
Application Decision

by **Richard Holland**

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

Decision date: 16 January 2020

Application Ref: COM/3236119

Beaford Moor, Devon

Register Unit No: CL24

Commons Registration Authority: Devon County Council

- The application, dated 22 August 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 Michael Underhill, Upcott Barton, Beaford.
 - The works comprise retention, and like-for-like replacement where necessary, of approximately 4500m of post and wire stock fencing for a period of 10 years.
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Decision

1. Consent is granted for the works in accordance with the application dated 22 August 2019 and accompanying plans, subject to the following conditions:
 - i. like-for-like replacement fencing works shall begin no later than three years from the date of this decision; and
 - ii. all fencing shall be removed on or before 16 January 2030.
2. For the purposes of identification only the location of the fencing is shown as a black line, and the public access gates in the fencing are shown as red crosses, 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 is to retain fencing which was given time-limited consent in 2005². The consent was valid for 10 years and expired on 3 February 2015.
5. Beaford Moor Site of Special Scientific Interest (SSSI) occupies most, but not all, of the common. The far north-eastern section of the common is outside the SSSI. The application plan originally did not include fencing of this area but it has since been amended to include it. The amended plan also shows an additional line of fencing in blue along the common's

¹ Common Land Consents Policy (Defra November 2015)

² Law of Property Act 1925: Section 194. Application Decision CLI97 of 3 February 2005

southern boundary. The applicant confirms that this fencing is not in place and that the current application proposes no such fencing. The blue line shows a preferred fence line to replace an existing section and the applicant may make a future application to move the fence line if funding becomes available.

6. I am satisfied that the application form and published notice make clear that the application is for all the fencing currently in place. I am also satisfied that the amended plan clearly shows the fencing included in the application and that the interests of anyone wishing to comment on the application have not been prejudiced.
7. This application has been determined solely on the basis of written evidence.
8. I have taken account of the representations made by the Open Spaces Society (OSS) and Natural England (NE).
9. 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;³ and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

10. The common land register records that the applicant is the landowner and holder of registered rights to graze 40 sheep, 18 cattle and 1 horse. The applicant grazes his cattle throughout the summer months. The Commons Commissioner ruled in his decision of 24 September 1979⁴ that further rights exist to graze 100 units of various animals provided that the rights registered shall be exercised and be held in trust for the benefit of the inhabitants of the parish of Beaford. Beaford Parish Council has since passed responsibility for managing the land to English Nature (now NE)⁵, which works with the applicant to manage it. I am satisfied that the application is in the interests of those occupying, and 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 unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. NE notes that no public rights of way run through the common, but it is clear from the application that the common attracts walkers and other visitors.
12. The purpose of the fencing is to enclose grazing cattle. This facilitates management of the Culm grassland by preventing scrub encroachment and improves the biodiversity of the

³ 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.

⁴ In the Matter of Beaford Moor, Beaford, Torridge District, Devon. Commons Commissioner Decision Reference No. 209/D/149.

⁵ Letter dated 12 December 2003 from Beaford Parish Council to English Nature.

SSSI. The applicant says the common would be overtaken by scrub if it was not grazed and that grazing over the last 14 years has allowed for easier public access due to the scrub and sedge grasses being eaten back. The application plan (as amended) shows seven gates in the fence line, which allow public access through the common. The applicant confirms that all the gates are kept unlocked and conform to BS5709: Gaps, Gates and Stiles. I conclude that by facilitating grazing the fencing helps to keep the land accessible to the public and that this balances any harm caused by limiting public access into and over the common via the seven gates.

13. The OSS is concerned that the location of the fencing at the south of the common, which is set well inside the common boundary, leaves an area of unfenced common (the area referred to in paragraph 5 above) that is, in effect, lost to the public. Although the OSS has not made its concerns clear, I assume it feels that the lack of fencing has allowed the area to become overgrown thus impairing public access. The absence of fencing must of course facilitate, rather than hinder, public access, but in any case my decision is not concerned with those parts of the common which are not proposed to be fenced.
14. The OSS is also concerned about the fencing at the south east of the common, which it feels is an eyesore, restricts public access and leaves an area of the common excluded. The applicant says it has been fenced for many years and was once used for sheep grazing by a previous rights holder. Whilst the area is included in the current cattle grazing regime, it is a semi-improved sward that does not form part of the SSSI and requires less grazing. The fencing has been retained so that cattle can be excluded from the area as required to prevent over-grazing. Three of the seven gates are within the enclosure fence line and I am satisfied that adequate public access to the area will be maintained.

Nature conservation and conservation of the landscape

15. Beaford Moor SSSI is cited for its Culm grassland and was assessed in 2010 as being in 'unfavourable recovering' condition. NE advises that Culm grassland management should maintain an open sward with a diverse vegetation structure that allows a range of plants and animals to flourish and that this is best achieved by light grazing in late spring, summer and early autumn, preferably by cattle.
16. The applicant advises that a Countryside Stewardship Agreement (CSA) written in close consultation with NE and Devon Wildlife Trust (DWT) is in place until December 2020. The CSA is to ensure that the flora and fauna on Beaford Moor is enhanced and all activities carried out on the area are to its advantage.
17. Whilst the 2010 SSSI assessment has not since been formally changed, there is anecdotal evidence to suggest that the condition of the SSSI may over time have improved to 'favourable'. In its letter of 16 August 2019 to the applicant, DWT expresses its full support for the retention of the fencing and says that the grazing regime has resulted in overwhelming biodiversity gains. In commenting on the application, NE says there is evidence that the cattle grazing has improved the biodiversity and in doing so will improve ecosystems and flood management.
18. I am satisfied that grazing by cattle is improving the condition of the SSSI and that the fencing the subject of this application is needed to keep cattle on the common and to control their movements accordingly in line with the grazing regime. I conclude that the fencing is in the interests of nature conservation.
19. The fencing has been in place since 2005 and retaining it will have no new or additional visual impact. NE advises that the Culm grassland plays an important role in the open character of the landscape and I consider that taking steps to manage the grassland will in

turn protect the landscape. As the fencing contributes to the management regime, I conclude that its retention for a further 10-year period is in the interests of the landscape.

Archaeological remains and features of historic interest

20. There is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

Other matters

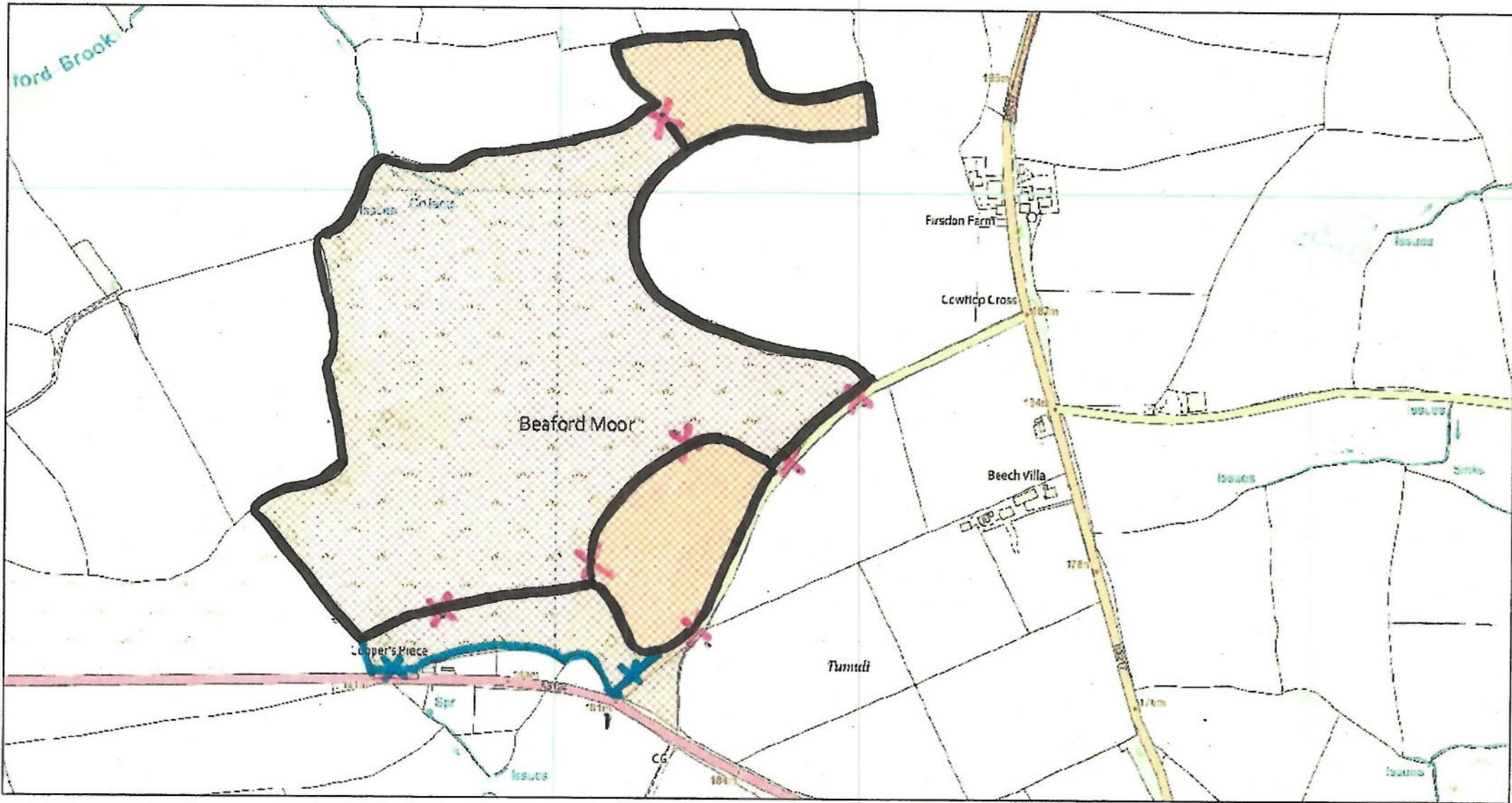
21. NE suggests that any consent should be for 5 years (until 2025), instead of the 10 years applied for, to allow for an earlier review of what is the least restrictive option, whilst providing for a flexible management system. This might include a mixture of traditional hard fencing and an invisible fencing system. It would seem that NE considers this to be a suitable time for a review on the basis that the applicant has a separate GS7 (Grassland) agreement in place until December 2025. The applicant advises that this agreement applies only to the north-east area of the common referred to in paragraph 5 above. As this area is not within the SSSI, which most of the fencing is in place to help manage, I am not satisfied that there is good reason to reduce the time period for consent from 10 years to 5 years.

Conclusion

22. I conclude that the works are likely to benefit nature conservation and landscape interests and will not harm the other interests set out in paragraph 9 above. Consent is therefore granted for the retention of the existing fencing, and like-for-like replacement where necessary, for a period of 10 years subject to the conditions set out in paragraph 1.

Richard Holland

Devon County Council



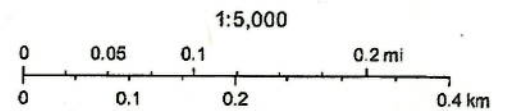
October 9, 2019

Existing Fence

Public Access Gates

Proposed new fence line to remove compartment as suggested dependent on funding.

Parcels of semi-improved swards



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