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# Application Decision

by **Richard Holland**

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

Decision date 14 November 2019

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## Application Ref: **COM/3234315** **Swarth Moor, North Yorkshire**

Register Unit No: CL 247

Commons Registration Authority: North Yorkshire County Council

- The application, dated 22 July 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 Natural England.
  - The works comprise:
    - (i) installation of approximately 2660 m of peat bunds for restoration of the raised bog on 11.76 hectares;
    - (ii) installation of viewing platform and boardwalk on 65 m<sup>2</sup>; and
    - (iii) construction of three mitigation ponds for great crested newts on 300 m<sup>2</sup>.
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## Decision

1. Consent is granted for the works in accordance with the application dated 22 July 2019 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 bunding is shown outlined in red and the location of the viewing platform and mitigation ponds as red dots 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. 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), Stainforth Parish Council (PC), Yorkshire Dales National Park Authority (YDNPA), and an adviser from Natural England (NE) who is not connected to the project or the team submitting the application.
6. 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;

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

- 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***

- 7. The works will take place on land owned by the applicant and the Maudsley Family. Tarmac also own part of the common. The applicant confirms that four commoners exercise rights of grazing over the common.
- 8. The PC is concerned that the creation of water-filled ditches would be hazardous to livestock which are legally allowed to roam on the common. In response, the applicant comments that the application does not add any new features to the common that would present a further hazard for livestock. The project does not include the creation of water filled ditches and any excavated trenches created as part of the works will be back filled. The applicant adds that there are already ditches on parts of Swarth Moor which are not fenced off.
- 9. I note that the landowners and commoners have been consulted about the application and have not objected to the works. I am satisfied that the works will not pose a further hazard to livestock or prevent the exercise of grazing rights over the common. I conclude that the works will not 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***

- 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. The applicant explains that the works are intended to facilitate access for all users, enabling visitors to have views across the raised mire and appreciate the wildlife/landscape and history of the site. The works have been granted planning permission (C/04/693). OSS and NE agree that the viewing platform and boardwalk will enhance public access for all users. NE comments that the works will improve the experience for visitors and point out that the wet terrain does not currently encourage users to venture out onto the moor, which is reflected in the absence of desire lines. The YDNPA advise that all rights of way must always be kept open; the applicant confirms that rights of way will be kept free from obstruction. The terrain on the raised bog and fen is difficult to walk across due to uneven ground surface, dense grass tussocks and is very wet in places. The viewing platform will provide a safe and dry means of access. I am satisfied that the works will not interfere with the way the common is used and are likely to improve access to an area that is at present relatively inaccessible, enhancing the visitor experience for all users. I conclude that the works are in the interests of the neighbourhood and those wishing to use the common for access and recreation.

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

- 11. The common is located within the Yorkshire Dales National Park (NP) and the application site lies within the Swarth Moor Site of Special Scientific Interest (SSSI). The works are confined to the SSSI which aim to bring an area of raised bog, a national priority habitat and a rare feature within the NP, into favourable condition for nature conservation. The applicant explains that historic peat cutting has resulted in an uneven surface and dry areas which are now species poor and dominated by purple moor grass. The bunding will raise water levels, restore the natural hydrology to dry parts of the peat and reduce rates of water loss, extending the bog communities and reducing the extent of purple moor grass. The mitigation ponds located at the boundary of the SSSI will create additional breeding opportunities between existing ponds for great crested newts.
- 12. The applicant goes on to explain that the bunding, shallow water within the bunds and the mitigation ponds will be colonised by vegetation. The bunding will have an initial visual impact but will settle to a low height of around 30 cm and is typically no more than 1 to 2 m in width. The

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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.

viewing platform and boardwalk will be constructed of brown recycled plastic, raised above ground level and will not be visible from most of the common. The material chosen is preferable to timber due to public safety (the material is non-slip), the environment (no chemical leaching) and durability.

13. NE agree that the proposal to raise water levels to promote the growth of sphagnum (bog moss) whilst reducing purple moor grass, has been shown to work on other sites and should therefore increase biodiversity. It adds that by undertaking this work the raised bog will begin to function as it should and this in turn will be reflected in an improvement in the quality of this rare and precious landscape. The PC comment that the works could harm wildlife, particularly roe deer. In response the applicant explains that the overall aim is to restore the raised bog and enhance the wildlife. The impact on wildlife is considered in an Ecological Impact Assessment and concludes that restoration of the raised bog will have mostly positive outcomes for wildlife on the site and that any negative effects on breeding birds (caused by a change in habitat due to increased water levels in the peat) are likely to be minor. The works will take place outside bird breeding season to avoid disturbance. The presence of roe deer has been noted in the assessment as widespread in the Yorkshire Dales and will not affect its ability to utilise the site. The area in and around the SSSI is the only known location within the NP of great crested newts and the works will benefit this protected species.
14. I note that the YDNPA supports the works and NE agrees that they should benefit biodiversity. I am satisfied that the works are likely to deliver benefits to the common by restoring a priority habitat and improving the condition of the SSSI. I consider that any visual impact will be mitigated by the eventual growth of vegetation and the use of materials that are sympathetic to the natural environment. I conclude that the proposed works will benefit nature conservation interests and enhance the landscape and natural beauty of the NP.

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

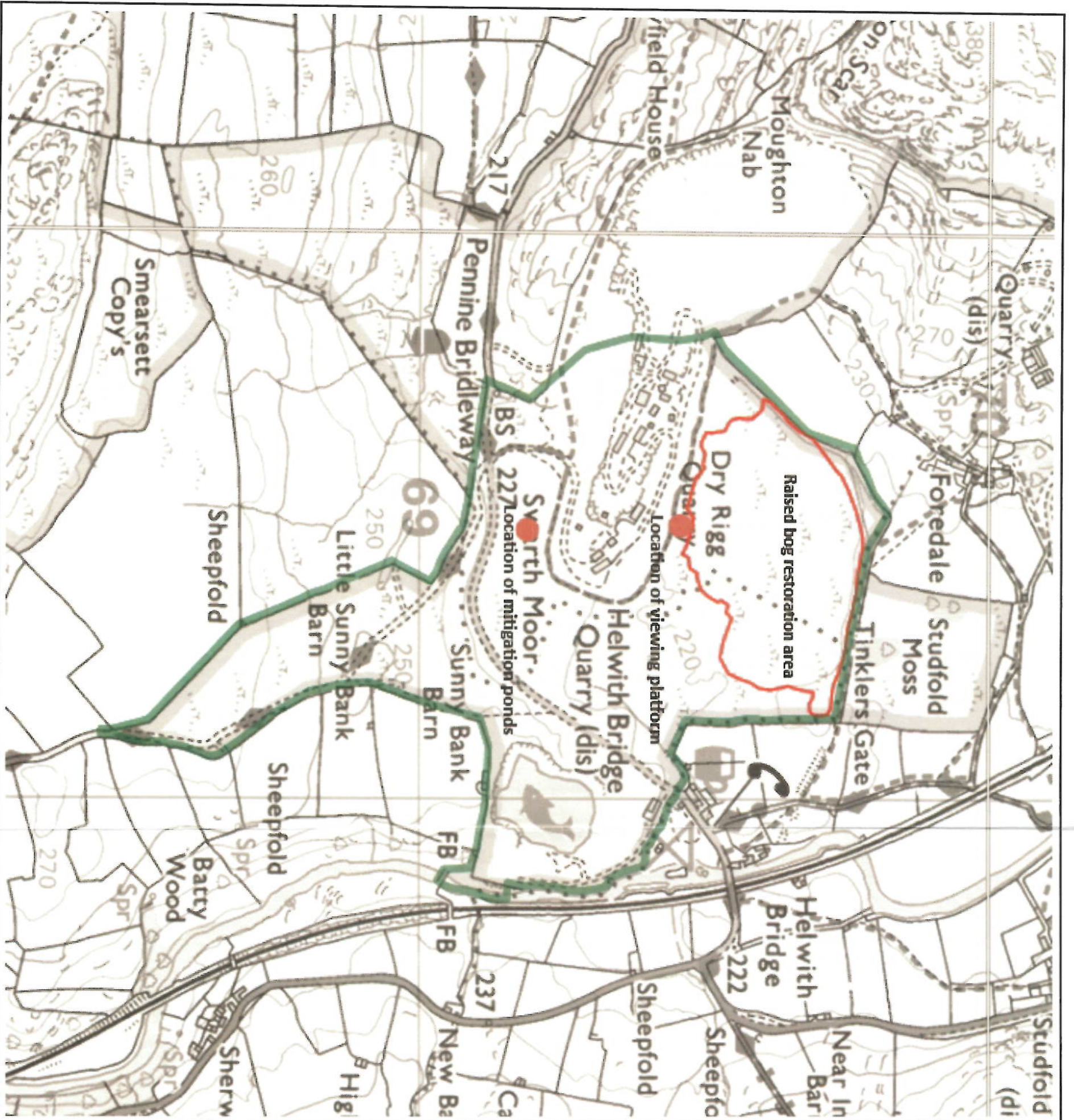
15. The YDNPA advise that there are a significant number of turbarry stones identifying former peat cutting rights on the common. The stones need to be retained. The mitigation measures include identification and ensure that the stones are not impacted. The surface of the common is likely to contain some earthwork evidence of former peat cutting which will be impacted by the works. The significance of the earthworks is considered relatively low but should be recorded by a competent archaeologist before the surface of the common is affected. The applicant confirms archaeological features have been recorded and will be protected as shown in a Heritage Statement submitted with the application and a further survey will be undertaken of existing peat cuttings before work begins and is a condition of the planning permission. I am satisfied that the assurances given by the applicant which are secured by way of a planning condition will ensure that the works do not harm any archaeological remains and features of historic interest.

### **Conclusion**

16. I conclude that the works are likely to enhance public access and benefit nature conservation interests and will not harm the other interests set out in paragraph 6. Consent is granted for the works subject to the condition set out in paragraph 1.

**Richard Holland**





**Annex 2 Swarth Moor Common  
showing location of proposed works**

**Key**

Ordnance Survey (Greyscale) © Ordnance Survey

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Map Produced from WebMap2 on 22/07/19  
Map Projection: British National Grid  
Map Scale at A4: 1:10,000