

Application Decision

by Richard Holland

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

Decision date: 5 April 2019

Application Ref: COM 3220404

Castle Acre Common, Norfolk

Register Unit No: CL107

Commons Registration Authority: Norfolk County Council.

- The application, dated 7 January 2019, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Norfolk Rivers Drainage Board.
 - River Nar restoration works of approximately 8 weeks duration comprising the creation of approximately 450 metres of new meandering channel with a livestock ford crossing within the common floodplain.
-

Decision

1. Consent is granted for the works in accordance with the application dated 7 January 2019 and accompanying plan, subject to the condition that the works shall begin within 3 years of the date of this decision.
2. For the purposes of identification only the location of the works is shown on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy¹ 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. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by Natural England (NE) and Historic England (HE), neither of which object to the application.
6. 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;² and

¹ Common Land Consents Policy (Defra November 2015)

²Section 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.

- d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

7. The land is owned by Holkham Estate, which manages the common in consultation with NE. The Estate was formally consulted by the applicant but has not commented on the application. The register of common land records no rights of common over the land. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

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

8. The proposed new channel will be formed to the south of a section of the River Nar to improve the flow of the river along a straighter, but still meandering, line. The section of river to the north of the proposed new channel will be isolated and turned into a backwater with a greatly reduced flow fed by spring water, ground water and flood flow. The land between the old and new channels will be enclosed by the channels.
9. 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. The river runs east/west through the centre of the common, splitting it into northern and southern sections. The area of the common the subject of the application lies within the southern section. Whilst the public has a right to access the whole of the common, there is currently no practical public access to the southern section from any direction. In the absence of bridges there is no access across the river from the northern section, or indeed from the east where the river turns to run along the common's eastern boundary. Whilst the backwater route will have a significantly gentler flow than it currently has, any future access across it would still need to be via a bridge due to the steepness of the banks. Access to the common from the south and west is hampered as there is no right of way through adjoining private land.
10. However, the new channel will have little or no practical effect on access because the physical features and status of the surrounding area already effectively prevent public access to the application site and there is nothing to suggest that this situation is likely to change in the foreseeable future. I consider therefore that the new channel is unlikely to make any practical difference to the extent to which local people and the general public have access over the common.

Nature conservation

11. The works lie within the Castle Acre Common and River Nar Sites of Special Scientific Interest (SSSI). As a statutory body, the applicant has a duty to conserve and enhance the special features of the SSSIs and to deliver the benefits set out in the River Nar restoration plan. Historical intervention to prevent the river from meandering through the floodplain has had negative impacts on habitats. Previous habitat restoration attempts within the existing channel were unsuccessful as fundamental gradient issues could not be fully addressed. Creating the new channel will provide for a gradient that is suitable for the restoration work, which is intended to create a more natural and sustainable chalk river with associated habitats that will allow indigenous species to prosper. Such habitats will include areas of clean gravel beds for invertebrates and spawning trout and additional riverbanks for water vole. I consider the proposals to be in the interests of nature conservation.
12. In commenting on the application, NE has recognised that the proposed works are for the environmental improvement of the designated sites and in the interests of creating a more naturally functioning river in connection with its floodplain. NE also noted that there may be enough of an impact on significant populations of protected species to require the applicant to seek an Environmental Impact Assessment (EIA). Whilst this may be the case, EIA and Section 38 are separate controls and the responsibility for making screening decisions and giving EIA consent (where needed) rests with NE. EIA is outside the scope of the determination of this application.

Conservation of the landscape

13. Holkham Estate manages the land by way of pony grazing. The proposed ford will allow the ponies access to both sides of the new channel, which will ensure that management of the land, and thus its traditional appearance which the grazing helps to maintain, can continue. A new meandering channel is likely to be an attractive additional natural feature in the landscape, although views from the south will be limited due to the access restrictions already described. The working area will be protected by bog mats to prevent damage by works machinery and to allow vegetation to recover. No fencing is proposed. Once the work is complete the site will be left to recover naturally over time. I am satisfied that measures are in place to protect the land from being damaged during the works and to ensure its restoration thereafter.

Archaeological remains and features of historic interest

14. HE has no objections to the application on heritage grounds as there are no Scheduled Ancient Monuments or listed buildings situated within the common or adjacent to it. HE notes that the site may have some archaeology sensitivity but acknowledges that the applicant has received advice from Norfolk County Council's Historic Environment Service and that a named archaeologist will be on hand during the works. I am satisfied that steps will be taken to prevent any potential harm the proposed works may have on any archaeological remains or features of historic interest.

Other matters

15. The applicant contends that other benefits will arise from the works. There will be a reduction in river maintenance needs as a self-sustaining channel will be created. Improved water flow will reduce flood risks and the backwater will act as a flood overspill channel to ease flood flows when river levels are high. Creating a river channel that functions more naturally will allow silts, sediments and pollutants to be filtered, which will improve water quality. I consider it likely that there will be such benefits and this adds weight to my decision.

Conclusion

16. I conclude that the proposed works will not significantly harm any of the interests set out in paragraph 6 above. Indeed, they are in the interests of nature and landscape conservation and will likely provide some benefits to flood prevention, water quality and reduced future river maintenance. Consent is granted for the works subject to the condition set out in paragraph 1.

Richard Holland

- Key:**
- River Nar SSSI
 - Vehicular Access Route to site
 - Common Boundary
 - Working area
 - SSSI

- Notes:**
1. No dimensions to be scaled from this drawing.
 2. Drawing to be read in conjunction with DWG SCH13/CAC/2019/200/002 - 004,

**FOR
CONSULTATION**

Rev	By	Dtd	Apprv	Date	Drawn/Sign

Project: **SCH13
RIVER NAR RESTORATION
CASTLE ACRE COMMON SCHEME**

Drawing: **SITE LOCATION &
ACCES PLAN**

Drawn by: P.GEORGE	Date: 11/12/2018
Checked by: P.GEORGE	Date: 11/12/2018
Approved by: P.GEORGE	Date: 11/12/2018

Drawing No:	Rev: none
SCH13/CAC/2019/200/001	0

Drawing Scale: 1:10000 AS SHOWN @A3

**DELIVERY, MEETING, PARKING
POINT 2**
Fulmer Lane
Castle Acre
Kings Lynn
nearest postcode PE32 2AA
TF 80700 15220

FULMER LANE

WEST ACRE
MILL

RIVER NAR

REFER TO DWG SCH13/CAC/2019/200/002

COMMON LANE

CASTLE ACRE

RIVER NAR

SOUTH ACRE

SOUTH ACRE
HALL

**DELIVERY, MEETING, PARKING
& MUSTER POINT 1**
Big Wood Lane,
South Acre,
Breckland,
PE32 1UF
TF 80581 14520

PETTICOAT LANE

WASHPIT DROVE