



Application Decision

by Richard Holland

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

Decision date: 10 June 2020

Application Ref: COM/3246346

Allendale Common and land at Mohope Moor and Pinch Park, Northumberland

Register Unit No: CL1

Commons Registration Authority: Northumberland County Council

- The application, dated 30 January 2020, 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 North Pennines AONB Partnership.
 - The works at Coalcleugh/Cowberry Hill comprise:
 - i) erection of 1186m of 1.05m high (approx.) steel wire mesh stock fencing, enclosing 9.63 hectares of common land for a period of 10 years;
 - ii) installation within the fence line of 5 x Watergates, 3 x field gates, 2 x stiles (one with dog gate) and 1 x kissing gate; and
 - iii) guards and stakes to protect 4815 native tree whips (unbranched shoots) planted within the enclosure.
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Decision

1. Consent is granted for the works in accordance with the application dated 30 January 2020 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision;
 - ii. all gates shall comply with British Standard BS5709; and
 - iii. all works shall be removed on or before 10 June 2030.
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 Natural England (NE), Historic England (HE) and the Open Spaces Society (OSS), none of which object to the proposals.

¹ Common Land consents policy (Defra November 2015)

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;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 The Trustees of the Allendale Estates 1999 Settlement, which was consulted by the applicant but has not commented. The common land register records various rights of grazing; rights to dig peat, turves and crow coal; to quarry stone; and to use watering places. The applicant advises that around 30 commoners represented by the Allendale and Hexhamshire Commons Association and the Allenheads and Killhope Commons Association exercise grazing rights. The Associations' representative and the Wellhope Syndicate, which owns sporting (grouse shooting) rights over the common, were also consulted by the applicant but have not commented. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood and public rights of access

8. The proposed fence will run roughly north to south alongside Restricted Byway 549 053 (the byway) and will form the western side and northern and southern ends of a narrow enclosure, within which trees will be planted. An existing boundary will form the eastern side. The purpose of the enclosure is to exclude grazing livestock until the trees are sufficiently established.
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 advises that few people are likely to want to walk through the enclosure as there is no path and there are large vegetated tussocks, small but steep dips and inclines and hidden holes. There is also a series of becks, drains and wet flushes, such that anyone walking through the enclosure is likely to get wet. Nevertheless, the public have a right to walk over the area if they so wish and access into the enclosure is provided at each end. Access from the south will be via a stile with dog gate and from the north via a stile and a kissing gate, which the applicant says is what was requested by local users. The proposed field gates are for stock movement only and the watergates are to keep livestock out rather than to provide public access into the enclosure. No public access points are proposed in the byway section of the fence as the land declines steeply west to east through the width of the enclosure.
10. I conclude that the fence will restrict, but not prevent, access into the enclosure and I consider the proposed access points to be adequate to allow access to continue. The planting will be low density and I am satisfied that the guards and stakes installed to protect the trees will not unduly impede public access through the enclosure.
11. OSS raised concerns that the planted trees just inside the fence might interfere with public use of the byway as they grow. Whilst OSS contends that the byway should be wide enough to allow two horse drawn buggies to pass without impediment, the applicant advises that it is unsurfaced, is exceptionally wet in places, is indistinct for much of its route along the proposed fence line and, in

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.

practice, allows pedestrian access only. The applicant further advises that the planting density is so low and tree growth will be so slow that it is highly unlikely any branches will impinge upon the byway. The applicant confirms that the fence will always be at least 4m from the centre of the byway and that Northumberland County Council Rights of Way officers are content with this. I am satisfied that the fence and planted trees are unlikely to unacceptably interfere with use of the byway.

The public interest

Nature conservation and conservation of the landscape

12. The application land lies within the Allendale Moors Site of Special Scientific Interest (SSSI), and the North Pennine Moors Special Area of Conservation (SAC) and Special Protection Area (SPA). The purpose of the tree planting is to locally increase native species woodland (downy birch, rowan, hawthorn, willow, alder, juniper and Scots pine), which will help to reduce soil deposition into the adjoining river, improve water quality, sequester carbon and provide habitat for the priority species black grouse. It is part of a nature recovery programme to re-establish habitats which are denuded of their original tree cover. The applicant says the area would have been more wooded before local mining activity and widespread grazing reduced tree cover, thus an increase in such cover will be of ecological and environmental benefit.
13. NE advised that it would not be possible to successfully establish trees without exclusion fencing and guards as grazing stock and deer would eat the whips. NE considers the disadvantages of introducing the fencing into the upland landscape will be outweighed by the nature conservation benefits gained and that 10 years is a reasonable length of time to provide protection for the growing trees. I am satisfied that the proposed fencing and guards are needed for a period of 10 years to keep grazing animals away from the trees and are in the interests of nature conservation as restricting grazing animals will increase the chances of successful woodland growth.
14. The application land lies within the North Pennines Area of Outstanding Natural Beauty (AONB) and the fencing will have a temporary detrimental impact on the landscape to a certain extent. The applicant advises that, other than from the byway, the main site line will be from Thornley Gate Road, from which the fence wire will be difficult to distinguish as the materials darken with age. NE considers that the fencing will not be visible from the top of the moor and that any visual intrusion will most likely be reduced as the trees grow. I consider that although the tree stakes and guards will also have a slightly detrimental visual impact, this is also likely to decrease as the trees grow.
15. Planting will be at a low stocking density of 500 stems per hectare and be clumped in random patterns to create a naturalistic effect so that when the guards are removed the trees should look as if the land had undergone a period of natural regeneration. I am satisfied that the proposals will help to ensure the natural beauty of the AONB is conserved in the long term and this outweighs any temporary visual harm.

Archaeological remains and features of historic interest

16. HE confirmed that it had no comments to make. There is no evidence before me to suggest that the works will harm any designated archaeological remains or features of historic interest.

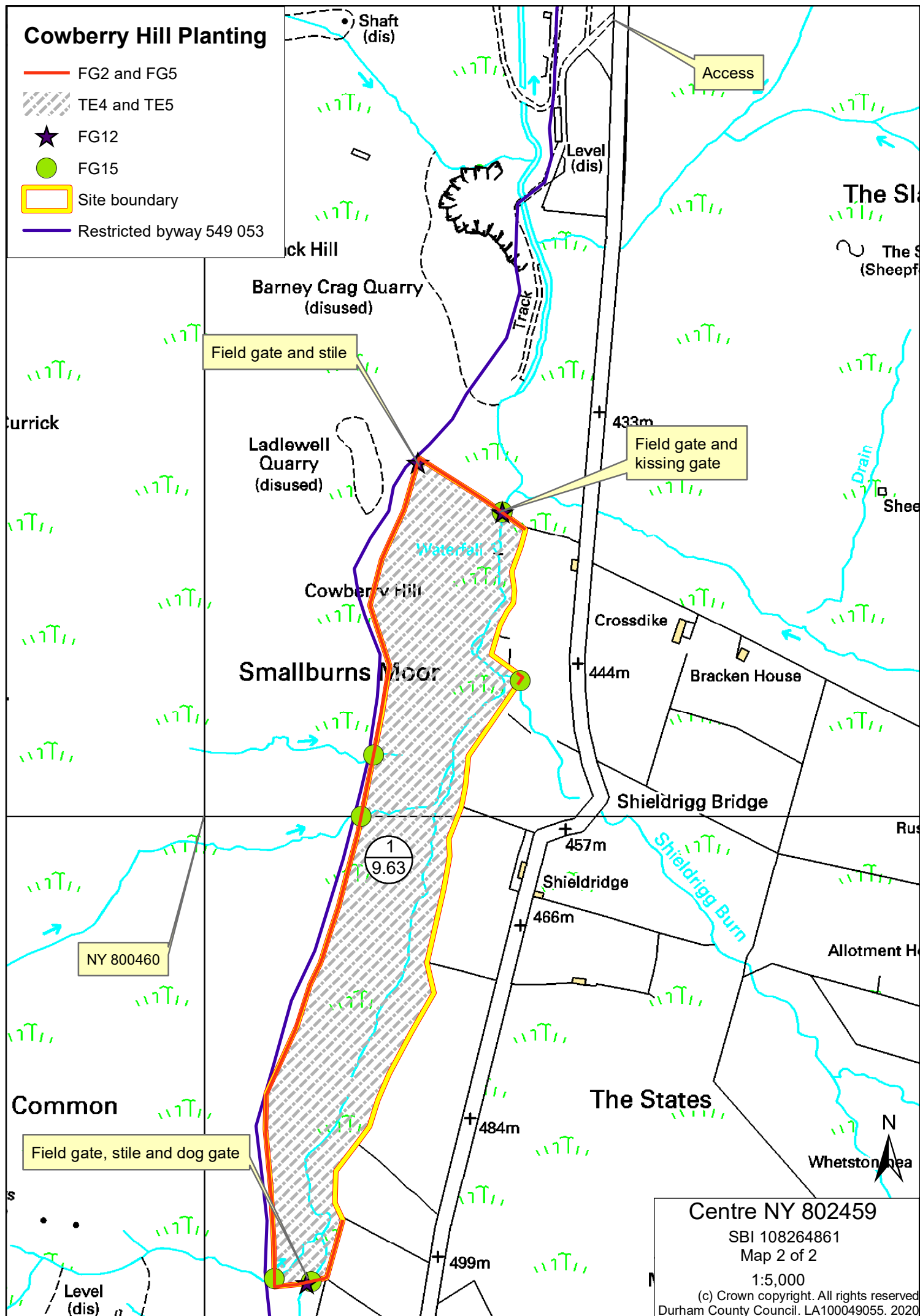
Conclusion

17. I conclude that the proposed works will not significantly harm the interests set out in paragraph 6 above; indeed, they will be in the interests of nature conservation and the landscape. Improving the river water quality is also in the wider public interest and this adds weight to my decision. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

Cowberry Hill Planting

- FG2 and FG5
- TE4 and TE5
- ★ FG12
- FG15
- Site boundary
- Restricted byway 549 053



Centre NY 802459

SBI 108264861

Map 2 of 2

1:5,000

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