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# Application Decision

by **Richard Holland**

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

Decision date: 3 December 2019

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**Application Ref: COM/3234287**  
**Brow Moor, Haworth, West Yorkshire**

Register Unit No: CL1

Commons Registration Authority: City of Bradford Metropolitan District Council.

- The application, dated 10 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 The Mineral Planning Group Ltd for Dennis Gillson and Son (Haworth) Ltd.
  - The works in relation to extending Naylor Hill Quarry comprise:-
    - i. the enclosure of 12500 square metres of land with 300 metres of 1.4-metre-high post and wire fencing;
    - ii. installation of approximately 190 metres of low angle 1.5 metre high bunding;
    - iii. quarrying of dimension stone within the enclosed area for a period up to 2042; and
    - iv. post-quarrying restoration works with permanent retention of some fencing.
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## Decision

1. Consent is refused.

## Preliminary Matters

2. I have had regard to Defra's Common Land consents policy<sup>1</sup> (Defra's policy) 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.
3. The common land register map shows that Naylor Hill Quarry lies wholly within the common land boundary. The applicant advises that the quarry has been present for over 170 years and pre-dates the registering of the land as common land. The application before me relates only to the 12500 square metres of land proposed to be added to the quarry and this decision is not concerned with the area of the common that already forms part of the quarry.
4. Planning permission for lateral extension and deepening of the quarry was granted by Bradford Metropolitan District Council (the Council) on 10 April 2019 (Application 18/03635/MAF).
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Natural England (NE), the Open Spaces Society (OSS) and Mr Anthony Haigh.

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

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.

## **Reasons**

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

8. The land the subject of the application is owned by the applicant, who will benefit from the proposed works.
9. The common land register records five rights to graze sheep. The applicant advises that none of the rights holders currently exercise their rights but confirms that all were consulted about the proposals. All but one of the rights apply to the whole of the common, including the right in favour of Mr Haigh of Higher Naylor Hill Farm. Mr Haigh has commented on the proposals - he is unable to exercise his rights although the reasons he gives are not related to the application proposals. Nevertheless, the proposals will prevent him from grazing sheep over the affected land should he decide he is able to exercise his rights in future. I conclude that the proposals are not in the interests of Mr Haigh or the other four rights holders.
10. The common land register also records that four parties, including two of the grazing rights holders, claim rights to take a water supply from the common. The applicant advises that the proposed works lie outside the area where the claimed rights would be exercised and there is no evidence before me to suggest that the proposals will affect such rights.

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

11. The interests of the neighbourhood relates to whether the works will affect the way the common land is used by local people and is closely linked with the interests of public rights of access. NE describes the common as an area of upland heath and the application plan shows it is crossed by various footpaths. I consider that the common is likely to be used for general recreational access by local people and the public alike. The applicant does not dispute that the common is subject to rights of access for air and exercise under section 193 of the Law of Property Act 1925. This includes a right to access on horseback, although there is no evidence to suggest that the common is used for horse riding.
12. The present quarry lies in the south-west corner of the common, close to a section of footpath running just inside the common's southern boundary. The footpath appears to run for several hundred metres before a spur runs north-west through the common. The proposed fencing will run closely parallel to both sections of footpath but will not cross them or interfere with public access over them. The proposed bunding will run between the fencing and the north-west footpath, again, without interfering public use of the footpath.
13. NE says that aerial photographs (which were not included in its representations) seem to show a desire line within the area to be fenced. The applicant advises that this is actually a drainage ditch and I am satisfied that there is no conclusive evidence of such a desire line. However, the application map appears to show a footpath running around the current footprint of the quarry, some of which would be unavailable for use were the proposed quarry extension to go ahead.

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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.

14. Most of the fencing will not be permanent as it will be removed in 2042. However, some fencing will remain in place permanently for reasons of health and safety as the tops of the quarry faces will require fencing following any restoration. Whilst it is arguable whether fencing in place until 2042 can reasonably be considered to be 'temporary', it is nevertheless the applicant's intention to remove most of it within a specified timescale.
15. The proposals will completely exclude the public from 12500 square metres of the common (almost 3% of the total area of the common) until 2042; this is a lengthy period. Whilst the applicant says that restoration of the land will allow public access to be re-instated, it will not be full access. Public access will be only from the lower parts of the quarry as it will not be possible via the retained rock faces, which will remain fenced. Furthermore, although still having common land status, the land will generally be far less suitable to walk over than upland heath. I conclude that the proposals will seriously and unacceptably harm public rights of access and local people's use and enjoyment of the affected land.

### ***Nature conservation***

16. NE advises that this upland heath common has no special designations but notes that the purpose of the works is not to benefit nature. However, this does not mean that there will be no such benefits. The applicant says that once quarrying has ceased the quarry will be restored to enhance bio-diversity, providing new habitats for flora and fauna. Indeed, conditions attached to the planning permission require restoration to provide for enhanced biodiversity. This includes creation of wetland, dry heath and acid grassland areas, creation of habitat/nest sites suitable for sand martins and oyster catchers and consideration of retention of areas of cliff for nesting peregrine falcons. Conditions also require measures to be taken to protect any wildlife on site before any works commence, including reptile and ground-nesting bird surveys and visual checks for places where hibernating animals may be present.
17. I am satisfied that these measures will protect existing wildlife and provide for enhanced bio-diversity on completion of quarrying activity. I conclude that the proposed works are likely to benefit nature conservation interests in the long term.

### ***Conservation of the landscape***

18. The 1.5 metres high bund (to be appropriately seeded) will be constructed on the site's eastern boundary to prevent views into the quarry from the adjacent footpaths; it will also shield the 1.4-metre-high fencing from public view. Whilst I consider that the bund will be visually preferable to a post and wire fence, it will remain an artificial and alien feature on the common until 2042.
19. The applicant says quarrying for building stone is a fundamental element of the character of the common that pre-dates its registration as common land in 1967 and that post-quarrying restoration will enhance visual amenity of the quarry by assimilating the site into the landscape. Conditions attached to the planning permission require such restoration of the land to be carried out in the interests of landscape character. This includes producing vegetated scree slopes, as well as seeding/planting of locally appropriate species on the quarry floor, benches (terraces) and rock faces. The applicant contends that the restoration will provide a more aesthetically interesting area for members of the public to exercise their rights of access over. A quarry may well have existed before the land was registered as common. Nevertheless, registration ensures that the special qualities of common land, including its open and unenclosed nature, are properly protected; the application must be determined accordingly. The proposed restoration may go some way to lessening the visual impact of the quarry. Nevertheless, the works are inconsistent with the status and character of the common and will permanently damage the landscape by transforming a sizeable part of the common from upland heath to quarry.
20. I conclude that the works will cause unacceptable visual harm to the landscape of the common, notwithstanding that the proposed bunding will screen views of the extended quarry from adjacent footpaths. The bund itself would, in any case, be visually intrusive.

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

21. A condition attached to the planning permission requires a written scheme of archaeological investigation (WSI) to be approved by the Council before any works take place within the WSI area to ensure that archaeological interests are protected. I am satisfied that measures will be put in place to ensure that archaeological remains and features of historic interest are not harmed by the proposed works.

## ***Other matters***

22. The applicant contends that the proposed works are in the wider public interest as they will release a locally distinctive building stone resource, appropriate to the West Yorkshire area, that can be used to repair and restore historic assets (and new builds) in the local area and region. Defra's policy recognises that works which do not benefit the common may be acceptable where they confer a wider benefit to the local community, for example the laying out of a cycle path to improve sustainable travel opportunities, so long as they do not have an unacceptable impact on the common. Minerals, of course, can only be worked where they are found and I do not doubt the quarry's valuable role in supplying stone used in the maintenance and repair of local buildings. However, I am not satisfied that the commercial production of building stone for unspecified projects, as is proposed in this application, accords with the policy, particularly given the harmful effect the proposal will have on the common. I therefore give the wider public benefit argument little weight in determining the application.

## **Conclusion**

23. The works are likely to benefit nature conservation in the long term as conditions attached to the planning permission require the restoration of the land to provide for enhanced biodiversity. Archaeological remains and features of historic interest are unlikely to be harmed by the works.

24. However, I conclude that any benefits to nature conservation are substantially outweighed by the unacceptable harm the works will cause to those wishing to use the common for grazing and recreation and to its character and appearance. Consent is therefore refused for the works.

**Richard Holland**