
Application Decision

by Richard Holland

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

Decision date: 10 December 2019

Application Ref: COM/3235049

Barrow Hill Common, Dorset

Register Unit No: CL 223

Commons Registration Authority: Dorset Council.

- The application, dated 29 July 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 Bournemouth Christchurch and Poole Council.
 - The works comprise the removal of 507 m of existing grazing fencing and the erection of 514 m of wooden post fencing and 126 m of metal post of new fencing with three gates. All fencing to be 1.2m high.
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Decision

1. Consent is granted for the works in accordance with the application dated 29 July 2019 and accompanying plans, 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 10 December 2029; and
 - iii. all access gates within the new fencing shall be bridlegates.
2. For the purposes of identification only the location of the new fencing is shown as a red line, the existing fencing to be removed as a broken red line and new access gates as two red squares and a red circle 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. The application originally proposed that the new fencing would include kissing gates. The application has since been amended by replacing the kissing gates with bridlegates. I am satisfied that the interests of anyone who may have wished to comment on the application have not been prejudiced by the amendment.
5. This application has been determined solely on the basis of written evidence.

¹ Common Land Consents Policy (Defra November 2015)

6. I have taken account of the representations made by the Open Spaces Society (OSS) and Mr A.S. Foster.
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;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 is the applicant and there are no rights registered over the common. I am satisfied that the works will benefit the interests of those occupying the common and the interests of those having rights over the land is not at issue.

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

9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. The applicant explains that part of the common has been grazed since the 1990s. The works will extend an area of conservation grazing forming part of a Countryside Stewardship (CS) agreed with Natural England to manage the site and improve and maintain the condition of the common. The common is near a main road and borders private land; the works will provide a secure area to graze livestock without the need for permanent staff. The applicant confirms that as the common is subject to section 193 of the Law of Property Act 1925 which confers a right of access on foot and horseback, all gates in the fencing will be bridlegates. An existing bridleway and permissive footpath will remain outside the fenced area, giving the public the option of not entering the fenced/grazed enclosure and a section of fencing that includes a stile will be removed to improve access.
10. The OSS objects and submits that the works will divide the common and restrict public access on foot and horseback, confining users to a narrow strip between the fence and common land boundary. Alternatives such as invisible fencing have not been fully explored. Mr Foster is concerned that the fences and stiles deter pedestrians while horse riders use tracks that are not bridleways and access to the common from bridleway (BR1) needs to be improved.
11. In response, the applicant explains that public access is restricted to the path network on the common by large areas of mature vegetation, including mature heather and gorse in dry areas and areas of bramble and mire. The bridleways were assessed as unsuitable to be included within the grazed area because of the high level of public use, particularly by school children accessing a nearby school. Alternatives to the works such as invisible fencing were deemed unsuitable and of high risk for reasons that include reliability, mature vegetation on the common, impact on tree roots and a nearby busy road.

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.

12. The applicant has submitted photographic evidence which I consider demonstrates that use of the common by the public is likely to be confined to existing tracks and given that two popular, well used bridleways will remain outside the fencing, I am satisfied that the works will not interfere with the way the public use the common. While the works will extend fencing to incorporate more of the common, existing fencing and a stile seen as a barrier to access will be removed and public rights of access maintained in the new fencing by the inclusion of bridlegates. I conclude that the works will not seriously impact the interests of the neighbourhood or public rights of access.

Nature conservation and conservation of the landscape

13. The common lies within the Corfe and Barrow Hills Site of Special Scientific Interest (SSSI), Dorset Heath Special Area of Conservation (SAC), Dorset Heathland Special Protection Area (SPA) and Heathlands Ramsar. The applicant explains that Natural England's view is that the common is in unfavourable recovering condition and advises that the existing grazing area needs to be extended. The works consist of a mixture of wooden and metal barb wire fencing. Metal fencing is needed at a section of common where wet ground restricts access.
14. The OSS is concerned the works will divide the common and leave large parts of it outside the fencing and at risk of being treated separately and that despite the applicant's assurances that vegetation will mask the fencing, the works will still be visible both from the common and outside it. The applicant explains that the current fencing divides the common and that except for grazing, common land within and outside the fencing is not treated differently. While the fencing will be visible to some degree within the common, the current fencing is visually intrusive and will be removed. The visual impact of the extended fencing will be mitigated by routing it through areas of existing trees and bramble and setting it back from tracks. It is also intended that further vegetation will grow to obscure the works. The visual impact outside the common will be mitigated by the presence of existing trees which will, for the large part, screen the works.
15. Natural England has been consulted and has not commented on the application. However, I have no reason to doubt the applicant when it says that NE has prescribed the extension to grazing as an appropriate way to improve the biodiversity of the common and I accept that the proposed fencing is needed to safely hold grazing livestock. I consider that the route of the fencing and the nature of the vegetation on the common, as demonstrated in the photographic evidence supplied, is likely to lessen the visual impact of the works which, in any case, is outweighed by the potential improvements to the biodiversity of the common which the fencing will help facilitate through the CS. I conclude that the works will benefit nature conservation interests. The improved biodiversity may also enhance the landscape in the long term.

Archaeological remains and features of historic interest

16. The applicant has submitted a pre-application advice letter from Historic England (HE) which notes that the common includes a Scheduled Monument (SM) recorded in the national heritage List for England as 'Round barrow cemetery on Barrow Hill 150 m south west of Brookvale Farm' (Ref. 1018029). HE advises that there will be no physical impacts from the works and the removal of old fences will, in its view, improve the setting of the SM. The applicant confirms that the route of the fencing has been chosen to avoid areas of archaeological interest. I am satisfied that the works will not harm archaeological remains and features of historic interest.

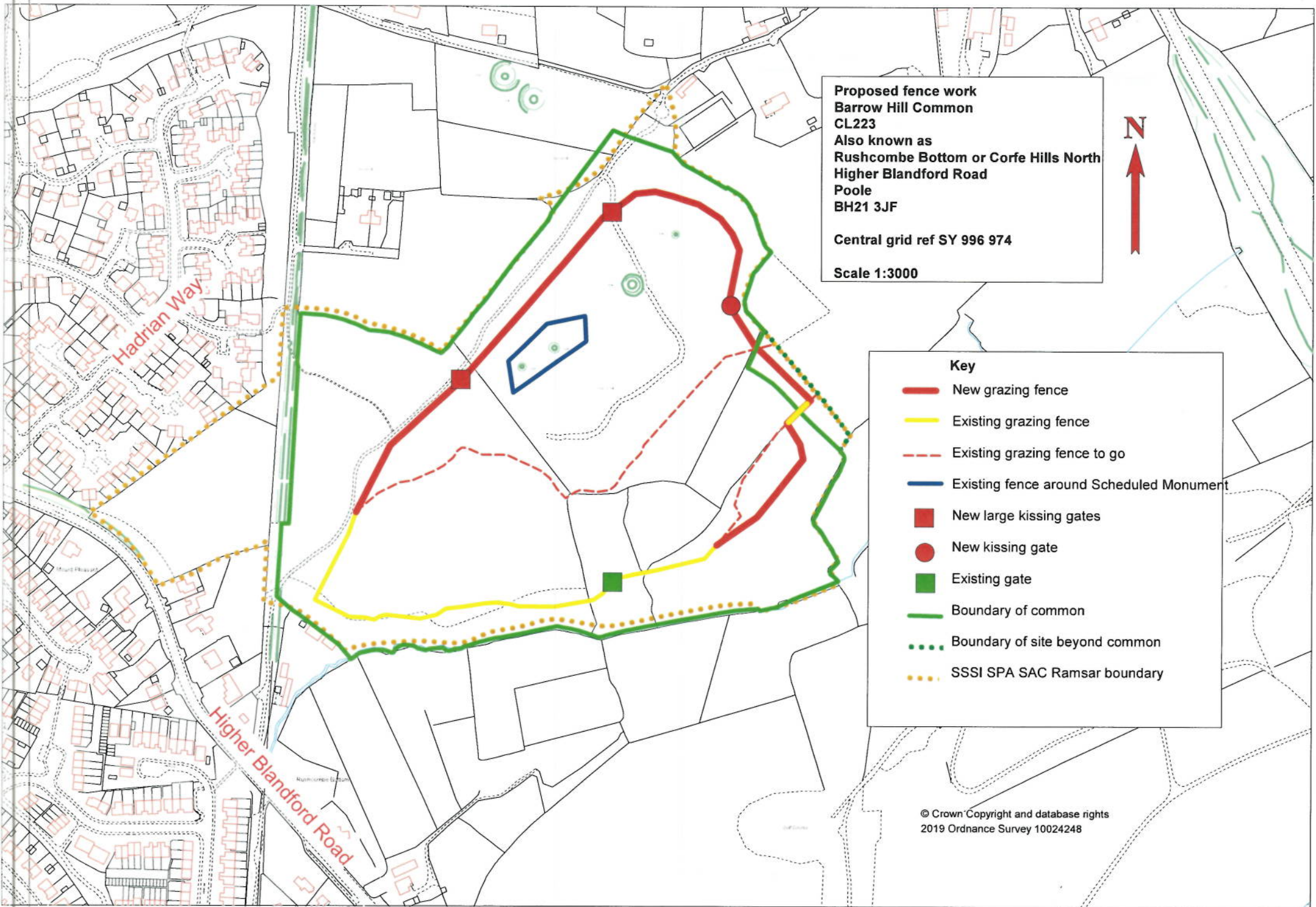
Other matters

17. I note that the OSS considers that any consent should be for a limited period (10 years) and subject to review, particularly as existing fencing is being removed. In response, the applicant supports a review of the works in ten years if consent is given. In view of the commitment to review and, given that the works are part of a 10-year CS and potentially subject to change after this time, I consider that a condition limiting the works to 10 years is appropriate. A further application can be made if the works are still required after this time.

Conclusion

18. I conclude that the works are likely to benefit nature conservation and possibly landscape interests and will not harm the other interests set out in paragraph 7 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland













Proposed fence work
Barrow Hill Common
CL223
Also known as
Rushcombe Bottom or Corfe Hills North
Higher Blandford Road
Poole
BH21 3JF

Central grid ref SY 996 974

Scale 1:3000



Key

-  New grazing fence
-  Existing grazing fence
-  Existing grazing fence to go
-  Existing fence around Scheduled Monument
-  New large kissing gates
-  New kissing gate
-  Existing gate
-  Boundary of common
-  Boundary of site beyond common
-  SSSI SPA SAC Ramsar boundary