



Application Decision

Site visit on 3 December 2019

by **Sue M Arnott FIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 17 January 2020

Application Ref: COM/3222590

Brimham Moor, Summerbridge, North Yorkshire

Register Unit No.: CL 117 Brimham Moor

Registration Authority: North Yorkshire Council

- The application, dated 1 February 2019, is made under Section 23 of the National Trust Act 1971 for consent to carry out restricted works on common land in the ownership of the National Trust.
 - The application is made by the National Trust.
 - The proposed works consist of fencing (with gates and stiles) to enclose two areas of Brimham Moor Common so as to enable the land to be grazed by stock.
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Decision

1. Consent is granted for the works described in the application dated 1 February 2019 and the plans submitted with it, subject to the following conditions:
 - i. The works shall begin no later than three years from the date of this decision;
 - ii. All gates and stiles shall meet British Standard 5709:2006 (revision 2018);
 - iii. All gates installed in the fence should be tied open during any significant period when there are no livestock grazing on the common
 - iv. All fencing shall be removed no later than 10 years from the date.
2. For the purpose of identification only, the location of the works is shown as a continuous red line on the attached plan.

Preliminary matters

3. In relation to the works proposed by this application, Section 23(2) of the National Trust Act 1971 (the 1971 Act) (as amended by the Commons Act 2006) requires the consent of the Secretary of State since access by the public to National Trust property will be impeded. Without first obtaining consent, any such works would be unlawful.
 4. In this case the applicant, the National Trust (NT), is seeking consent to enclose a substantial portion of Brimham Moor Common (in two parts) with stock-proof fencing in order to implement a grazing regime to improve the condition of the common.
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5. Brimham Moor Common comprises of 150.31 hectares, registered as common land (CL 117) under the Commons Registration Act 1965. Rights to graze sheep, cattle and ponies are registered although NT has no knowledge of these rights being exercised since it acquired ownership in 1970.
6. The common lies within the Nidderdale Area of Outstanding Natural Beauty (AONB) and the proposed works would take place on land within the Brimham Rocks Site of Special Scientific Interest (SSSI). It is registered as Access Land under the Countryside and Rights of Way Act 2000. The moor is bisected by a minor public road which runs broadly from south-west to north east across the moor. The Nidderdale Way long-distance path crosses from east to west and several other public footpaths lie within the southern part of the site.
7. This application has been determined on the basis of written representations and my visit to the site for which I was accompanied by representatives of the applicant (NT). This included Ms C Barber (Ranger), Ms H McDermott (Site Operations Manager for Brimham Rocks), Mr R Phillips (Operations Manager for Fountains Abbey) and Mr J Carlisle (Farming Advisor).

The application

8. The proposal which is the subject of this application includes 6445 metres of temporary fencing (required for 10 years) to enclose an area of approximately 113.83 ha, incorporating 18 pedestrian gates, 5 field gates (for vehicle and stock movements) each sited alongside a pedestrian gate or stile, and approximately 24 other stiles set at 100m intervals.
9. Two types of fencing are proposed. For the most part (4215m) this would be constructed of wooden fence posts with stock netting and reinforced with a line of high tensile plain wire lashed to the top of the net. This would be topped by a single strand of barbed wire to prevent cattle crushing the fence and to minimise the chance of deer becoming entangled.
10. For the remaining length (2230m), this would consist of wooden posts with three strands of barbed wire. This is proposed alongside the eastern boundary of the moor where dry-stone walls separate the common from adjacent farm land. However, the integrity of these walls varies and it is proposed that the addition of new fencing immediately within the common is intended as a temporary measure where the condition of the wall means it is not reliably stock-proof and whilst plans are put in place to restore the walls.
11. Notice of the proposal was given in three local newspapers: the Nidderdale Herald, the Harrogate Advertiser and the Ripon Gazette, all published on 7 February 2019. In addition, the applicant has confirmed that all listed commoners were consulted as well as North Yorkshire County Council (the commons registration authority), the Nidderdale AONB Joint Advisory Committee, Natural England, Historic England, the Open Spaces Society (OSS) and the Yorkshire Wildlife Trust; it has also indicated that notices were posted on the site with relevant documents placed on deposit for public inspection. Further, NT has followed guidance recommended by Natural England¹ by carrying out consultations with the local community and with user groups. The proposal is therefore the result of wide-ranging stakeholder engagement.

¹ A Common Purpose: a guide to Community Engagement Revised 2012

12. I am satisfied that the applicant has carried out the required consultations and that, through these actions, the advertisements in local newspapers and notices on the application site, all those with an interest in the land have been provided with an opportunity to comment on the application.
13. As required by Section 23(2) of the 1971 Act, the application was accompanied by a letter from the Solicitor to the National Trust, Jan Lasik, dated 22 January 2019 confirming that the National Trust has concluded that, having regard to Section 23(1) of that Act, the proposed fencing and associated gates are *“desirable for the purpose of improving opportunities for the enjoyment of the property by the public and are in the interest of visitors to the common.”*

Main Issues

14. In determining this application for consent I must have regard to² (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 (which may include the public interest in nature conservation, the conservation of the landscape, the protection of public rights of access to any area of the land and the protection of archaeological remains and features of historic interest), and (d) any other matter considered to be relevant. I must also have regard to the published guidance relating to the determination of applications under section 23³.

Reasons for the Decision

Policy context

15. It is the policy of the Secretary of State⁴ that commons should be maintained or improved as a result of the works being proposed on them. This legislation should be seen as conferring additional protection on common land, rather than enabling common land to be used for purposes inconsistent with its origin, status and character. In other words, consent under section 23 should be seen as a gateway which enables the construction of works which are sympathetic to the continuing use and enjoyment of common land, but which reinforces controls on development which are inappropriate or harmful.
16. The consent process should ensure that works take place on common land only where they maintain or improve the condition of the common land or where they confer some wider public benefit and are either temporary in duration or have no lasting impact. Further, any use of the common should be consistent with its status as common land.
17. In reaching my conclusions on this application, I have taken into account this policy framework in addition to the points raised in the representations submitted by Natural England (NE), the Open Spaces Society (OSS), the Yorkshire Wildlife Trust (YWT) and members of the Dale family (Dr T Dale, Ms A M Dale and Mr J Dale) together with other related correspondence.

² National Trust Act 1971 Section 23(2A) which refers to the Commons Act 2006 Sections 39 and 40

³ Common Land consents policy: November 2015 - Guidance published by Department for Environment, Food and Rural Affairs

⁴ As set out in paragraph 5.7 of the above Guidance as applied by paragraph 5.18

The interests of those occupying, or having rights in relation to, the common

18. The applicant is the landowner and occupier of the common. I note that it considers the proposed works desirable in terms of improving opportunities for the public to enjoy the property and that they would be in the interests of visitors to the common. Both areas, north and south of the road, are included in the Higher Level Stewardship (HLS) Scheme.
19. The common land register lists 8 graziers holding rights on the moor. However, none of these rights have been exercised for almost 50 years, primarily because the area is not secure for stock. In the distant past it is said to have been grazed by sheep but gates are thought to have been in place across the public road to ensure the animals were contained on the moor.
20. The NT has consulted the holders of grazing rights and no adverse comments have been forthcoming. Indeed it would appear that securing substantial parts of the common with stockproof fencing could only be to the benefit of those with grazing rights.
21. The fencing would not enclose the whole of the common and therefore around one quarter of the total area would (theoretically) remain open for grazing with unsecured boundaries. However, that situation exists at present and the applicant has sound reasons for excluding certain parts from this proposal.
22. Overall I conclude that the proposed fencing would benefit the occupier of the common and those holding rights to graze it.

The interests of the neighbourhood

23. There is no definition within the 2006 Act of the term 'neighbourhood' (nor in the 1971 Act).
24. In a rural situation such as this, the applicant has sought to work with the registered commoners and immediate neighbours, together with its large visitor base to introduce and explain the basis for the proposed works. Whilst the main visitor attractions (Brimham Rocks visitor centre, café and other associated facilities) lie outside the two areas to be enclosed, the common as a whole attracts visitors from a wide area of North Yorkshire.
25. Commenting on the proposal, the OSS considers it to be detrimental to the interests of the neighbourhood and the public. However it does not give reasons for holding that view.
26. I have noted the letters of support for the proposal from local people. It is also clear that the concerns expressed by some have been addressed by the NT in refining its application. Having considered the submissions made, I am not persuaded that the interests of the neighbourhood or other local interests will be negatively affected by the proposed fencing to any substantive extent.

The public interest

Nature conservation

27. The SSSI is recorded as having a mosaic of upland plant communities including dry and wet heath, birch woodland and acid bog.

28. The long-term aim of the proposed works is improvement of the condition of the Brimham Rocks SSSI which is presently rated as “unfavourable recovering”. Once grazing ceased on the moor, succession began, leading to secondary woodland Birch being the primary coloniser. Cattle grazing is recognised as the best way of controlling regeneration and rough grasses although there is a need to balance these benefits with damage done to dwarf shrubs and by dunging.
29. The NT anticipates that the exact stocking rate would need to be adjusted as the effects of grazing are monitored. In response to Mr Dale’s concerns over the need for a scientific approach to this issue, requiring careful assessment of the effects of grazing, NT has confirmed that the collection of baseline data has been carried out throughout 2019 and would continue throughout the project.
30. Initially grazing is intended primarily in the summer months and cattle may need to be moved around the site to produce the best biodiversity results. NT intends to continually review this with the grazier and with NE to ensure the conservation aims of the HLS scheme are met.
31. Dr Dale has expressed concern over the effect of the proposal on deer and particularly the potential loss of tree cover. The applicant observes that the local deer population is transient but their movement around the area would not be interrupted by the fencing; this would be 1m high, well below the 1.8m fence height required to deter deer. Only one strand of barbed wire is intended so as to prevent the risk of entanglement. Deer are content to graze alongside cattle and would not suffer from fewer trees on site.
32. Dr Dale also comments on the management of bracken and ragwort on the moor. In response NT has clarified that it does not anticipate that cattle will graze on the bracken but expects their hooves will break down the rhizomes of the plant which lie close to the surface, thus controlling its spread.
33. NT anticipates that grazing will improve the overall quality of the moorland by browsing off young birch saplings and coarser grasses; this should allow for a varied structure of heather to be maintained to improve the habitat for ground nesting birds, prevent the further growth of large trees which dry out the moor, introduce cattle droppings and poach the ground to diversify the habitat for invertebrates, and to improve soil quality by increasing microbial activity.
34. Success in these fields has been measured on various sites elsewhere and is supported by evidence published in various NE research papers. It is also a practice supported by AONBs, Wildlife Trusts and other conservation charities. Indeed, the Yorkshire Wildlife Trust supports this application and comments that grazing can be vital to manage high quality species-rich grassland, a practice used elsewhere on its own reserves.
35. From the information available to me, I am satisfied that the effects of cattle grazing within the proposed fenced areas will need to be closely monitored to make sure stocking levels are adjusted to have the desired effects on the quality of the SSSI, but on balance I consider the proposed grazing regime is more likely to benefit nature conservation interests than to bring negative consequences.

Conservation of the landscape

36. NE advises that Brimham Moor does not sit on the moorland plateau and therefore is expected to be less wild and more akin to a lowland heath. Having regard to the description of the moor in a number of Landscape Character Area assessments, NE points out that as woodland is gradually establishing itself on the moor, the site requires active management to prevent the threat of further encroachment of birch saplings and to restore the character of the area to a lowland heath landscape. In terms of priority, NE comments that the southern parcel is of greater importance in landscape terms.
37. It is the applicant's contention that this control is best achieved by grazing with cattle and that this can most effectively be implemented by fencing (temporarily) parts of the common. NT has tried to minimise the impact of the proposed works on the landscape (as well as people's enjoyment of it) by siting the fencing sensitively.
38. NE comments that the fencing would have greatest visual impact where it runs either side of the road for a distance of 300m. NT has addressed this by proposing to site the fences a minimum distance of 4-4.5m from the carriageway so as to avoid any 'tunnel-effect' and to lessen its impact. The applicant has also sought to site the fencing to avoid transecting the horizon at the most popular viewpoints so that it should appear sensitively hidden within the landscape. Further, the use of wooden posts and stock netting should result in the fences naturally softening into the landscape over time.
39. The OSS has commented on the need for fencing alongside walls, suggesting that the walls should instead be restored. In response NT points out that the fence is intended to be a temporary measure and that here it is only necessary as a back-up. In some places the wall is sound and the secondary fencing may not be needed. The applicant has confirmed that its aim is to repair the stone walls along the eastern boundary over the 10-year period so that this section of fencing could gradually be removed.
40. Any fencing scheme will have an effect on a previously unenclosed landscape. In my view, it is important to strike a balance between enabling conservation measures to be implemented by grazing the common whilst minimising the impact on the landscape. I am satisfied that the applicant's proposals have taken into account the sensitivities of the site such that the impact of the fencing will not be visually intrusive to the extent it would significantly damage the quality of this important landscape.

Protection of public access rights

41. The main focus of the Brimham Rocks visitor attraction lies to the north of the road but outside the area which would be enclosed. Therefore the vast majority of visitors and their dogs would not come into direct conflict with the cattle.
42. The public enjoy open access over the whole of the Brimham Moor common although the majority of use is confined to the paths and tracks which cross it. NE intends to adopt a "least restrictive option" approach to facilitating continued public access by providing gates on all defined paths (both public rights of way⁵

⁵ Subject to consent under Section 147 of the Highways Act 1980 being granted by the highway authority. NT confirmed it is in discussions with North Yorkshire County Council on this matter.

and other well-used routes) with stiles also conforming to BS 5709 (2018) and installed at 100m intervals. As a result, no visitor approaching the proposed perimeter fence(s) would be more than 50m from a crossing point.

43. The pedestrian gates proposed would be frameless, self-closing and would swing completely open to allow mobility vehicles through. They would also be fully compliant with BS 5709:2006 British Design Standard for Gaps, Gates and Stiles, 2018 edition. Further, NT has confirmed it intends that all gates would be tied open whenever cattle are not present on the site so as to better facilitate unrestricted access, an intention that is applauded by NE.
44. NT proposes that the cattle chosen to graze the site should be mature with no young calves and of a reliably stable breed so as to minimise any risk to public safety.
45. The Dale family has suggested an alternative line for the fence to avoid clashes between people and cattle at a particular point on the western side of the north moor. In response NT has confirmed that the intended fence will not enclose this section of moor; it would be set back using the topography of the gully to sensitively hide the fence line whilst preventing livestock gaining access to the footpath and watercourse at this point.
46. Having considered all the points made in the representations, I am satisfied that these have been addressed by the applicant and that, as far as is possible given the nature of the works, the scheme facilitates access in such a way as to limit any restrictions on enjoyment of the common by the public.

Protection of archaeological remains and features of historic interest

47. There are no such sites or features within the area to be enclosed by fencing that would be affected in any way, although suppression of trees and root growth will protect any undiscovered features from future disturbance.

Summary

48. On the basis of the applicant's submissions, taking account of the matters raised in the representations and from my observations on site, I consider the proposed works will not materially harm any of the interests to which I am required to have particular regard (as set out in paragraph 14 above).

Other relevant considerations

49. NT submits that introducing cattle would improve the educational opportunities on offer at the site, providing a platform to explain why moorland is important and highlight the species that the project aims to protect. Also, the close monitoring of habitats on the moor and how these react to the introduction of grazing would not only inform this project but could provide useful data for the management of other NT commons too.
50. The OSS argues that the works proposed are not consistent with the Secretary of State's policy that "*works take place on common land only where they maintain or improve the condition of the common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact.*" On a similar point, Dr Dale challenges the description of the works as '*improving*' the moorland.

51. I reject both these points. I am satisfied that the aims of the proposal are in line with the Secretary of State's policy and that the fencing is designed to facilitate a grazing regime which should help to restore the condition of the common and the SSSI in particular. Further, the application makes clear the fencing is intended as a temporary measure and that the effect on the biodiversity of the common will be closely monitored during the 10-year period requested.
52. OSS also submits that other means of facilitating grazing without fencing have not been fully explored and suggest the use of 'fenceless fencing', a speed limit or other traffic calming measures. I note that NT has examined these options and given its reasons for finding them unsuitable for this site.
53. Although there would be a risk to both road users and livestock, it is possible that traffic-calming may be a realistic means of addressing this. However, gates and/or cattle-grids would be necessary to prevent the egress of stock along the highway. I agree that, if cattle grazing has the anticipated effect on the common, permanent features such as these should be re-considered alongside other measures to facilitate its continuation as and when this project is reviewed.
54. In summary NT says the proposed fence would allow for the safe containment of cattle to achieve the aims associated with improving the quality of nature conservation interests on the common whilst minimising the disturbance to the SSSI and, with the high number of access points proposed, would still allow for visitor access and enjoyment across the common. The grazing of cattle is essential to returning Brimham Moor SSSI to favourable condition.
55. Finally, both NE and OSS have pointed out that the proposed fencing exceeds the threshold of 2000 metres and is therefore subject to the provisions of the Environmental Impact Assessment Agriculture (Regulations) 2017. I understand the applicant has now put in place a request for screening in accordance with these regulations.
56. Where, following screening, a project is identified as being significant, Environmental Impact Assessment (EIA) consent must be obtained from Natural England before works may proceed.
57. In this case I do not have before me an EIA but have determined this application for consent under Section 23(2) of the 1971 Act on the basis of the material before me and submitted in support of this application.

Conclusion

58. I consider that the proposed works will not materially harm any of the interests set out in paragraph 14 above; indeed they are likely to benefit nature conservation and landscape conservation interests in the long term. I conclude that consent should be granted subject to the conditions listed below.

Sue Arnott

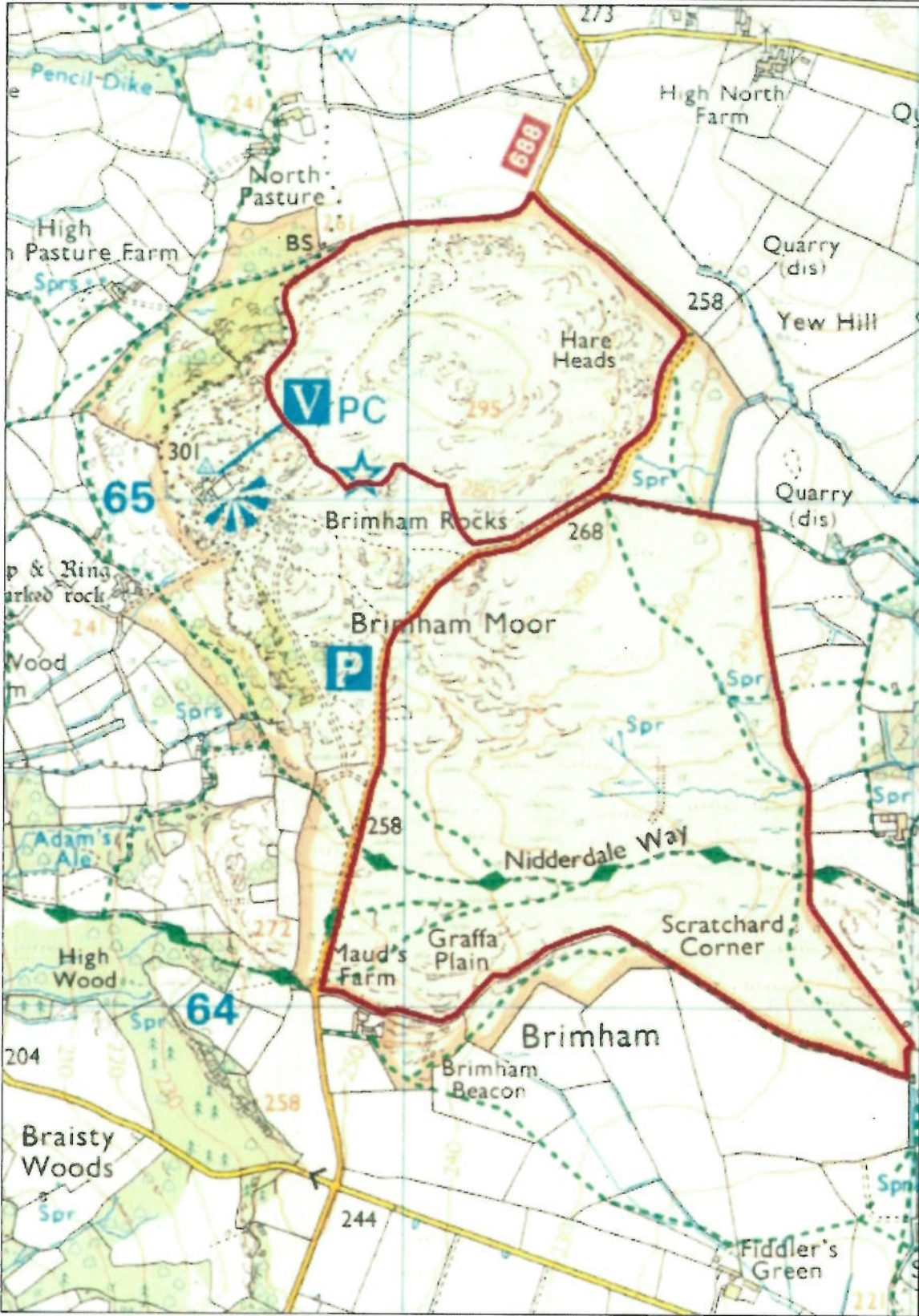
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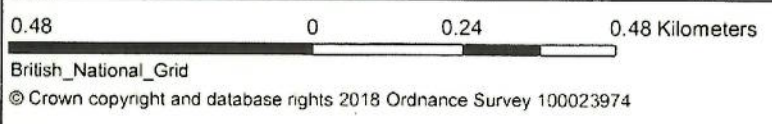
A map to show the proposed works



Scale 1: 12,000



Legend



Date: 27-Nov-2018
This map was created using the National Trust GIS Browser 54