



## Application Decisions

**by Susan Doran BA Hons MIPROW**

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

Decision date: 27 August 2020

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### **Application Ref: COM/3236938**

#### **Gooseholme, Kendal**

Register Unit No. CL153 & 1899 Scheme of Management

Registration Authority: Cumbria County Council

- The application, dated 4 September 2019, is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
- The application is made by Rachel Lightfoot, PFK Planning on behalf of Matthew Pearson, Cumbria County Council, Infrastructure Recovery Programme, Parkhouse Building, Kingmoor Park, Carlisle.
- The works comprise:  
The construction of a Disability Discrimination Act compliant ramp to a replacement bridge across the River Kent and stepped access towards Gooseholme Park together with temporary works during the construction phase.

#### **Decision: Consent is granted for the works in accordance with the application and subject to the following conditions:**

- The works shall commence no later than 3 years from the date of this decision
  - All fencing shall be removed, and the land shall be fully reinstated, within one month from the completion of the work
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### **Application Ref: COM/3236939**

#### **New Road, Kendal**

Register Unit No. CL68

Registration Authority: Cumbria County Council

- The application, dated 4 September 2019, is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
- The application is made by Rachel Lightfoot, PFK Planning on behalf of Matthew Pearson, Cumbria County Council, Infrastructure Recovery Programme, Parkhouse Building, Kingmoor Park, Carlisle.
- The works comprise:  
The construction of a Disability Discrimination Act compliant ramp to a replacement bridge across the River Kent together with temporary works during the construction phase.

#### **Decision: Consent is granted for the works in accordance with the**

**application and subject to the following conditions:**

- The works shall commence no later than 3 years from the date of this decision
  - All fencing shall be removed, and the land shall be fully reinstated, within one month from the completion of the works, with the exception of the land immediately adjacent to Melrose Place
  - The land immediately adjacent to Melrose Place shall be restored to grass within 3 years of the completion of the works, or the conclusion of adjacent flood relief works by the Environment Agency, whichever is the later
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**Preliminary matters**

1. These applications were scheduled to be determined by means of an accompanied site visit that was due to be held on 26 August 2020. Unfortunately, the introduction of the Covid-19 lockdown restrictions and social distancing rules on 23 March 2020 meant that the holding of such events needed to be reconsidered. In order to progress the applications without delay, all interested parties were invited to consider whether a change of procedure would be acceptable in these circumstances. As a result, it was decided that the applications would be determined on the basis of the papers on file and without a site visit. I am grateful to all concerned for their assistance in making this alternative arrangement during this difficult time. In reaching my decisions I take into account all of the submissions made.
2. The objectors, the Friends of the Lake District ('the FLD') and the Open Spaces Society ('the OSS'), comment that the applications could have been made as one rather than separately. For the purposes of this decision and to avoid unnecessary repetition, I have considered the applications together. Nevertheless, I have reached separate decisions for each application. I am aware that these schemes are linked to a proposed flood defence scheme at this location. However, it is only the Gooseholme and New Road Commons applications that are before me for consideration.
3. Part of the land affected by the Gooseholme Common application is not registered common land but subject to a scheme made for the regulation and management of that land under Part I of the Commons Act 1899. However, I believe this is also subject to a requirement for consent under section 38 of the Commons Act 2006 (the 2006 Act).
4. In addition to the construction of a ramp accessing the bridge on either side of the River is reference to the provision of steps. However, as the FLD and the OSS (both of whom expressed general support for the proposals) pointed out in their submissions there was no plan showing the full extent of the steps and the ramps and the exact location of the potential steps. To this end a replacement plan was submitted by the Applicant and an opportunity afforded to comment on it.
5. For the purposes of identification only, the location of the proposed works is shown on the attached (replacement) plan.

***The Applications***

6. The Gooseholme Common application concerns an area of approximately 57 sq. metres with a mix of permanent and temporary proposed works, the latter required during an 8-month construction phase. The permanent works include the construction of a replacement bridge for one damaged following Storm Desmond in January 2016 together with an access ramp, both structures being Disability Discrimination Act ('DDA') compliant, and wide enough to accommodate pedestrians and cyclists. In addition, stepped access towards Gooseholme Park is to be provided. The proposal also ties in with the Environment Agency ('EA') flood defence scheme by integrating the flood walls with the ramp arrangement. The temporary works include a compound area to facilitate construction of the new footbridge and comprise at most 3,400 sq. metres for the compound and 1080 sq. metres for a temporary aluminium access track approximately 200 metres in length (from the edge of the temporary compound).
7. The New Road application concerns an area of approximately 183 sq. metres, and the temporary works approximately 400 sq. metres, with the latter required during the 8-month construction phase. The temporary works include a compound area. As above, together with the construction of a replacement bridge is a DDA compliant ramp to replace the existing non-compliant ramp leading to the bridge. Similarly, the proposal ties in with the EA's flood defence scheme by integrating the walls within the ramp arrangement.
8. Although the New Road application refers to the possibility of a stepped access to be provided this is not included in the plans due to a variety of concerns including the constraints of land ownership, associated parking interests, rights of access, and safety adjacent to Melrose Place. Whilst the Applicant has confirmed that they are not in a position to provide the stepped access as part of these works, I understand it is to be the subject of a future section 38 application for works on New Road Common once the various concerns have been addressed.
9. The OSS invites me to consider granting consent for the steps<sup>1</sup> on the basis that no harm can arise from granting consent for that purpose without the requirement for a further application. However, I do not consider it would be appropriate for me to do so. In view of the concerns highlighted by the Applicant (paragraph 8 above), I consider it would be prudent to await the outcome of their investigations, and future application.

## **Background**

### **Main Issues**

10. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land, including the erection of fencing; the construction of buildings and other structures; the digging of ditches, trenches and the building of embankments; and, the resurfacing of land if this consists of laying concrete, tarmacadam, coated roadstone or similar material.
11. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application:

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<sup>1</sup> If I am minded to grant consent for the 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, which includes the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
  - (d) any other matters considered to be relevant.
12. I have had regard to Defra's Common Land Consents Policy Guidance<sup>2</sup> in determining this application, 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

13. There are no registered rights of common on either Gooseholme or New Road Commons. I understand that the works have been designed so that there is no interference with rights in relation to the use of the land. In particular the registered interest for the parking of vehicles/access near Melrose Place (New Road Common) will not be adversely affected. Further, whilst a bi-annual fun fair which uses the Commons may need to be temporarily relocated during the works, the rights are maintained. Overall, I am satisfied the proposals have no negative impact on those with rights or interests in the land of either Gooseholme or New Road Commons.

### ***The interests of the neighbourhood***

14. Together, the proposals will benefit the wider and local community by reinstating (and maintaining) the link across the River Kent which connects Kendal town centre with the eastern part of the town. Historically there has been a bridge at this location and the proposal to reinstate it will have a positive benefit enabling people to access the commons either side of the River again, via the bridge. Further, the interests of the neighbourhood are enhanced by the provision of DDA compliant access to both sides of the bridge by means of the ramps.
15. I conclude the proposals will positively benefit the neighbourhood, local people will be able to use Gooseholme and New Road Commons as they did previously, and the proposed works will benefit future use and enjoyment of the commons. Accordingly, there is no interference with rights in relation to the interests of the neighbourhood as regards either of the commons.

### ***The public interest***

#### *Nature conservation*

16. The River Kent is a Site of Special Scientific Interest ('SSSI') and Special Area of Conservation ('SAC'). However, whilst there are no potential benefits to

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<sup>2</sup> Common Land Consents Policy Guidance (Defra July 2009)

nature conservation identified to result from either of the proposals, there is no interference with this aspect of the wider public interest.

#### *Conservation of the landscape*

17. As regards the temporary works, the land in use will be adjusted to increase the available common land and access across the commons during the work period. There will be 2-metre-high fencing around the temporary compounds, netted to reduce visibility into the working area, to maintain public safety during the works on Gooseholme Common and on New Road Common where the compound is situated close to Melrose Place. In addition, there will be a temporary access track on the Gooseholme side. I consider the measures in place will reduce the impact on the landscape, so far as is possible, during the construction phase.
18. As regards the permanent works, I understand that alternative proposals were considered for the DDA compliant ramps on both commons, but that the proposals best meet the need to integrate the scheme with the EA's flood wall. Further, much of the ramp on the Gooseholme Common side of the bridge will occupy land outside the common land boundary. Here, landscaping works include planting and seating, and the proposals have no impact on the neighbouring putting green. In respect of New Road Common, the proposal does not alter the current situation whereby the common is divided at the bridge access. In both cases, the impact on the conservation of the landscape is proportionate.

#### *The protection of public rights of access*

19. Both commons enjoy an established use as public open space. There would be a temporary loss of access to parts of both commons during the construction phase, but this is estimated to be for only some 8 months. If consent is granted there would be a loss of common land in providing the permanent works. For Gooseholme Common this comprises 57 sq. metres of common land for the ramp and steps, and for New Road Common 183 sq. metres for the ramp. However, alongside this is a significant public benefit in terms of public rights of access. The proposal will re-establish the bridge connecting both commons either side of the River, thereby retaining the historic link between them. Documentary evidence shows that a bridge has existed at this location since around 1875. Furthermore, it will enhance public access through the provision of the ramps which will benefit more users in terms of accessibility, including for cyclists. In addition, the proposals for Gooseholme Common include steps adjacent to the riverside beside the bridge at the northern end of the ramp.
20. The design of the bridge is such that future damage to the structure from flooding events and the local flood risk will be reduced. As a consequence, public rights of access will be further protected by the proposal which provides access to the bridge.

#### New Road Common

21. Both Objectors raised concerns about the positioning of the ramp on the New Road Common side of the River, which takes up part of the main area of the common land here. Its proposed location is to the south west side of the bridge structure. However, to the north east of the proposed bridge is an area

- of hard standing and car parking, adjacent to Melrose Place. The Objectors consider it offers a more suitable location, were the ramp be moved further to the north, since it is currently an under-used and less attractive part of the Common where the proposed works would have little adverse effect on the houses.
22. I understand that the ramps need to take account of the height of the associated flood wall that is to be constructed by the EA. Placing the ramp on the land immediately adjacent to Melrose Place was considered by the Applicant. However, it was discounted for a number of reasons: the available space is insufficient to accommodate a DDA compliant ramp (taking into account the flood wall and bridge height to reduce flood risk); there would be privacy issues for the occupiers of the adjacent properties; there are legal issues concerning parking outside Melrose Place that also restrict the available space; more turns would be required in the ramp and the width would be compromised. Accordingly, the design chosen by the Applicants afforded the least impact on users. The area in front of Melrose Place is to be developed in a similar manner to the rest of New Road as part of the flood alleviation scheme.
23. It seems to me that alternatives to the proposal that have been explored by the Applicant would be hampered by a lack of available space to the north of the proposed site and/or result in a greater negative impact and/or intrusion onto both the Common and the occupiers of dwellings at Melrose Place. There would be a loss of views to the river and it would be necessary to provide a ramp structure integrated with a bridge design that does not impact adversely by exacerbating the flood risk. Other options considered, to create a dead-end section along the river wall that would trap debris, or realigning the ramp along the river wall, would introduce additional turns. This may result in compromising user safety, for example between walkers and cyclists.
24. The proposed ramp is, I understand, the smallest possible design, taking into account drop, width and gradient, to meet the requirements. In addition, the Applicant has outlined technical issues regarding the suitability of the land immediately adjacent to Melrose Place that further steer away from this site as a location for a possible ramp structure. The proposed arrangements ensure the ramp exit off the bridge is surrounded by flood walls and closed flood gates in the event of flood water inundation.
25. Accordingly, whilst I agree it is not desirable to have a small area of common that is potentially under-used and isolated from the remainder, on the available information there is no viable alternative that would meet the overall requirements of the proposal.

*Archaeological remains and features of historic interest*

26. Neither proposal affects any Archaeological remains or features of historic interest associated with either of the commons.

*Conclusions on the public interest*

27. Overall, I am satisfied that there are no adverse impacts on the public interest as regards either of the commons that would cause me to conclude the applications should not be granted.

*Other relevant matters*

### New Road Common

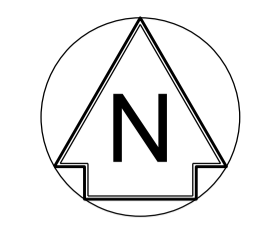
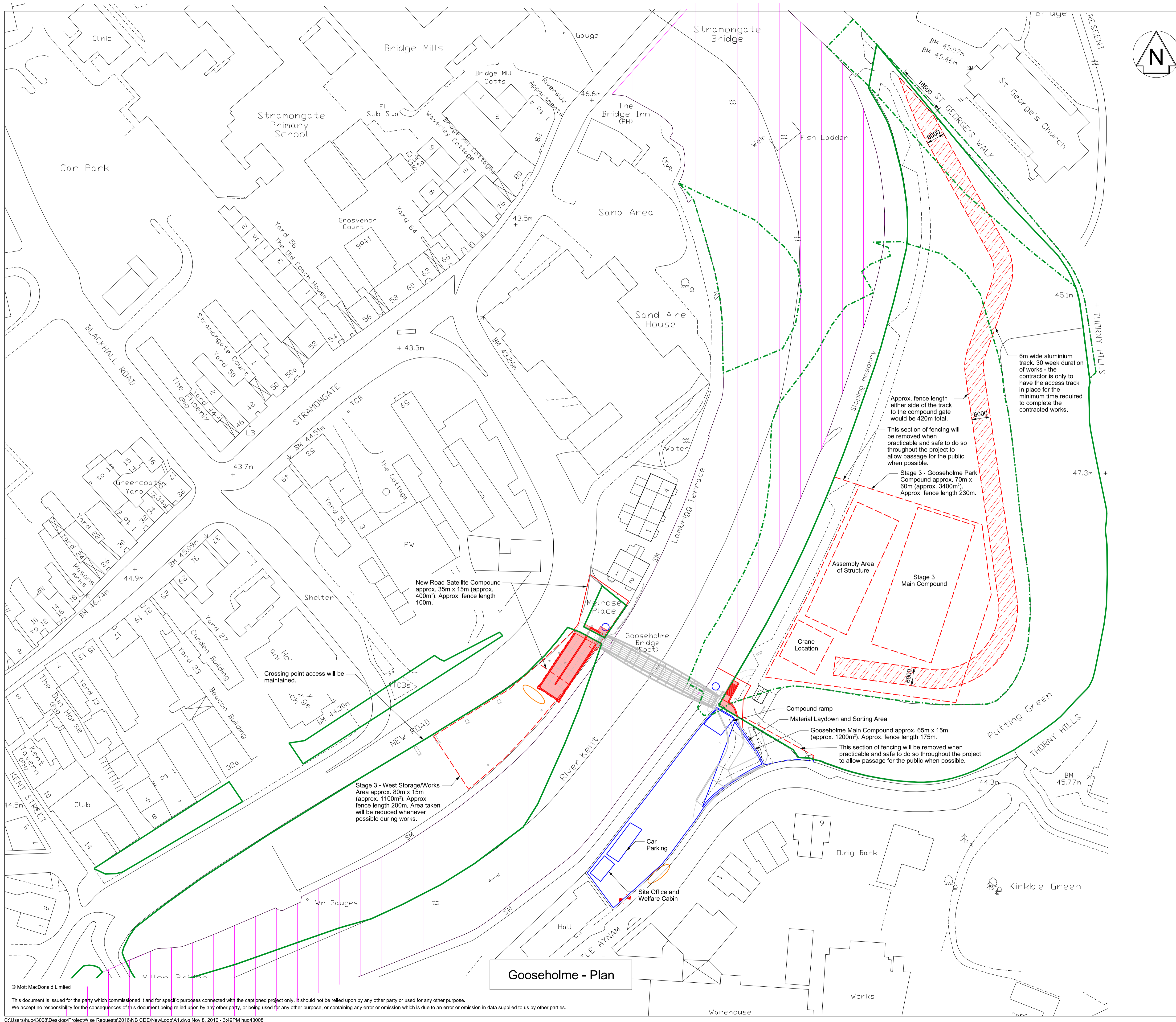
28. The Objectors would prefer that the area of common land in front of Melrose Place be reinstated with grass following completion of the proposed scheme. However, this may not be practicable in the short term given that the EA will require access to construct the flood wall. Nevertheless, I consider it is open to me to include a condition requiring that the land immediately adjacent to Melrose Place be restored to grass within 3 years of the completion of the works or the conclusion of adjacent EA flood relief works, whichever is the later.

### **Conclusion**

29. Paragraph 4.6 of defra's policy guidance advises that commons should be maintained or improved as a result of the works being proposed. Furthermore, paragraph 4.7 advises that in deciding whether to grant consent to carry out works on common land, the Secretary of State will wish to establish whether the proposed works are consistent with the use of the land as common land.
30. In assessing these applications, I am required to consider whether they propose the best outcome. If I consider there is a better approach it is open to me to impose conditions to improve the outcome. Alternatively, I may refuse the applications, or either one of them if, having applied the statutory criteria, there are good grounds for doing so.
31. I conclude the proposed works will not significantly harm the interests set out in paragraph 9 above as regards both Gooseholme Common and New Road Common, for the reasons given. Indeed, public rights of access will be secured and enhanced, there will be positive benefits to the interests of the neighbourhood as use of both commons will be facilitated, and there will be no significant adverse effect on the conservation of the landscape. Overall, the proposals will positively benefit public enjoyment of the commons.
32. Consent is therefore granted for the works on Gooseholme Common subject to the conditions set out above.
33. Consent is therefore granted for the works on New Road Common subject to the conditions set out above.

*S Doran*

**Inspector**



- Notes
- All dimensions are shown indicatively in millimetres (unless noted otherwise).
  - Buried services are indicative only.
  - Existing topography based upon topographical survey undertaken by Central Alliance on behalf of Story Contracting - June 2018.
  - Common Land and Scheme of Management boundaries have been drawn using historical maps provided by Cumbria County Council, and are indicative only.

Compound Areas	
Compound	Area (m <sup>2</sup> )
Little Aynam	1200
New Road Satellite	400
Gooseholme Park	3400
West Storage/Works Area	1100
<b>Total</b>	<b>6100</b>

- Key to symbols
- Permanent Works within Common Land Area
  - Permanent Works not within Common Land Area
  - Common Land
  - 1899 Scheme of Management
  - Gooseholme Footbridge
  - SSSI/SAC Boundary
  - Gooseholme Main Compound Outside of Common Land Area
  - Emergency Muster Location
  - Emergency Spill Kit
  - Site Gates
- Stage 3
- Gooseholme Compound & West Storage/Works Area within Common Land Area
  - 6m Wide Aluminium Track

Fence Lengths	
Compound	Length (m)
Little Aynam	215
New Road Satellite	100
Gooseholme Park	235
Access Track	420
West Storage/Works Area	200
<b>Total</b>	<b>1125</b>

Rev	Date	Drawn	Description	Ch'k'd	App'd
P01.1	20/08/19		Common Land Map		

Status Stamp

**NOT FOR CONSTRUCTION**

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Client

**STORY** Cumbria County Council

Title

**Gooseholme Footbridge  
Common Land  
Gooseholme Plan**

Sheet 1 of 1

Designed	--	Eng check	--
Drawn	--	Coordination	--
Dwg check	--	Approved	--
MMD Project Number	399629	Scale at A0	AS SHOWN
Suitability Description	Work In Progress	Security	STD
Drawing Number	399629-MMD-00-XX-DR-T-1011	Suit. Code	S0
		Revision	P01.1

**Gooseholme - Plan**

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