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# Application Decision

by **Richard Holland**

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

Decision date: 10 March 2020

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## Application Ref: COM/3233283

### The Allotment, Austwick, North Yorkshire

Register Unit No: CL339

Commons Registration Authority: North Yorkshire County Council

- The application, dated 1 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 Mr Allan Whittaker.
  - The works comprise:
    - i) installation of 318m of 1.05m high (approx.) wooden post and netting stock fencing, enclosing 17.8 hectares of common land for a period of 10 years; and
    - ii) installation within the fence line of a timber kissing gate for public access and a wooden field gate for movement of stock.
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## Decision

1. Consent is granted for the works in accordance with the application dated 1 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 kissing gate shall comply with British Standard BS5709; and
  - iii. all fencing shall be removed on or before 10 March 2030.
2. For the purposes of identification only the location of the fencing is shown as a broken red line 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. The application originally proposed that the fence included a stile. However, the applicant later amended the application by substituting a kissing gate for the stile. I am satisfied that the amendment has not prejudiced the interests of anyone who might wish to comment on the application.

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

5. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Yorkshire Dales National Park Authority (YDNPA), Yorkshire Dales Access Forum (YDAF), Natural England (NE) and the Open Spaces Society (OSS).
6. 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***

7. The land is owned by the Trustees of Dr. J. A. Farrer's Discretionary Will Trust. The Trust was consulted by the applicant about the proposals but did not comment. However, the applicant confirms that the Trustees are party to a Higher Tier Countryside Stewardship (HTCS) agreement in relation to which the works the subject of this application are proposed. I am therefore satisfied that the works are in the interests of the landowner.
8. The common land register records one right of turbary over the whole of the common land unit in favour of Dr. Farrer. I am satisfied that the works will not interfere with that right, which the applicant advises is not exercised. The register records no grazing rights. The applicant, who is also a party to the HTCS agreement, grazes the land under the terms of a tenancy agreement.

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

9. The proposed fence will run roughly east to west across the whole width of the common at one of its narrowest points and will, in conjunction with existing dry-stone walls, enclose an area at the northern end of the common. Its purpose is to control stock movement into the northern end (the enclosure), known as Simon Fell, from the larger southern area. The applicant advises that there has been no previous boundary at that location.
10. 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 application plan shows that the western end of the proposed fence is very close to the Dales High Way public footpath and it is here that the kissing gate will be positioned, although its exact location has yet to be determined. The fence line and the footpath diverge considerably at this point so it would seem that the western end of the fence is the best place for the kissing gate. However, the applicant has committed to reviewing the location of the kissing gate with the Park Ranger to take into consideration any known desire lines. The applicant confirms that the kissing gate will comply with the relevant British Standard, which can be secured by attaching a suitable condition to the consent.
11. I agree with the OSS that it would have been better had the type and exact location of the gate been established before the application was made. Nevertheless, I am satisfied that the kissing gate will be positioned at a suitably convenient point for walkers and will provide sufficient access into the enclosure. Whilst not forming part of the application, the applicant advises that a stile will be erected in the western dry-stone wall, which will offer a further point of public access into 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.

enclosure. A field gate will also be provided for the sole use of the grazier so that any sheep that stray into the enclosed area can be removed.

### ***Nature conservation***

12. The Allotment comprises Unit 53 of the Ingleborough Site of Special Scientific Interest (SSSI) and also lies within the Ingleborough Complex Special Area of Conservation (SAC). NE advises that the habitat is blanket bog, which supports unique communities of specialised plants and animals. Unit 53 has been assessed as being in 'unfavourable recovering' condition. The last field visit (presumably undertaken by NE) was in April 2019 when it was found that the blanket bog failed in most areas assessed as it was actively eroding and showing bare peat. NE further advises that it is only considered to be recovering because there are plans in place to restore the bare peat to blanket bog. The restoration will be achieved through the HTCS agreement, which includes preventing grazing animals eating re-establishing vegetation and trampling recovering blanket bog. The 10-year agreement runs from January 2020.
13. I am satisfied that the proposed fencing is needed to keep grazing animals away from the recovering area and is in the interests of nature conservation as restricting grazing animals will increase the chances of successful peat and habitat restoration.

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

14. The affected land lies within the Yorkshire Dales National Park and the proposed fencing will have a detrimental impact on the landscape to a certain extent. However, the fence line has been chosen to ensure that the minimum amount of fencing to enclose all the recovering areas is used. NE advises that the fence line will be at the base of an escarpment. This means it will not be visible against the horizon, which will reduce its visual impact. As temporary consent is sought (to approximately match the HTCS agreement period) the fencing will not form a permanent feature in the landscape.
15. I consider that restoration of the blanket bog will help conserve the natural beauty of the National Park in the long term and that the fencing is required in the medium term to allow the benefits to be realised. I give weight to YDNPA's support for the proposals and that it raised no concerns about the impact of the fencing on the landscape.

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

16. The YDNPA senior archaeologist confirms that there are no known archaeological features within the application area to be impacted by the fencing. I am satisfied that the works will not harm any archaeological remains and features of historic interest.

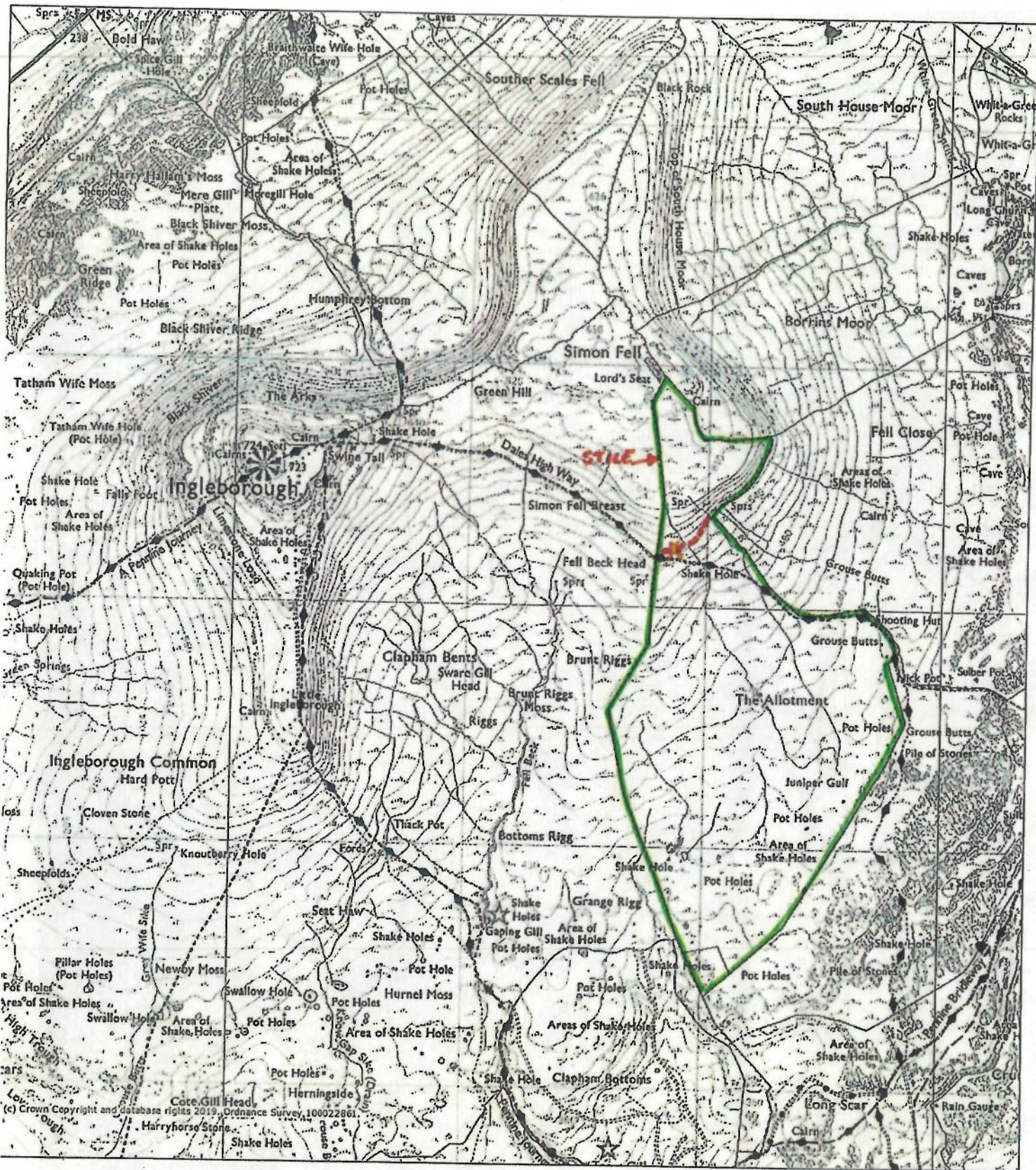
### ***Other matters***

17. The applicant advises that successful blanket bog restoration will also bring wider public benefits such as flood alleviation, carbon storage and the enhancement of downstream water quality. NE indicates that blanket bog restoration is indeed beneficial in these ways and I consider that the fencing will contribute to the realisation of such benefits.

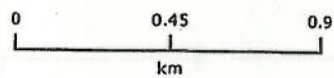
### ***Conclusion***

18. I conclude that the works are likely to benefit nature conservation and landscape interests and will also contribute to the wider public benefits set out in paragraph 17 above. The works will not seriously harm public access interests or impact on archaeological and historical features. Consent is therefore granted for the proposed fencing for a period of 10 years subject to the conditions set out in paragraph 1.

*Richard Holland*

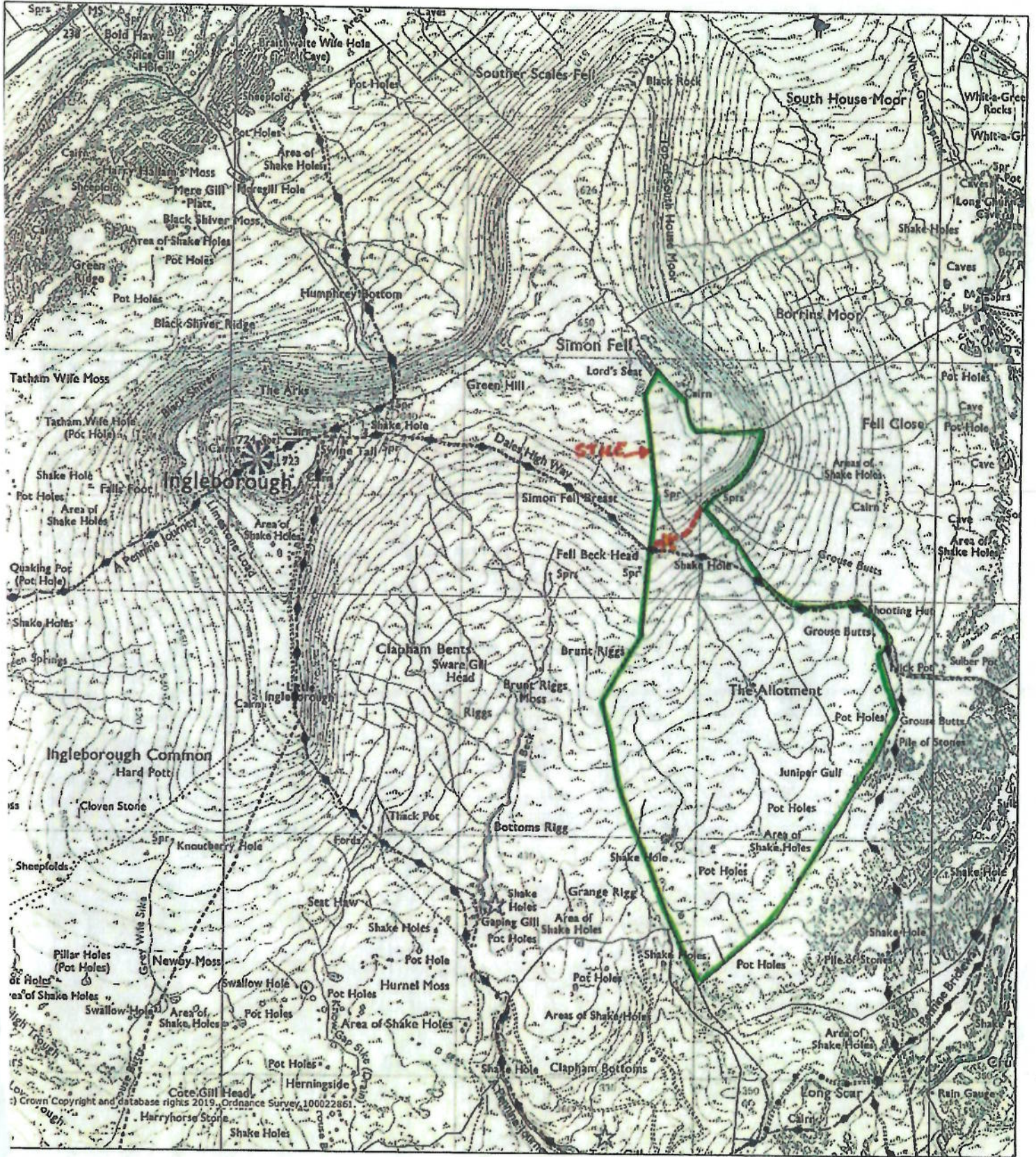


--- PROPOSED FENCE LINE  
 X PROPOSED ANTE/STILE

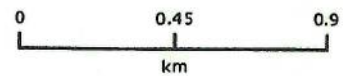


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