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# 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**

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## **Application Ref: COM/3259582**

### **Crosby Ravensworth Common**

Register Unit: CL10

Registration Authority: Cumbria County Council

- The application, dated 16 September 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 3,324 metres of new temporary fencing for a period of 15 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 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 CL10 Crosby Ravensworth Fell Common. It is made on behalf of the Crosby Ravensworth Commoners Association (CRCA). It proposes the erection of 3,324m of fencing to create enclosures within which existing conifer plantations can be felled and replaced by mixed density native planting to create scattered scrub habitat. 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. The common lies 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.

6. 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.
7. Another application (Ref: COM/3253102) proposes the erection of fencing to create a number of enclosures within which planting to create scattered scrub habitat can take place. Responses to consultation on that application suggested that the conifer plantations should be felled to improve the landscape. The felling of the plantations is the subject of a Forestry Commission (FC) Felling Licence which also requires replanting on the footprint of the existing plantations.

### **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;<sup>1</sup>
  - (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 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***

10. The application is made on behalf of the CRCA and in association with the landowner. There are currently 18 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 common by way of several public rights of way and more generally. The effect of the proposals on this right is considered later.
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.

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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

### ***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 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. 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.
22. It was also suggested that the lack of an EIA from Forestry England with regard to the felling and replanting of plantations should be considered. However, the felling and replanting is not part of the application and, in any event, such an EIA is said not to be required by the applicants.
23. Overall, it is my view that the proposals will have significant benefits for nature conservation.

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

### *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 rectangular shaped conifer plantations are regarded as detracting from the landscape of the common. Neither the shape of the plantations nor the type of tree fits with the landscape character of the area. The proposed replacement planting will consist of more appropriate species and plantations will be less regularly shaped. This will result in a significant improvement in the landscape.
28. Some concern has been expressed that the present locations of the plantations are not the best areas for new planting to fit the landscape character of the area, particularly in respect of blocks on higher areas of land. However, it is a requirement of the FC licence that replanting takes place on the same footprint as the plantations to be felled. This being the case, the proposed planting with native species at a lower density than existing and in a less rectangular shape will still result in an improvement to the landscape.
29. 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 enough 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.
30. 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 removal of the conifer plantations and the new planting that will be enabled.

### *Public Access*

31. No public rights of way cross the areas proposed to be enclosed by fencing. However, the area is designated as Open Access land in accordance with the provisions of the Countryside and Rights of Way Act 2000 and the Wainwright

Coast to Coast route passes immediately to the east of one of the existing conifer plantations and within one of the proposed new enclosures.

32. It is proposed that pedestrian gates and stock gates will be provided where the Coast to Coast route crosses the proposed fence lines and that new planting will be set back to allow a minimum unplanted width of 5m for the path. In addition, the new planting will include 30% open space some of which will be alongside the path. One objector has suggested that an unfenced 20m corridor would be more sustainable and avoid the possibility of the route becoming overgrown by vegetation. 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. They also suggested that an unfenced corridor might become churned up and muddy as a result of stock grazing.
33. It is also proposed that gates will be provided to allow public access to other enclosures.
34. The proposed arrangements for the installation of gates and the setting back of planting from the Coast to Coast route will in my opinion be sufficient to adequately safeguard public access rights.

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

35. 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.
36. 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.
37. 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**

38. The application form states that the length of fencing proposed is 2,369m whereas it is actually 3,324m although the application map correctly indicates the location and extent of fencing. When this error was discovered the application was re-advertised to make clear the correct length. As a result of this action, it is my view that no party will have been misled or had their interest prejudiced by this error.
39. One objector expressed concern about the maintenance and management of proposed planting and suggested that a condition be imposed requiring a fund and maintenance plan to be established. However, as the planting is not actually part of the application it would be inappropriate for such a condition to be attached. I also note that the applicants have stated that they might be required to repay funding if planting is unsuccessful and have committed to establishing a maintenance fund.

## **Conclusions**

40. 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

