
Application Decision

by **Richard Holland**

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

Decision date: 27 January 2017

Application Ref: COM/3162208
Birkdale Common, North Yorkshire

Register Unit No: CL149

Commons Registration Authority: North Yorkshire County Council.

- The application, dated 28 October 2016, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by The North Pennines Area of Outstanding Natural Beauty Partnership (the AONB Partnership).
 - The works are to lay a 200 metres long linear path of stone flags over damaged peat bog covering an area of approximately 200 square metres.
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Application Ref: COM/3162212
Hartley Fell, Cumbria

Register Unit No: CL95

Commons Registration Authority: Cumbria County Council.

- The application, dated 27 October 2016, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by The North Pennines Area of Outstanding Natural Beauty Partnership (the AONB Partnership).
 - The works are to lay a 250 metres long linear path of stone flags over damaged peat bog covering an area of approximately 250 square metres.
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Decision

1. Consent is granted for the works in accordance with the applications dated 27 and 28 October 2016 and accompanying plans, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown by a red line on the attached plans.

Preliminary Matters

3. The two common land units are in different counties and fall under separate commons registration and local planning authorities. Furthermore, Birkdale Common lies within the Yorkshire Dales National Park (YDNP) whereas Hartley Fell lies within the North Pennines Area of Outstanding Natural Beauty (AONB). However, the two common land units are contiguous and, whilst separate applications have been made by the AONB Partnership, the proposal is effectively for one stone flag path bisected by the common land boundary. The two applications are therefore being determined together. The plans for both applications show that at the location of the proposed works there is a thin strip of land between the two commons that seems to belong to neither. The commons register maps show no such strip of land and I consider that the works are proposed for land which is wholly within common land units CL149 and CL95.

4. The Birkdale Common application form gives the land owner as Arthur Williams Earl Pell Hyning, as recorded in the common land register, and gives the applicant's agent as Gunnerside Estate Limited (GEL). The AONB Partnership has since clarified that there is no agent acting on its behalf and that GEL is instead the current owner of the common. An email to the AONB Partnership from GEL dated 22 November 2016 confirms this to be the case. I am satisfied that no party wishing to make a representation about the application has been prejudiced by the error in the application form.
5. There is an inconsistency between the lengths of path proposed to be stone flagged given in the application forms and that given in the published notices. The application forms give the lengths as 330 metres (Birkdale Common) and 320 metres (Hartley Fell). The published notices give lesser lengths of 200 metres and 250 metres respectively. The AONB Partnership has since clarified that the lengths given in the published notices are the correct ones. The greater lengths given in the application forms represent the lengths for which separate planning permission has been given, but are in excess of what is actually currently proposed. As it is the published notices which give the correct proposed lengths, and as these lengths constitute lesser works than that given in the application forms, I am satisfied that no party wishing to make a representation about the application has been prejudiced by the discrepancies.
6. I have had regard to Defra's Common Land Consents Policy¹ in determining these applications 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.
7. These applications have been determined solely on the basis of written evidence.
8. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE), Historic England (HE), The Wainwright Society (WS) and Kirkby Stephen & District Walkers Are Welcome (KSDWAW). All either support the applications or raise no objections.
9. The Yorkshire Dales National Park Authority (YDNPA) granted planning permission for the Birkdale Common stone flags on 27 October 2016 (Ref R/06/246). Eden District Council granted planning permission for the Hartley Fell stone flags on 1 November 2016 (Ref 16/0825).
10. I am required by section 39 of the 2006 Act to have regard to the following in determining these applications:-
 - 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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

11. The respective owners of the commons were consulted about the applications. In clarifying its ownership of Birkdale Common, GEL made no comments about the proposals and has not otherwise commented. The owner of Hartley Fell, Mr Christopher Harrison-Beck, has made no comments. There is no evidence before me to suggest that the interests of the common land owners will be harmed by the proposals.

¹ Common Land Consents Policy (Defra November 2015)

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.

12. Both commons are subject to numerous grazing rights. The AONB Partnership has advised that there are six active graziers on Birkdale Common and two on Hartley Fell. All were consulted individually and through the respective graziers associations. None have commented about the proposals. There is no evidence before me to suggest that the interests of the rights holders will be harmed by the proposals.

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

13. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people. The flags are proposed to be laid along a section of permissive footpath which spans the border between Cumbria and North Yorkshire on the Wainwright coast to coast route. The established use of the applications land is for walking and the interests of the neighbourhood and the protection of public rights of access are therefore closely linked. The AONB Partnership advises that due to increased footfall (estimated at 6000 to 7000 walkers every year) and heavy rain the blanket bog habitat at this point of the Wainwright route is becoming eroded and damaged. This damage has caused the peat to become soft to the point that some walkers have become stuck in the bog and have had to be rescued by local mountain rescue teams.
14. The flags are to be placed on the bare peat and will 'float' on top. They will benefit path users by providing a safe and stable surface on which to walk. OSS, KSDAW and the Wainwright Society, all of which have a specific interest in the route from a public access perspective, support the proposals. I consider that the proposed works are consistent with the established use of the land for walking and will be of positive benefit to the interests of the neighbourhood and the protection of public rights of access.

Nature conservation

15. Birkdale Common falls within the Mallerstang-Swaledale Head Site of Special Scientific Interest (SSSI). Hartley Fell falls within the North Pennine Moors Special Area of Conservation (SAC) and Specially Protected Area (SPA). NE has advised that keeping walkers on the flags will help to stabilize and re-vegetate areas of bare peat, which will benefit the internationally important habitats and species and contribute to the improvement of the SSSI, which is in 'unfavourable recovering' condition. I consider that the proposed works will assist in the recovery of damaged areas and help to protect the habitats from future footfall damage and that they are therefore in the interests of nature conservation.

Conservation of the landscape

16. The proposed flags are natural coloured and weathered reclaimed stones from old working mills in Lancashire and Derbyshire. The AONB Partnership considers that they will blend into the natural environment very quickly and advises that similar stone flags have been used across the Peak District, Yorkshire Dales National Park and the North Pennines AONB to great effect.
17. The flags will be a new feature in the landscape and will therefore have an impact on it. However, they have a natural appearance and are proposed to be laid on a well-used existing path. I consider that, on balance, their visual impact will be positive when compared with the harm that would continue to be caused to the landscape if no action was taken to control erosion caused by walkers.
18. The AONB Partnership is the body responsible for co-ordinating efforts to conserve and enhance the North Pennines AONB. I consider that its proposals serve those interests. YDNPA has not commented on the applications but I am satisfied that it was fully consulted; as noted at paragraph 5 above, it has granted planning permission for the laying of flags. I consider that the proposed works are likely to help conserve the natural beauty of the National Park and the AONB.

Archaeological remains and features of historic interest

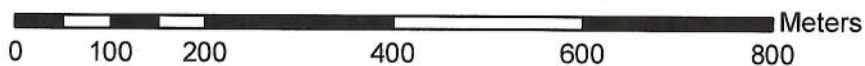
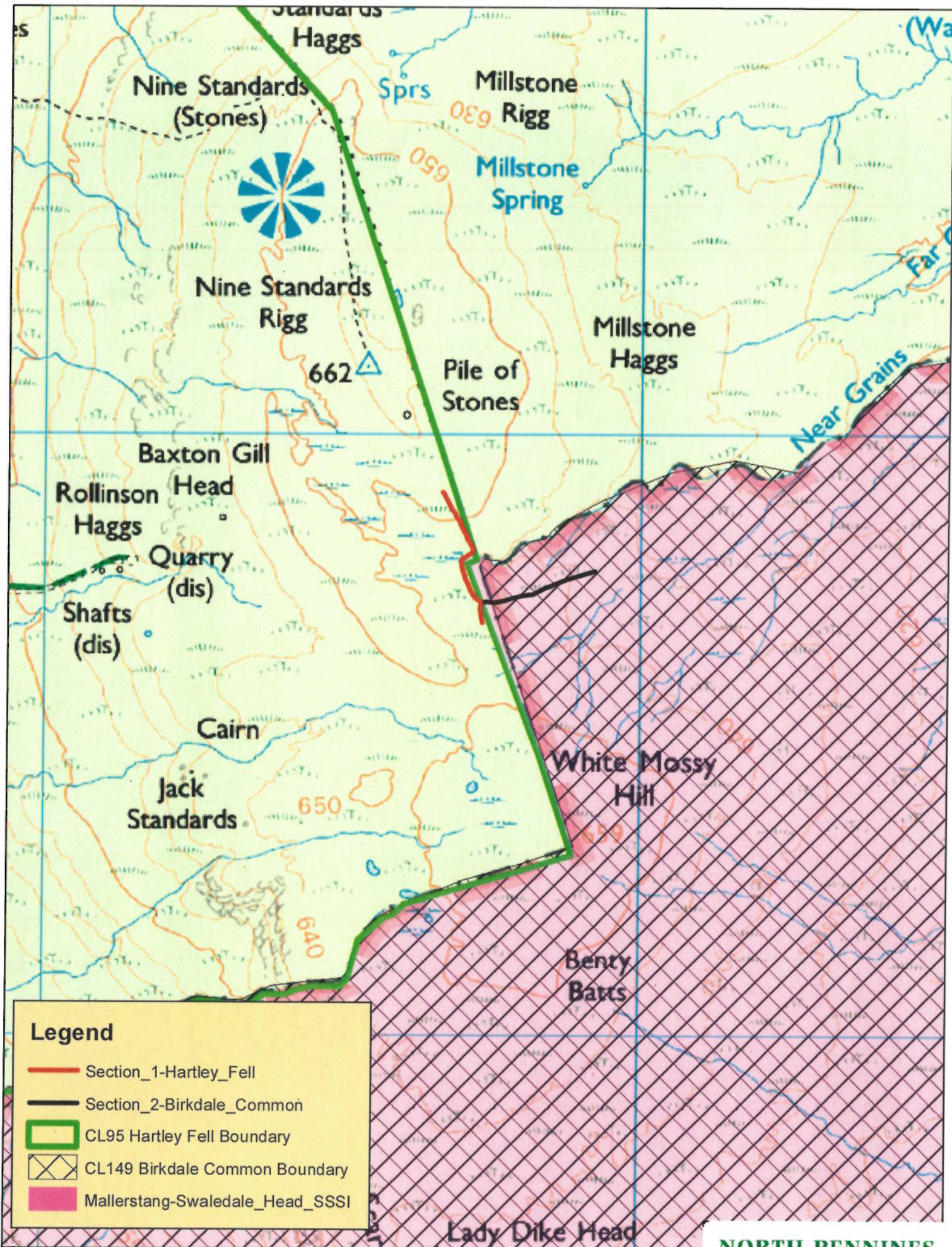
19. HE has advised that it has no objections to the applications. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

Conclusion

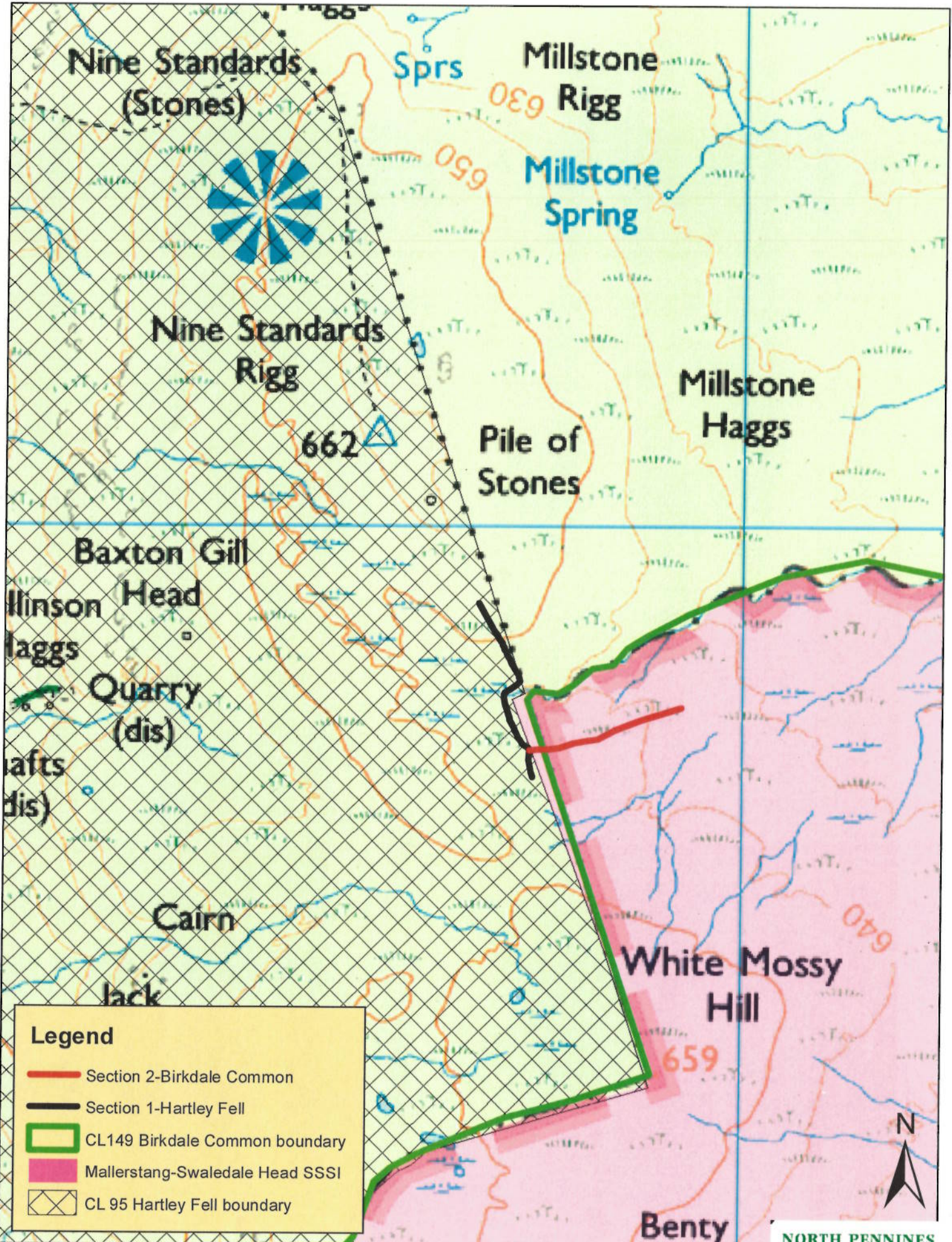
20. I conclude that the proposed works will not harm the interests set out in paragraph 10 above. Indeed, they will benefit nature conservation, landscape and local/public access interests. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

CL95 Hartley Fell and proposed work NY82700 05700



CL149 Birkdale Common and proposed work NY82700 05700



Legend

- Section 2-Birkdale Common
- Section 1-Hartley Fell
- CL149 Birkdale Common boundary
- Mallerstang-Swaledale Head SSSI
- CL 95 Hartley Fell boundary

