

Application Decision

Site visit made on 3 November 2020

By Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 8 December 2020

Application Ref: COM/3253102

Crosby Ravensworth Commons

Register Units: CL10, CL11 and CL7

Registration Authority: Cumbria County Council

- The application, dated 14 May 2020 is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
 - The application is made on behalf of the Crosby Ravensworth Commoners Association.
 - The works comprise the erection of a total of 15,577 metres of new temporary fencing for a period of 15 years and the extension of consent for 2,369m of existing fencing for a further period of 10 years.
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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 and associated structures shall be removed and the common re-instated no later than 31 December 2035;
 - ii. gates of appropriate types shall be provided at all points where public rights of way or other tracks cross proposed new fence lines. The design of the gates shall be in accordance with BS5709.

Preliminary Matters

2. I made a visit to the land referred to on 3 November 2020 when I was able to view the sites of the proposed works and the existing fencing from various points.
3. For purposes of identification only, the locations of the works are shown marked in red on the attached plan.

The Application

4. The application relates to land within 3 commons, CL10 Crosby Ravensworth Fell, CL11 Hardendale Fell and CL7 Bank Moor (Westmorland). It is made on behalf of the Crosby Ravensworth Commoners Association (CRCA). It proposes the erection of 15,577m of fencing to create enclosures within which scattered scrub habitat can be established. It is proposed that the fencing will remain in place for 15 years to exclude livestock and deter wild deer so as to prevent grazing of newly planted trees and shrubs.

5. Two further areas of fencing have been in place for 10 years already and were granted consent for 15 years. It is considered that the vegetation and scrub planting in these areas will not have reached the required condition to withstand livestock grazing in 5 years' time and the additional 10 years requested will mean that this fencing will be due for removal at the same time as the proposed new fencing.
6. The majority of the commons lie within a Special Area for Conservation (SAC) and a Site of Special Scientific Interest (SSSI). Scattered scrub creation is a priority at this site and is one of the conservation objectives for the SAC.
7. The CRCA in association with the landowner, Lowther Estate Trust, intends to enter into a Countryside Stewardship Agreement (CSA) and is working with Natural England (NE) to achieve sustainable management of the SAC and SSSI through the Stewardship scheme. The benefits from implementing the fencing, planting and stock management proposals which will be included in the scheme are said to include supporting commoning, hill farming and rural communities, reducing flood risk, soil conservation and mitigating climate change.

Main Issues

8. 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;¹
 - (d) any other matter considered to be relevant.
9. I will also have regard to the Department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy Guidance², which has been published for the guidance of both the Planning Inspectorate and applicants.

Interests of those occupying or having rights over the land

10. The application is made on behalf of the CRCA and in association with the landowner. There are currently 17 active graziers exercising common rights on the commons, grazing mainly sheep and some cattle. There are a further 5 inactive graziers some of whom have let their grazing rights to active graziers. In addition, there are rights for a small number of geese and rights of turbary which are not currently exercised.
11. I do not know if all those with common rights are represented by the CRCA, but no commoner has raised any objection to the application.
12. The public also has the right of access to the commons by way of several public rights of way and more generally. The effect of the proposals on this right is considered later.

¹ 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.

² Defra, Common Land Consents Policy Guidance November 2015

13. In general terms, the interests of those occupying or having rights over the land are unlikely to suffer any significant adverse effect as a result of the proposed works.

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 impact³.
15. The proposed works are temporary in duration albeit intended to be in place for 15 years and it is argued by the applicants that they will result in an improvement of the condition of the commons and confer wider benefits.
16. It is difficult to define the 'neighbourhood' of the commons. A limited number of people live close to them 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 works fall within the Crosby Ravensworth Fell SSSI and the Ashby Complex SAC. These are national and international designations respectively and indicate the importance of the area for nature conservation.
18. The application is supported by a report prepared by Bowfell Consulting Ltd which describes the potential benefits to the biodiversity of the commons that will result from the planting that will be enabled as a result of the application.
19. NE, the official body responsible for advising on the public interest of the commons regarding the natural environment, has stated that the consultant's assessment is correct and that the proposals will enhance the SSSI and SAC. It is considered that the proposed areas of native scrub will be beneficial for the designated features of the area and for biodiversity in general.
20. NE has carried out an assessment of the proposals under Regulation 24 of the Habitats Regulations 2017 and has concluded that the proposals will not have an adverse effect on the SAC and will assist with the achievement of the site's conservation objectives. NE has also assessed the proposals in accordance with Section 28 of the Wildlife and Countryside Act 1981 and concluded that no detriment to the SSSI will result.
21. One of the areas enclosed by existing fencing is limestone pavement and the extension of the permission is to allow the limestone pavement vegetation and grassland to recover from excessive grazing which threatened its long-term quality. The limestone pavement and grassland habitats are notified features of the SSSI and SAC. NE has expressed the view that the recovery of both areas enclosed by existing fencing will not have reached a satisfactory condition in 5 years' time and the extension of the consent is therefore appropriate.

³ Defra, Common Land Consents Policy, para.3.2

22. NE is carrying out an Environmental Impact Assessment (EIA) in accordance with the EIA (Agriculture) Regulations 2017. One objector has expressed concern that this was not done before the application was made, however, NE has confirmed that the process is being followed correctly.
23. Overall, it is my view that the proposals will have significant benefits for nature conservation.

Landscape

24. The commons lie mainly within the Yorkshire Dales National Park. A Landscape and Visual Impact Assessment (LVIA) of the proposals was carried out by an independent consultant on behalf of the applicants.
25. The landscape is generally open with isolated trees. Scrub is also a natural part of this landscape but has not successfully regenerated in recent years as a result of grazing pressures. The planting which will be enabled by the proposed works has been designed to mimic the natural landscape.
26. In general, the erection of fencing on open common land is discouraged but, where it is necessary, care should be taken in the design and siting of fences to minimize any adverse impact on the landscape. In this case the fencing proposed is stock fencing 1.1m high, consisting of wooden posts and sheep netting with a plain single top wire erected between strainer posts. However, it is stated that barbed wire may be used for the top wire in areas where there will be frequent passage of grazing cattle, but this will not be used adjacent to public rights of way. Care has also been taken to avoid siting fences where they will be visible on the skyline.
27. The existing fencing for which an extension of consent is sought was not opposed on landscape grounds when consent was applied for in 2010.
28. Some objections related to a section of proposed fencing on the east side of the M6, north of the Shap/Orton road, on the grounds that it would adversely affect perceptions of the open common landscape from the motorway. In response the applicants point out that the LVIA concluded that the fencing and planting in this area would relate well to existing fencing along transport corridors and would have a minor or negligible impact in landscape terms. It is also stated that NE and the local community support planting in this area.
29. Some objectors also drew attention to existing conifer plantations which are regarded as alien features detracting from the landscape of the area. The removal of these plantations and their replacement by more appropriate planting is proposed in another application which is the subject of a separate decision (Ref: COM/3259582).
30. Concern was also expressed regarding the period of the permission applied for and it was suggested that this should be reduced to 10 years to coincide with the length of the CSA and ensure that funds will be available for the removal of the fencing. In response, it is stated that the CRCA also wish to ensure that the fencing is removed at the end of the consented period so that grazing can return in the planted areas. However, they do not believe that 10 years will be a sufficient time for the scrub and trees to become sufficiently established to withstand sheep and cattle browsing. The site is exposed, and the soil is poor meaning that growth is likely to be slow. They therefore propose that a ring-fenced fund be established and set aside to pay for the removal of the fencing after 15 years.

31. Overall, it is my view that the proposed fencing will have a limited adverse effect on the landscape of the commons but that this will be outweighed by the beneficial effect of the planting that will be enabled.

Public Access

32. The areas proposed to be enclosed by fencing are crossed by a number of public rights of way of different types. The area is also designated as Open Access land in accordance with the provisions of the Countryside and Rights of Way Act 2000.
33. It is proposed that gates of appropriate types will be installed wherever a public right of way or any other track marked on the Ordnance Survey map intersects a fence line. In addition, 21 further field gates are to be provided to enable entry for planting and maintenance and will also enable public access. All public access gates are to be in accordance with BS5709 and constructed to specifications provided by Cumbria County Council.
34. A total of 9 gates of various types provide public access points to the 2 areas already enclosed.
35. It is also proposed that an unplanted corridor of minimum width 5m will be maintained along all public rights of way and other tracks and desire lines. This width will be varied to avoid the creation of uniform corridors and, because of the open nature of proposed planting, will in many cases be greater than 5m. Some objectors wanted the buffer along paths to be a minimum of 10m. but the applicants referred to precedents for the 5m. width and argued that the open nature of the proposed planting and the species selected means that the 5m. width will prove generous.
36. The proposed arrangements for the installation of gates and the access corridors will in my opinion be sufficient to adequately safeguard public access rights.

Archaeological remains and Features of Historic Interest

37. There are several known sites of archaeological remains and features of historic interest on the commons and it is accepted by the applicants that it is likely that there are more that have not yet been discovered. They have stated that they are committed to working with the National Park Authority and County Council to avoid any damage to historic interests. A survey of the proposed fence lines has already been undertaken and allowance has been made for funding to employ a professional archaeologist to provide advice on exact fence lines during the course of the works.
38. In addition, although tree and shrub planting are not the subject of the application, the applicants have agreed to undertake surveys of the areas to be enclosed by the fencing and to leave a minimum of 10m unplanted around any historic features.
39. These proposed arrangements will in my view ensure that archaeological remains and other features of historic interest are not damaged as a result of the proposed works.

Other relevant matters

40. In the application, the length of proposed new fencing is given as 15,447m rather than 15,577m. This is the result of a technical issue in the mapping system used. However, the notice of the application included the correct length

and the map accompanying the application adequately shows the location of the fencing. Accordingly, I am satisfied that no party will have been misled or had their interests prejudiced as a result of this discrepancy.

41. The CSA which includes the provision of the fencing applied for will also require the removal of sheep from the commons during the winter. Some objectors regard this as contrary to the cultural heritage of the area. On behalf of the applicants it is stated that without off-wintering NE could not offer a CSA and this might mean that a significant proportion of the hill flocks would cease to be grazed on the common. I understand the concerns of the objectors and the applicants regarding this matter but, as it is not part of the current application, it is not for me to reach any conclusion on the merits of these arguments.

Conclusions

42. 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

