*Sue Arnott*

**INSPECTOR**

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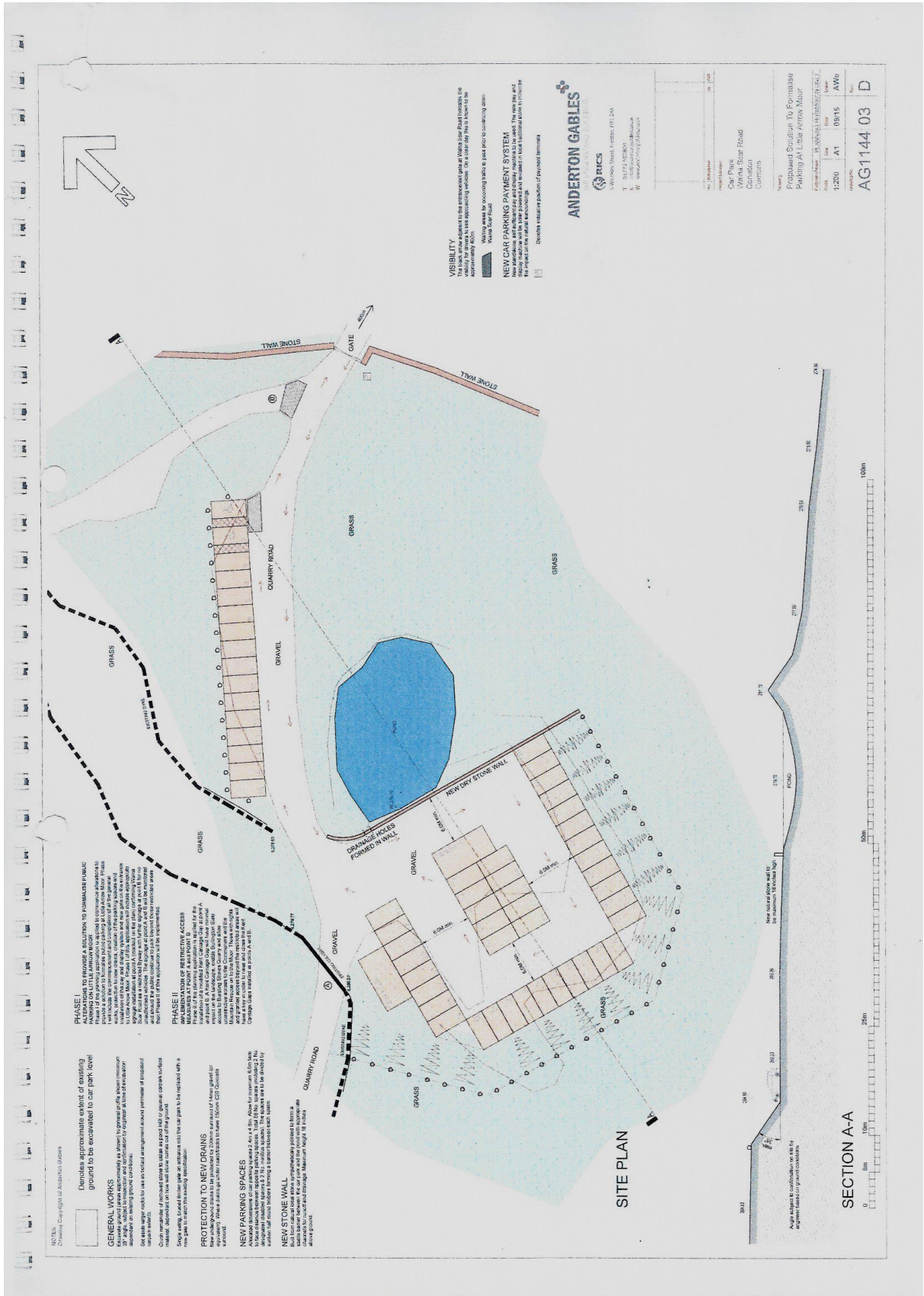
<sup>7</sup> Known as 'the Sandford Principle'

APPENDIX A



NOT TO ORIGINAL SCALE

APPENDIX B



NOT TO ORIGINAL SCALE