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# Application Decision

Site visit made on 27 July 2020

**By Barney Grimshaw BA DPA MRTPI (Rtd)**

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

Decision date: 25 August 2020

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## Application Ref: COM 3236971

### Ugthorpe Common, Ugthorpe, Whitby, North Yorkshire

Register Unit: CL 137

Registration Authority: North Yorkshire County Council

- The application, dated 10 September 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 on behalf of Mulgrave Estate.
- The works comprise the erection of a total of 5289 metres of fencing. A 10 year consent is sought.

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## Decision

1. Consent is granted for the proposed works in accordance with the application and subject to the following conditions:
  - i. the fencing shall be removed on or before 25 August 2030;
  - ii. the common shall be re-instated no later than one month following removal of the fencing;
  - iii. all gates and stiles currently in place shall be replaced with new gates in the same locations and new gates shall be provided at all other points where public rights of way cross the proposed fencing. All new gates shall be constructed and maintained in accordance with the requirements of the relevant British Standard (BS 5709).

## Preliminary Matters

2. I made an unaccompanied visit to the land referred to on 27 July 2020.
3. For purposes of identification only the location of the works is shown marked in red on the attached plan.

## The Application

4. The application is made on behalf of the Mulgrave Estate. It proposes that 5289m of sheep net fencing is erected to allow the common to be grazed. As the common is crossed by the A171 road it is considered to be irresponsible to introduce livestock without fencing. 3704m of the fencing has already been installed to the west of the A171. This fencing is said to have been erected to replace previous fencing in the same location.

5. The common is within a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Special Protection Area (SPA). However, the heather moorland habitat is becoming degraded in areas as a result of the natural succession of invasive scrub, gorse and trees. A programme of conservation grazing is being implemented supported by a Countryside Stewardship Agreement (CSA) with Natural England (NE) in order to keep the moorland free of encroaching scrub. The fencing applied for is required in order to implement the grazing programme safely.

### **Main Issues**

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>1</sup>
  - (d) any other matter considered to be relevant.
7. I will also have regard to the department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy Guidance<sup>2</sup>, which has been published for the guidance of both the Planning Inspectorate and applicants.

### ***Interests of those occupying or having rights over the land***

8. There are 27 commoners with the right to graze varying numbers of sheep on the common and take peat, stones and/or sand and gravel and bracken from the land. Grazing rights are not currently exercised and appear not to have been for some time. Whether this is because of the absence of fencing and consequent danger from the A171 road is not known.
9. No objection has been made to the proposed fencing on behalf of people having common rights over the land.
10. The common is crossed by a number of public rights of way and is designated as Open Access Land over which the public have the right to walk. It is proposed by the applicant that all existing access gates situated on public rights of way will remain and new kissing gates and field gates will be installed in the proposed fence lines.
11. In general terms it would appear that the public right of access to the land will be maintained if the application is approved. The number of access points will inevitably be limited but the nature of existing vegetation around the proposed fence lines would suggest that this is effectively already the case to some extent. It is however important that all access gates are of an appropriate standard and this matter is addressed later.
12. The owner of the land is the applicant for the proposed fencing and believes that it will be of benefit to the land.

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<sup>1</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.

<sup>2</sup> Defra, Common Land Consents Policy Guidance November 2015

13. Overall, it is my view that on the balance of probability the proposed fencing will not have a significant adverse effect on people occupying or having rights over the land.

### ***Interests of the Neighbourhood***

14. In general terms works should only be permitted on common land if 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<sup>3</sup>.
15. The proposed works are temporary in duration albeit intended to be in place for 10 years and it is argued by the applicant that they will result in an improvement of the condition of the common.
16. It is difficult to define the 'neighbourhood' of Ugthorpe Common. A limited number of people live close to it but, the nature of the area and the fact that it lies within a National Park mean that it is of significant wider public interest. In general terms it is likely that the interests of local residents and the wider public are similar and this view is supported by the representations received regarding the application.

### ***Public Interest***

#### *Nature Conservation*

17. The proposed fencing is to be erected on land that is within the North York Moors SSSI which is cited for its upland dwarf shrub habitat. It is also included within the North York Moors SAC and SPA for the presence of the upland dwarf shrub habitat and associated birds, namely Golden Plover and Merlin. The applicant has entered into a CSA with NE, the relevant competent authority, which aims to improve the management of the land so as to restore and maintain the character of the moorland. An important element of this is a programme of conservation grazing to keep the land free of encroaching scrub. The proposed fencing is required to allow livestock grazing safely and the CSA includes specification of the fencing to be erected.
18. It is argued that the proposed fencing will have a beneficial effect for nature conservation on the common. The SSSI is currently considered to be in an unfavourable condition as a result of too high a cover of Purple Moor-grass. NE accepts that light grazing can be an effective mechanism for reducing cover of Purple Moor-grass and could restore the area to a favourable condition over a number of years. The CSA stipulates a grazing regime that will prevent overgrazing by limiting the number of livestock and the time they will be present.
19. Some objectors question the nature conservation benefits of a grazing programme but I have no basis on which to disagree with the view of NE in this regard.
20. Overall, it is my view that the proposed fencing will enable controlled grazing of the land which will be potentially beneficial for nature conservation.

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<sup>3</sup> Defra, Common Land Consents Policy, para.3.2

### *Landscape*

21. The land affected by the proposed works lies within the North York Moors National Park, the landscape of which features wide sweeping views of open moorland. The erection of fencing will inevitably affect this character to some extent. However, much of the proposed fencing is already in place and its impact can therefore be readily assessed.
22. The type of fencing proposed and already in place is of a fairly open nature and a little over 1m high. In many sections, vegetation close to the fence line is higher than the fence and the fence is not or will not be visible from many viewpoints. I also noted that fencing is present in many other parts of the moorland. Nevertheless, it has to be acknowledged that the proposed fencing will have some additional impact on the landscape.
23. However, the fencing already in place does not restrict the sweeping views of the open moorland and has a limited impact on the character of the landscape. Accordingly, it is my view that the proposed fencing will not have a significant adverse effect on the landscape.

### *Public access*

24. As already stated, public access to the areas to be fenced will be to some extent limited in that access will only be available at certain points. However, although access is theoretically available at any point at present, in practice vegetation already limits the number of points at which access to the land to be enclosed is possible to some extent.
25. Much of the fencing is already in place along with access for public rights of way. The application states that all gates and stiles currently in place will be replaced with new items in the same locations. The application thus raises the possibility of access arrangements at these points being improved where they do not accord with present recommended standards. Fence lines are also to be set back a minimum of 3m from roadsides which should allow walkers and riders sufficient space to await an opportunity to cross.
26. It is my intention that, if the application is approved it should be conditional on access infrastructure at all access points being provided and maintained to the requirements of the relevant British Standard (BS 5709).
27. Some objectors have expressed concern that the presence of grazing cattle on the land would present a danger to horse riders and walkers, particularly those accompanied by dogs. They refer to incidents in which walkers have been injured or even killed by cattle. Whilst such unfortunate incidents have indeed occurred, they are rare although it is very common for public rights of way to cross land on which cattle are grazing. Also, in this case the CSA limits the number of cattle that can be introduced to a maximum of 1 per hectare and they will not be present at all times of the year.
28. Overall, it is my view that the proposed fencing will not have a significant adverse effect on public access.

### *Archaeological remains and Features of Historic Interest*

29. There is a scheduled ancient monument, Loose Howe, on land proposed to be enclosed to the east of the A171. Historic England, the relevant competent authority, was consulted on the application and did not wish to make any

comment. The National Park Authority commented that grazing of the site would be considered positive although not essential.

30. No other archaeological remains or features of historic interest are known to be present on the land affected by the proposed fencing.
31. Overall, the proposed fencing is likely to have no adverse effect on archaeological remains or features of historic interest.

***Other relevant matters***

32. The application is for a period of 10 years. I suspect this is a somewhat arbitrary time period as the beneficial effect of grazing may take an unspecified number of years to be seen. Nevertheless, I have no basis upon which to suggest an alternative period and therefore I intend to impose conditions to the effect that after 10 years the fencing should be removed and the common restored.

**Conclusions**

33. Having regard to these and all other matters raised in written representations I conclude that all the criteria for the approval of the proposed works have been satisfied and the application should therefore be approved, subject to the conditions at paragraph 1.

*Barney Grimshaw*  
INSPECTOR

