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# Application Decision

by **Richard Holland**

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

Decision date: **21 September 2018**

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## Application Ref: **COM/3205462**

### **Mungrisdale Common, Cumbria**

Register Unit No: CL 293

Commons Registration Authority: Cumbria County Council

- The application, dated 12 June 2018, 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 Lake District National Park Authority.
  - The works comprise:
    - (i) the construction of 286.5 m of track in three contiguous sections with an average width of 1.8 m within a 20 m wide alignment corridor. Consisting of 78 m of sub strata path; 158 m stone flag path with stone clapper bridges as appropriate for water courses and water logged areas and 50.5 m of sub strata path.
    - (ii) The construction of 7.5 m x 2 m timber beam bridge to carry foot and agricultural traffic. Timber deck and hand rails with stone faced concrete abutments.
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## Decision

1. Consent is granted for the works in accordance with the application dated 12 June 2018 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown as a coloured red circle 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 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 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. The "*Locations of Specified Works*" map submitted with the application shows the stone flag path (section 2) as 168 m long. However, the applicant subsequently confirmed that this should be 158 m. The map shows five work sections but only sections 1, 2, and 3 (totalling 286.5 m) form part of the application, along with the bridge.
5. This application has been determined solely on the basis of written evidence.

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

6. I have taken account of the representations made by the Open Spaces Society (OSS) and Natural England (NE).
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.
8. The proposed works are to create a sustainable route around a section of public footpath which was washed away during Storm Desmond in December 2015. The footpath also served as the agricultural access for commoners. Users are bypassing the missing section of footpath by fording the River Glenderamakin in low flow or crossing the peat bog which is very susceptible to trampling damage. The works are intended to maintain access without causing further environmental damage.

## **Reasons**

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

9. The landowner, Mr Neville Howard, has been consulted about the application and has not objected. The applicant confirms that four commoners exercise grazing rights over the common; they also have not objected to the works.
10. The works will benefit commoners managing grazing on the common (e.g. by allowing them to reach hefted flocks as part of their regular husbandry) by maintaining access without causing further damage to nearby peat bog. I am satisfied that the proposed works will not harm the interests of the landowner and will benefit commoners having rights over the land.

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

11. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. The applicant explains that a major flood event during Storm Desmond resulted in approximately 675 m<sup>2</sup> of common being washed away. The area of common lost to flooding included part of a constructed public right of way that was well used by the public to access the Northern Fells and commoners to manage grazing. As the missing path is unrecoverable, the public and commoners are forced to ford the river in low flow, or cross the sensitive peat bog. The resulting trampling and compaction from those on foot or quad bike is damaging and degrading the bog. The construction of a track to reconnect the footpath is needed to prevent further damage to the bog. The works include the replacement of an existing bridge with a larger foot and quad bike bridge. The applicant has submitted a letter from Mungrisdale Parish Council confirming that the work is essential to safeguard the sensitive ecology of the location, while at the same time allowing access to the fells around the River Glenderamakin.

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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.

12. The flood event damage is shown in photographs submitted by the applicant. I accept that the works are needed to provide a surfaced access track and replace an existing bridge. The reconnection of an existing public right of way and the removal of barriers to access will improve the way the common is used by local people, the public and commoners. The works will regulate access and better protect the common by reducing the need for the public and commoners to use a non-formalised route that damages the peat surface and vegetation. I conclude that the works will benefit the interests of the neighbourhood and the protection of public rights of access.

### ***Nature conservation and conservation of the landscape***

13. The common lies within the Lake District National Park, Skiddaw Group Site of Special Scientific Interest (SSSI) and Lake District High Fells Special Area of Conservation (SAC). The proposed works are intended to help prevent loss and damage to the SSSI, in particular the peat bog. Stone paths are considered a recognised and widely used technique to enable tracks to cross areas of peat without damage. A 20 m alignment corridor, and 5 m buffer either side of the works, will allow for routing to suit ground conditions and take into account ecological considerations. The works will follow existing track alignments where possible.
14. Mitigation measures are set out in the method statements and an Appropriate Assessment submitted by the applicant. The sub strata path and pitching stone for fords will be formed from existing material. The stone flags are quarried Rossendale Gritstone which is weathered/distressed to approximate local stone colour. The foot and quad bike bridge will be constructed of timber, concrete and locally won stone and aggregate. Existing vegetation cover and topography will help screen the works and reduce the visual impact.
15. NE does not object to the works and is of the view that formalising the footpath route and providing a sustainable surface is better than allowing continued damage to habitats through uncontrolled access over the wetland area. NE confirms that it agrees with the conclusions of the Appropriate Assessment. The OSS advises that consent should be granted subject to recommended mitigations and conditions.
16. The track and bridge have clearly been designed to be as sympathetic to the landscape as possible. While they may however have a slightly urbanising effect in this rural location I agree that any such harm will be slight and outweighed by the prevention of further damage to the peat bog. I am satisfied that the mitigation measures set out in the method statements and Appropriate Assessment will lessen or avoid any adverse effect on the integrity of the site. I conclude that the works will conserve the landscape and natural beauty of the National Park by the reducing and preventing further damage to the common. I have no reason to think that the applicant will not take the necessary environmental protection steps when carrying out the works and I see no need to make the consent conditional to this effect.

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

17. There is no evidence before me to indicate that the works will harm archaeological remains and features of historic interest.

### **Conclusion**

18. I conclude that the proposed works will facilitate access over the common while preventing further damage to important habitats and will not adversely impact the other interests set out in paragraph 7 above. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

**Richard Holland**

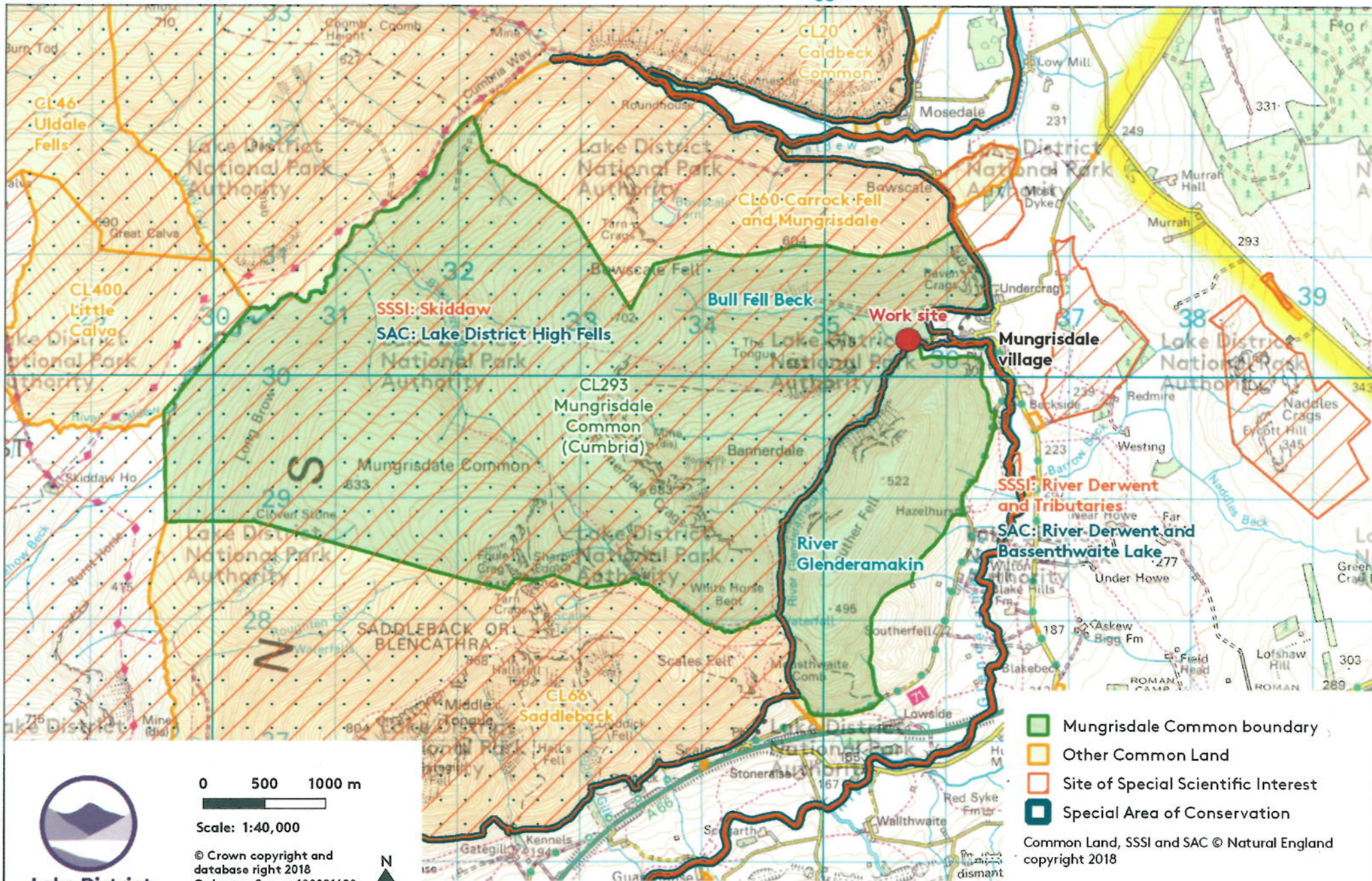


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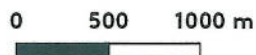
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**Lake District National Park**  
Date: 21/05/2018



Scale: 1:40,000

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- Mungrisdale Common boundary
- Other Common Land
- Site of Special Scientific Interest
- Special Area of Conservation

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## Bull Fell Beck - designations and work site