
Application Decision

by Richard Holland

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

Decision date: 13 May 2020

Application Ref: COM/3245053
Seabanks and Foreshore, Cumbria

Register Unit No: CL 474

Commons Registration Authority: Cumbria County Council

The application, dated 9 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 Allerdale Borough Council.

The works comprise:

- (i) the resurfacing of 1.6 km of an existing, unbound path with a bound, bituminous material; and
 - (ii) 1.6 km of temporary fencing for a 3 to 4 month duration.
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Decision

1. Consent is granted for the works in accordance with the application dated 9 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 temporary fencing shall be removed on completion of the works.
2. For the purposes of identification only the location of the works is shown as a black line within the common land boundary coloured light blue 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 Historic England (HE), 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);

¹ Common Land Consents policy (Defra November 2015)

- 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 applicant confirms that the owners of the common agree to the works and registered rights of grazing over the common are not exercised. I am satisfied that the works will not impact the interests of those occupying or having rights over the land.

The interests of the neighbourhood, and the protection of public rights of access

8. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people and is closely linked with the interests of public rights of access. The path forms part of Hadrian's Cycleway (National Cycle Network Route 72) and is designed to be used by pedestrians and cyclists. The applicant explains that consent (application reference: COM 370) for this stretch of path was given for an unbound surface. Cumbria Highways maintains the path and considers this section of the route is not suitable to accommodate those on road bikes and has received several complaints from cyclists about the uneven surface. It is of the view that resurfacing the path with a bound, bituminous material will improve the user experience for cyclists as well as those in wheelchairs and with pushchairs. Temporary fencing is required for safety and good construction practice while the works are being undertaken and will be removed upon completion. The path will be closed in sections for around 3 to 5 days. The works are expected to take around 3 to 4 months and disruption will be minimised by avoiding the peak summer season.
9. The OSS is concerned that the works will encourage cyclists to travel faster and increase potential conflict with other users. In response the applicant explains that the works will improve consistency of access, encouraging more people to enjoy and access the coastline and providing wider public benefits such as health and well-being, as well as sustainable economic development. The use of the path will be managed with signage in line with the bound section of the path to the south.
10. The surface of a cycle path is a key factor in user experience and a bound surface is more inclusive and accessible than an unbound surface. Many, if not most, cycle paths have a sealed surface and I consider that the bound surface proposed will not lead to a significant conflict with other users, especially as the use will be controlled by signage to some extent. I accept that temporary fencing is needed to maintain health and safety and facilitate the resurfacing works. I consider that the impact of the construction works will be limited given that they are of short duration and will be undertaken in sections to minimise disruption and the temporary fencing will be removed upon completion of the works. I am satisfied that the works are likely to improve public access, particularly for cyclists, and are in the interests of the neighbourhood.

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.

Nature conservation and conservation of the landscape

11. The site lies within Solway Coast Area of Outstanding Natural Beauty (AONB), Silloth Dunes and Mawbray Bank Site of Special Scientific Interest (SSSI) and Ramsar Natural 2000 sites (including Upper Solway Flats and Marshes Special Protection Area (SPA), Solway Firth Special Area of Conservation (SAC), Upper Solway Firth Flats and Marshes Ramsar Site). The works will resurface part of an existing path using the same materials as other parts of the route, including a section recently granted consent in December 2019 (application reference: COM 3234072).
12. NE comments that the location of the works, 3km south of the SSSI, could be appropriate habitat to support important and established species such as Natterjack Toads and Great Crested Newts. NE advise that a survey should be conducted to inform any licences or mitigation measures that may be required and recommend that habitat enhancement measures are considered alongside the works. NE is concerned that the works may result in adverse impacts upon the visual and landscape character of the AONB and advise that the Solway Coast AONB is consulted. The OSS comments that the works would be an intrusion on the AONB and would urbanise the area.
13. In response the applicant has submitted a letter from the Solway Coast AONB advising that it supports the project and agrees that the current path is not fit for purpose. It confirms that the works meet with several objectives of the AONB Management Plan and as the majority of the pathway runs either on carriageway or adjacent to the B5300, the impact on the landscape and the special qualities of the Solway Coast AONB is minimal. In addition, as this is an existing path, there is no loss of common land as public access will not be restricted. The applicant confirms that the works will be undertaken in full accordance with the regulations and with the appropriate licencing in place.
14. The works are merely to replace the unbound surface of the existing path with a bound surface. I note the concerns raised by NE, however in view of the applicant's assurances and the comments of the Solway Coast AONB, I conclude that the works will conserve the natural beauty of the AONB and will not harm nature conservation interests.

Archaeological remains and features of historic interest

15. HE does not object to the application. I am satisfied that there is no evidence before me to indicate that the works will harm any archaeological remains and features of historic interest.

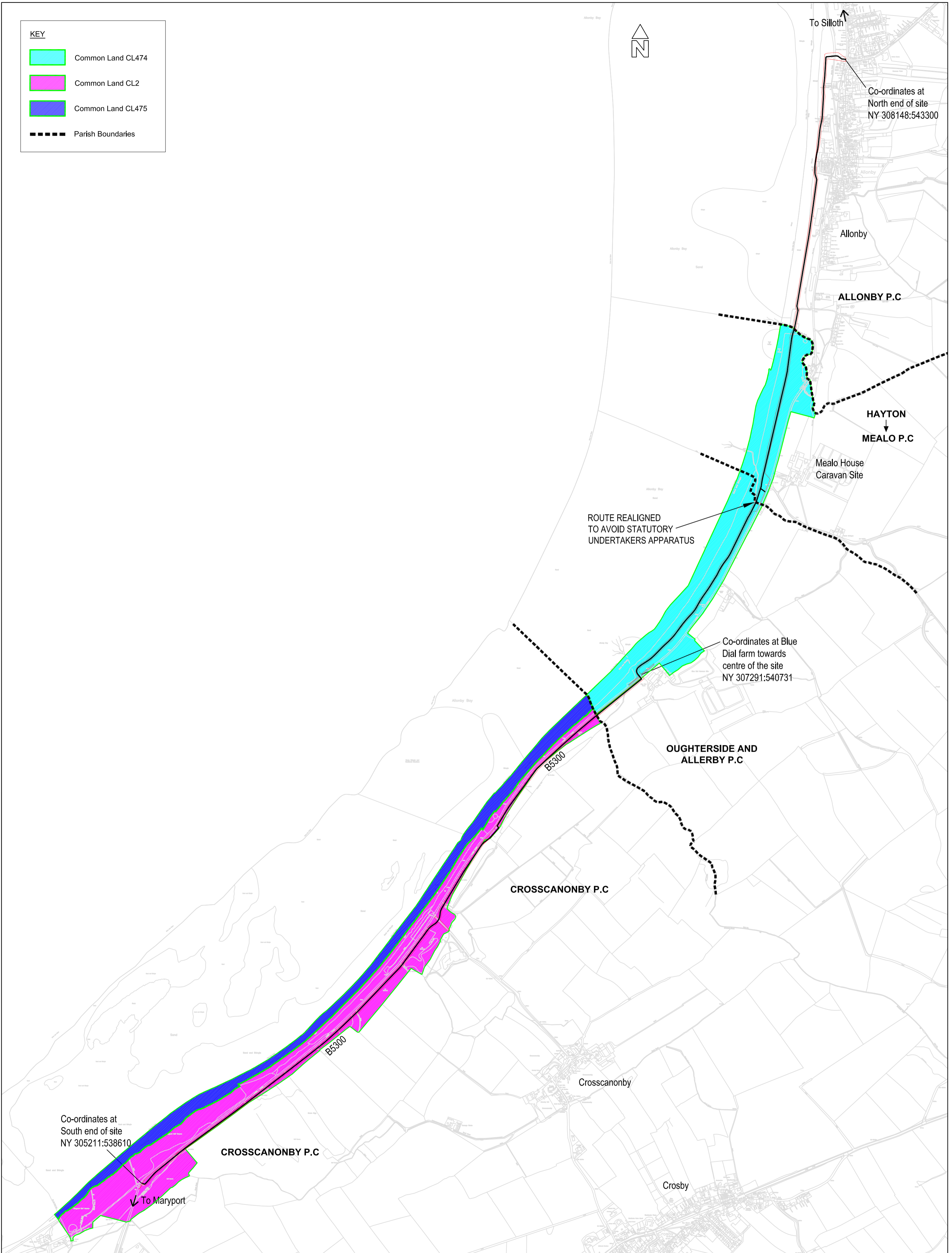
Conclusion

16. I conclude that the works are likely to benefit public access and the neighbourhood and conserve the natural beauty of the AONB and will not harm the other interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the conditions at paragraph 1.

Richard Holland

KEY

- Common Land CL474
- Common Land CL2
- Common Land CL475
- Parish Boundaries



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Hadrian's Cycleway - Closing the Gap - B5300 Maryport to Allonby Common Land Plan

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