
Application Decision

by **Richard Holland**

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

Decision date: 5 July 2019

Application Ref: COM/3221446

Helton Fell, Cumbria

Register Unit No: CL 113

Commons Registration Authority: Cumbria County Council

- The application, dated 4 January 2019, 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 Mr Andrew Dyer on behalf Askham and Helton Commoners Group.
 - The works comprise the erection of deer fencing forming two enclosures measuring 3150 m and 1350 m at Brown Beck to protect tress including Hawthorn, Blackthorn, Juniper and Willow.
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Decision

1. Consent is granted for the works in accordance with the application dated 4 January 2019 and accompanying plan, subject to the following conditions:
 - (i) the works shall begin no later than three years from the date of this decision;
 - (ii) the fencing shall be removed on or before 5 July 2034; and
 - (iii) the access gates shall comply with BS 5709 and include Open Access signs.
2. For the purposes of identification only the location of the works is shown in red, within the common land boundary outlined in green, and the access points are shown lettered A to I on the attached plan. The mesh tree guards (shown as red dashes) are not part of the application and should therefore be ignored.

Preliminary Matters

3. The application has been amended from one seeking permanent consent for a single fenced enclosure measuring 5100 m in length to one seeking temporary consent of 15 years for two fenced enclosures measuring 3150 m and 1350 m in length at Brown Beck. The applicant has also confirmed that consent is no longer sought for the mesh guards and associated tree planting on Heltondale Beck. Those that have made representations about the application have been consulted about the amendments. I do not consider that any interested parties will be prejudiced by the amendments.
4. 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

¹Common Land Consents Policy (Defra November 2015)

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE), Lake District National Park Authority (LDNP), Friends of the Lake District (FLD), Cumbria & Lakes Joint Local Access Forum (LAF) and the Land Agent for United Utilities.
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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. The landowner, United Utilities, confirms it supports the application and comments that the works will protect the land from erosion, enhance the vegetation on the drinking water catchment and improve water quality.
9. NE also supports the works and confirms that they form part of a Countryside Stewardship Agreement it is negotiating with the applicants. NE, along with LDNP, acknowledge that the Agreement will provide additional funding likely to benefit the commoners and farm businesses involved. LDNP comment that the exclusion of livestock within the enclosures should not harm the long-term future of grazing which is a tradition and attribute of the Lake District World Heritage Site.
10. I note that the applicant confirms that rights of grazing registered over the common are exercised by several commoners and the Agreement will benefit the farming community. I am satisfied that the works, as a necessary part of the Agreement, are likely to benefit the interests of those occupying or 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 unacceptably interfere with the way the common land is used by local people. The applicant explains that the works have been sought by United Utilities and are needed to protect the area from future soil erosion and loss of vegetation and habitat. The common is known for its valuable peat habitat and suffers from loss of peat and vegetation following extreme weather events. The works will reduce the impact of grazing, stabilise the steeply sloping areas of ground and improve water storage capacity by reducing sediment build-up. An

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.

open corridor of between 150 – 200 m wide will remain between the two enclosures at Brown Beck to allow livestock access.

12. Those that made representations are broadly supportive of the application but add that access infrastructure should satisfy ongoing public access rights, that gates provided should conform to BS 5709 and that access signs are posted on gates. LAF welcomes the open corridor or 'stock gathering lane' as it would provide unimpeded pedestrian access.
13. I note that the applicant in response confirms that six access gates conforming to BS 5709 will maintain public access to the enclosed areas. The open corridor will enable both public and livestock access outside the fenced enclosures. I do not consider that the works will unacceptably interfere with public access and are likely to benefit the interests of the neighbourhood by helping to protect the common and by supporting the local farming community.

Conservation of the landscape

14. LDNP comments that clarity is needed on the species to be used and assurances that scrub planting is in the right place in relation to the existing vegetation. It adds that the route for livestock movement should be wide enough to prevent the degradation of vegetation or damage to any historic sunken route. The works should avoid sky lines/ridgelines and sharp angular/pointed profiles and sufficient use of materials to ensure curved lines. NE is of the view that the design of the fence mitigates much of the impact on the landscape, being hidden within the Brown Beck Valley and stopping short of the summit ridge. There is a short section of approximately 200 m where the fence skylines but this is not seen from any rights of way or well used routes or viewpoints.
15. The applicant confirms that the planting mix, location and potential benefits have been considered. It is intended that existing Rowan, Gorse and Birch will regenerate in the absence of grazing. Planting will consist of Willow on wetter lower slopes and Hawthorn, Blackthorn and Juniper on dryer slope; Rowan will be planted in low numbers. The applicant confirms that skylining will not occur from important viewpoints or rights of way and agrees with the need to mitigate the impact of the fencing and open corridor.
16. The two enclosures at Brown Back will require 1.9 m high deer fencing and it is envisaged that, once developed, the scrub planting will reduce the impact of the fencing, as will the use of materials such as green wire and timber posts. I am satisfied that the mitigation measures proposed will help reduce the impact of the fencing on the landscape which in any case is outweighed by the benefits that the scrub planting will have on the landscape, particularly by preventing unsightly bankside erosion. I conclude that the proposed works will enhance the landscape and natural beauty of the national park.

Nature conservation

17. NE agree that the reduction in grazing pressure on this area and the establishment of low-density scrub cover is necessary for the restoration of water quality (through sediment reduction) on a tributary of the nearby River Eden and Tributaries Site of Special Scientific Interest (SSSI) and will benefit both the SSSI and Special Area of Conservation (SAC). NE welcomes the planting of low-density native scrubs species to extend the existing woodland cover up the gill and adds that fencing is necessary, at least in the short term, to achieve restoration of biodiversity in this location.
18. LDNP supports the intentions of the works but comments that it would expect additional benefits relating to the expansion of scrub to be cited including benefits for habitat connectivity/facilitating species movement. It asks why other options such as fencing both parts of the scheme or no fencing were not considered feasible. In response the applicant

explains that landslips, soil loss and poor water quality will continue without the works, and public benefits will result from longer and more robust vegetation which the exclusion of grazing will secure. Other options would involve a complex agreement between two schemes and tree guards alone would not provide stabilisation of this type of landslip.

19. I am satisfied that the concerns raised by LDNP have been addressed by the applicant and I give weight to NE's view that the temporary works are needed and will deliver benefits to the area. I conclude that the temporary works are needed to protect and improve the common and will, overall, benefit nature conservation interests.

Archaeological remains and features of historic interest

20. LDNP advise that its archaeologist has provided the applicant with information about features of archaeological interest. The applicant confirms that it will continue to work with the LDNP's archaeologist to avoid damage to these sites during construction. I am satisfied that the steps taken by both the LDNP and applicant will avoid harm to any archaeological remains and features of historic interest.

Other matters

21. FLD and LAF comment that specific information about the process and body legally responsible for removing the works should form part of the consent/application. LDNP also advises that it would expect the responsibility and resource required for the removal of the works at the end of the consent period to be clearly defined by the applicant. I consider that these matters fall outside the scope of the application and therefore cannot form part of the conditions attached to the consent. However, I note the applicant confirms that, along with the landowner, it is responsible for the removal of the fence. The fencing will be removed after 15 years or a further application made if the works are still required after this time.

Conclusion

22. I conclude that the works will benefit those occupying and having rights over the land, the neighbourhood, landscape and nature conservation interests, and will not unacceptably harm public rights of access or heritage features. Consent is granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

COMMON BOUNDARY IN GREEN SCALE 1:25000

