



Application Decision

by **Richard Holland**

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

Decision date: 9 April 2020

Application Ref: COM/3240753

Coniston, Dunnerdale, Seathwaite Fells & Torver High Common, Cumbria

Register Unit No: CL 29

Commons Registration Authority: Cumbria County Council

- The application, dated 4 November 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 United Water Utilities Ltd.
 - The works comprise a single 3.66m wide galvanised steel pedestrian and vehicular access gate.
-

Decision

1. Consent is granted for the works in accordance with the application dated 4 November 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. the gate shall be painted brown and maintained in that condition;
 - iii. the gate shall comply with British Standard BS5709; and
 - iv. a sign shall be permanently fixed to the gate to say the land is public access land.
2. For the purposes of identification only, the location of the proposed works is shown in red 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. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the landowner, Historic England (HE), Open Spaces Society (OSS), Friends of the Lake District (FLD) and Cumbria & Lakes Joint Local Access Forum (LAF).
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

¹ Common Land consents policy (Defra November 2015)

- 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

7. The land is owned by Richard Le Fleming (Ryedale Estate), who fully supports the application. The common land register records numerous rights of common. The applicant advises that there is one active commoner, Mr B Wilson, who has the right to graze 1100 sheep plus followers over the land. Mr Wilson was consulted by the applicant but has not commented on the application. The Federation of Cumbria Commoners was also consulted but has not commented. There is no evidence to suggest that the works will harm the interests of those occupying or having rights over the land (and in particular persons exercising rights of common over it).

The interests of the neighbourhood and public rights of access

8. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access on foot. The gate is proposed to cross a privately-owned stone track to prevent joyriding and car parking obstruction by restricting vehicular use to authorised persons only, including local people who use the track to access their properties. Authorised persons are otherwise the applicant, which requires 24-hour unobstructed access to the track to and from the nearby water treatment works, common rights holders, Burlington Stone (tenants of an active quarry) and others authorised by the Ryedale Estate.
9. The gate includes a pedestrian side gate, which will allow local people and the general public to bypass the vehicular gate on foot. Signs will be placed to advise that the land remains open to public access. A photograph provided by the applicant shows that the land rises steeply on one side of the track and drops steeply on the other. The gate will therefore be sufficient to stop unauthorised vehicles as it will not be possible to drive around it on either side. The applicant has suggested that boulders can be placed either side of the gate to act as a further deterrent to unauthorised access. However, as this is not part of the application I cannot take it into account.
10. I am satisfied that the works will not prevent legitimate local use of the track or unduly interfere with public access on foot along it.

The public interest

Nature Conservation

11. The affected land lies within the Coniston Mines and Quarries Site of Special Scientific Interest (SSSI). Natural England (NE) was consulted by the applicant and advised of an interest in the application but has not commented on it. The works will occupy only a small area of a stone track and there is no evidence before me that leads me to think they will harm any statutorily protected sites or other nature conservation interests.

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.

Conservation of the landscape

12. The application land lies within the Lake District National Park (LDNP) and the Lake District World Heritage Site (WHS). The National Park Authority was consulted by the applicant but has not commented on the application. The applicant's photograph shows the application site and the surrounding area to be exposed and without tree cover and I consider it likely that the gate will be visible from some distance away. Although the gate will be within a mining and quarrying setting, OSS is concerned that the gate's design and materials are out of keeping with the natural beauty of the WHS and that it will be an eyesore that will deface the common. FLD is concerned that a metal structure of the size proposed is inappropriate in the upland landscape and will be somewhat intrusive and incongruous.
13. The applicant has considered other types of gates but believes the proposed gate is the best design and is fit for purpose but has agreed to paint it brown to match the other gates in the area, which is likely to soften its appearance. The landowner considers that preventing unauthorised parking, with its related anti-social behaviour and litter problems, will benefit the visual amenity of the area. Although the gate is somewhat utilitarian in design and will not enhance the visual appearance of the area I conclude, on balance, that given its setting the gate will not be out of keeping and will conserve the natural beauty of the WHS and LDNP so long as it is painted brown; this can be secured by attaching a suitable condition to the consent.

Archaeological remains and features of historic interest

14. The works will affect the site of the Coniston Copper Mines Scheduled Ancient Monument (SAM), which covers a large area. Consent from the Secretary of State for Digital, Culture, Media and Sport is required for any works causing ground disturbance within a SAM and such consent was granted for the gate on 27 August 2019 (reference S00224605). On the basis of the consent HE advises that it has no objection to the proposals. I am satisfied that the works will not harm any archaeological remains or features of historic interest and will help to protect the SAM land from unauthorised vehicle activity.

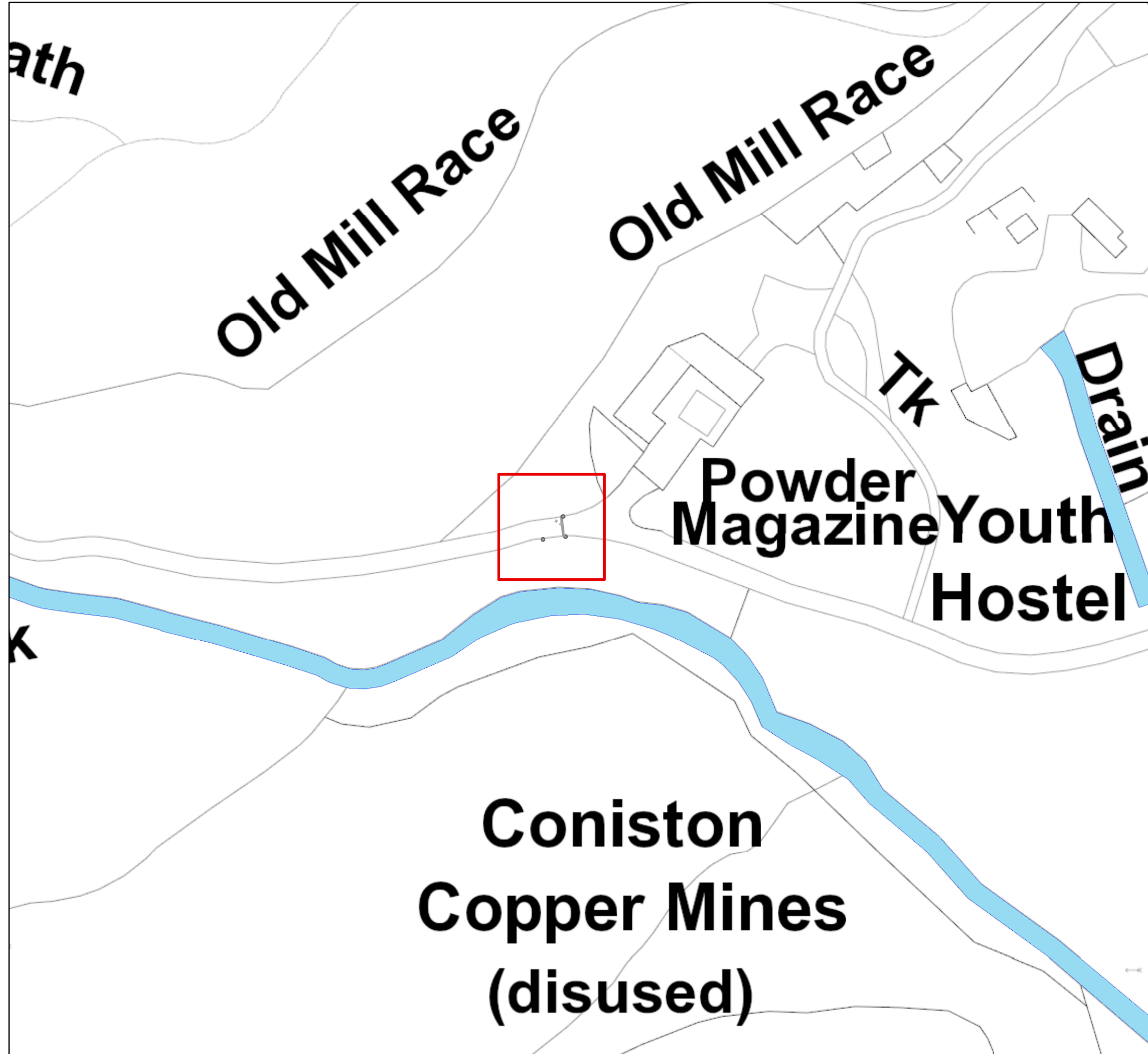
Other matters

15. OSS, FLD and LAF are concerned that there was a lack of pre-application consultation to consider alternatives to the proposed gate, including any to prevent unauthorised use of the track nearer to Coniston village. They are also concerned that the gate will either not achieve its purpose or will move the problem of anti-social vehicular activity further down the track or to elsewhere on the common.
16. The applicant advises that local landowners were consulted and did not favour a barrier nearer to the village as it would be an inconvenience. I am satisfied that a gate at the proposed site will be capable of preventing unauthorised vehicle access as intended. It is not for me to speculate on how unauthorised vehicular activity may, or may not, shift elsewhere once the gate is in place.

Conclusion

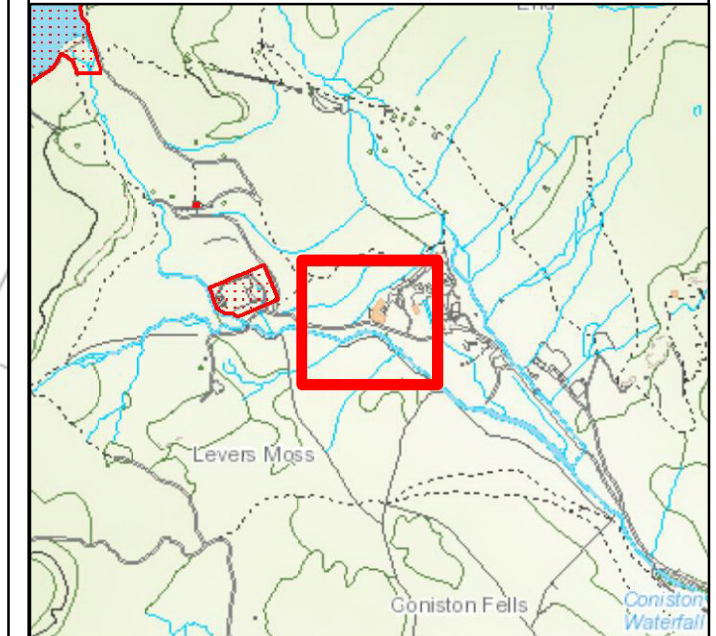
17. I conclude that the proposed works will conserve the landscape and will not unacceptably harm the other interests set out in paragraph 6 above. Furthermore, the works will confer a public benefit by preventing anti-social vehicular activity on SAM and SSSI designated land. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



Paddy End WTW Access Gate

Layout Plan



NGR 328791,498576	SCALE 1:1000 @ A3	DATE 30/07/2019
DRAWN BY MB	SHEET 01	REVISION A

DRAWING NUMBER
UU.ES.E.PADDYENDACCESS.501.02

COPYRIGHT ACKNOWLEDGEMENT
THIS PLAN IS BASED UPON THE ORDNANCE SURVEY MAP BY UNITED UTILITIES WITH THE SANCTION OF THE CONTROLLER OF H.M. STATIONERY OFFICE. CROWN COPYRIGHT RESERVED. UNAUTHORISED REPRODUCTION INFRINGES COPYRIGHT

THIS PLAN IS ISSUED BY UNITED UTILITIES ENVIRONMENT AND SUSTAINABILITY TEAM ON THE CONDITION THAT IT IS NOT COPIED EITHER IN WHOLE OR IN PART OR DISCLOSED TO THIRD PARTIES UNLESS PRIOR WRITTEN AUTHORISATION IS GIVEN