
Application Decisions

Hearing held on 9 August 2016

Site visit made on 10 August 2016

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 02/09/16

Application A - Ref: COM 729

Grasmere and Loughrigg Commons, Cumbria

Register Unit Nos. CL78 and CL79

Registration Authority: Cumbria County Council

- The application, dated 25 August 2015, 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 Mr J Lowther, Lowther Estates Limited.
 - The works comprise:
 - A proposed building as an extension to the existing toilet block;
 - Proposed low walls adjacent to the car park entrance;
 - Proposed re-siting of bus stops.
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Application B - Ref: COM 730

Grasmere and Loughrigg Commons, Cumbria

Register Unit Nos. CL78 and CL79

Registration Authority: Cumbria County Council

- The application, dated 25 August 2015, 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 Mr J Lowther, Lowther Estates Limited.
 - The works comprise:
 - A proposed building as an extension to the existing toilet block;
 - Proposed low walls adjacent to the car park entrance
 - Proposed re-siting of bus stops.
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Preliminary Matters

1. I conducted a hearing into these 2 applications in conjunction with 2 planning appeals relating to proposed development at the same location. Those applications are the subject of separate decisions.
 2. These alternative applications under S38 relate to proposals to erect a building and carry out other works as described above adjacent to existing car parks located to the north and south of the A591 road. Objectors to the applications have questioned whether commons consent has ever been granted for the use of the land as car parks. However the use has never been challenged through legal process. Evidence indicates that the use is clearly long standing, probably dating from at least the 1950s. In any event this is not a matter on which I am required to reach a conclusion as any challenge to the lawfulness of the car park use must be made through other channels.
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3. Objections and/or representations were received from:

- The Open Spaces Society;
- Friends of the Lake District;
- The Federation of Cumbria Commoners;
- Susan and Peter Dixon;
- Messrs Taylor of Helmside, Grasmere;
- Mr Alan Riley;
- Mr Paul Truelove;
- Andrew and Maria Chadwick;
- Mr Stewart Fuller;
- Peter and Judith Hitchcock;
- D and J Nicholson;
- Mr Richard Le Fleming;
- Anne and Peter Robinson;
- Jean Savage;
- The Wordsworth Trust;
- Historic England.

I have taken all of these into account in reaching my decisions. In addition I have had regard to the evidence presented at the hearing. With the agreement of all parties my site visit was conducted unaccompanied.

Decisions

4. Application A – consent is refused.
5. Application B – consent is refused.

The Site

6. Grasmere and Loughrigg Commons are extensive areas of land which in total cover something over 2400 hectares. The application site, which includes small areas of each common, extends to some 3.9 hectares. The northern part of the site forms a gravelled car park in a disused quarry. The southern part of the site lies at the other side of the A591 road and includes a gravelled car park, toilet block and various footpaths within a woodland setting.

The Applications

7. The aims of the applications are described, in short, as being to manage the site in a way which provides a welcome hub and encourages the use of sustainable transport whilst increasing safety and improving management of the site. The application A scheme is the larger of the two. The proposed extension to the toilet block would cover about 112m² whilst the proposed low walls would be about 43m². The re-sited bus stops would be very small at 1m². The scheme in application B would be smaller. In this case the building extension would be about 27m², and the low walls would be some 45m². The bus stops would be as in scheme A. Other parts of the overall works proposed are put forward as not requiring consent and I agree with that position. This principally involves providing loose bound pathways and alterations to the car park layouts to enable more efficient use of those areas. The provision of the low walls and the moving of the bus stops have not been controversial. The main concerns relate to the proposed building extension in each case.

Main Issues

8. 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, tarmac, coated roadstone or similar material.
9. 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, 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.
10. I have had regard to Defra's Common Land consents policy 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

11. A number of Commoners have made comments on the applications. There are rights of grazing over the commons. However I was told at the hearing that it is unusual to see any grazing animals within the site, and I can easily see why that would be the case. Firstly, the car parks, paths and area around the toilet block provide no grazing opportunity. Secondly the use of the site by visitors (particularly in the busy periods) is bound to deter grazing animals. Thirdly, the A591 is a serious hazard and encouraging the use of the site by grazing animals would be a hazard to the animals and road users alike. Given that the building in dispute in both applications would cover a modest area largely devoid of grazing opportunity already, it seems to me that the direct impact on the interests of those who hold grazing rights would be negligible at worst.
12. However, it is suggested that grazing may be affected if intensification of the site resulted in visitor numbers rising to the extent that it caused a commensurate increase in sheep worrying in the surrounding area of common. I regard this as a legitimate concern, but given the acknowledged popularity of the site already it seems unlikely that numbers could realistically rise significantly because of car park size constraints. Hence this too is a matter which would be likely to have a minimal indirect impact on those with grazing rights.

13. Taking this matter in the round it is my judgement that the rights of Commoners with grazing rights would not be unduly affected by these proposals.

The interests of the neighbourhood

14. There was some discussion at the hearing about how the interests of the neighbourhood may differ from the public interest in this case. Some of the matters relevant to these cases are dealt with either under the headings of 'public interest' and 'other matters' below.
15. I have received objections from users of the commons to the effect that the introduction of the visitor hub and retail/business use in either application would impair their enjoyment of the commons. I regard this as a legitimate concern, and it is my judgement that the proposals would be likely to fundamentally change the nature of the immediate surroundings. From being a relatively quiet dispersal point for walkers and others enjoying the countryside either building would be likely to entail people gathering and remaining at the site for longer periods, increasing activity and lessening the sense of being in a countryside location almost entirely free of built development. In effect each alternative proposal would establish a commercial enterprise in a currently unspoilt location where no such enterprise exists at present. I accept that this would be likely to be harmful to the quiet enjoyment of the locality of local people and others who use the commons. Although the proposed facilities would provide an on-site presence of staff to assist with daily management I am not persuaded that such a presence could not be provided by other means as I explain below.

The public interest

16. There are a number of matters here which I deal with in turn.

Landscape

17. The landscape of the area is famously beautiful. Within the site the building(s) in dispute would be located in a wooded area close to the existing car parks. Although the noise from the A591 impacts negatively on the tranquillity of the location there is still a sense of being in attractive and unspoilt countryside which has changed little over many years. The introduction of either building would fundamentally change the immediate environment from being an area with car parks from which people disperse, to an area which encourages a greater propensity to linger and use the proposed buildings as a focal point for taking refreshment. This intensification of use together with the commercial element of the proposals, as I have explained elsewhere, would be detrimental to the rural countryside ambience. The building in either scheme would be out of character with the surroundings and in my judgement would cause significant harm to the landscape.

Public Access

18. The commons are open to the public who have rights of access to them. Public access to the commons would not be restricted, other than by the overall area being reduced in a minor way by the footprint of the building(s). I accept that in a wider sense access would be slightly improved if the proposals for relocating bus stops and enhancing the crossing point of the A591 were implemented. In addition the clear 'signposting' of the car park entrances with

uncontentious low walls would improve access to a minor degree. There would therefore be no material detriment to public access.

Nature Conservation

19. Some concern has been expressed that the proposals would be detrimental to nature conservation. However, the site is already well used and it seems unlikely to me that the works proposed would have any material effect in this regard. Although a few minor trees would be affected this would not materially alter the nature of the woodland setting, and in any event further planting and management of the site is proposed. Whilst there is a County Wildlife Site overlapping the southern part of the site I have no evidence that there would be any detriment to that area by the proposals in these applications. I therefore find no detrimental impact to nature conservation interests. Some benefit may accrue if the intended management of the site by the daily presence of a member of staff were to be initiated, but this seems to me to be a matter which may be possible by other means.

Cultural Heritage and Archaeology

20. No party, including Historic England, has identified any direct impact on heritage assets or archaeological resources. The locality is well known for its cultural association with historical figures, including William Wordsworth. This already attracts many people to the general area. It seems unlikely to me, though, that the proposals would materially impact upon the continuing appreciation of the cultural heritage of the locality. Any benefit from the larger scheme of providing information, education trips or talks would be offset by the detrimental impact of the building itself.

Other Matters

21. The Applicant has put forward the alternative schemes in order to improve visitor facilities and enable better management of the existing site. On the other hand objectors have pointed out that visitor facilities exist nearby and are adequate to cater for the existing need. I agree with that position and do not see the addition of a commercial element serving visitors at this site, or the proposed change to site management, as being sufficiently compelling to justify the restricted works proposed. In any event the evidence that management could only be improved if either of these applications is successful is not something of which I am persuaded. It seems unlikely to me, for example, that there is nobody closer than Penrith to deal with maintenance of the toilet facilities, or that it is necessary for cleaners to travel from Kendal. Local people suggested matters could be dealt with locally. Whilst I understand and accept the difficulties experienced by the Lowther Estate in seeking to manage the area successfully it seems to me that alternatives other than those pursued to date cannot yet be ruled out.
22. One concern identified by objectors is the impact of the proposals on existing businesses which serve the tourist industry. I was told that local catering facilities, for example, have been affected by recent road closures caused by storm damage, and that any further erosion of trade may lead to closure. That in turn may be detrimental to the neighbourhood. However, I can only agree with the Applicant that the evidence here is lacking and I cannot reach a conclusion that there would be any detrimental impact on existing tourist related facilities as a result of these proposals.

23. The Applicant has indicated that in the event of consent being granted alternative land adjacent to Grasmere Common could be dedicated for the use of Commoners. However, there is no application to deregister any common land and exchange it for the land 'on offer'. The Applicant in fact indicated that it is part of their case that the dedication of the alternative area of land is not necessary and that it was offered in the event that the decision maker took a different view. I do not take a different view and as such I do not afford the Applicant's proposal to dedicate alternative land any weight in the decision process which I must follow.
24. An application has been submitted to make the Lake District a World Heritage Site. Concern was expressed that permitting either of these schemes may jeopardise that application. However, given the relative scale of the Lake District in comparison with these proposals such an outcome seems to me to be unlikely and I do not accord it weight in my deliberations.

Conclusions

25. To sum up on these cases I find the following:
- a) There would be no material detriment to the interests of those who have rights over the land;
 - b) There would be harm to the public interest by reason of detriment to the landscape;
 - c) There would be detriment to the interests of the neighbourhood by the loss of quiet enjoyment of the locality;
 - d) I do not accept that the objective of better management of the facilities here could only be achieved by the implementation of either of these schemes;
 - e) There are no other matters which impact on the balancing considerations.
26. In my judgement the harm that would be caused to the public interest and in relation to the interests of the neighbourhood would not be outweighed by the lack of detriment or any benefit elsewhere. For the reasons set out above I conclude that these applications should not be granted.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Taylor	Appellant's Agent
Mr M Carter	Of Counsel
Mr S Richards	Landscape Architect
Mr A Fox	Lowther Estate
Mr R Bird	Lowther Estate

FOR THE LOCAL PLANNING AUTHORITY:

Ms M Lock	Area Planning Officer, Lake District National Park
Ms C Campbell	Planning Officer, Lake District National Park

INTERESTED PERSONS:

Mr I Brodie	obo Open Spaces Society, Ramblers Association and Friends of the Lake District
Ms L Fiske	Friends of the Lake District
Mrs F Sparrow	Lakes Parish Council
Mr P Truelove	Lakes Parish Council
Ms J Darrall	Friends of the Lake District
Mrs V Rees	Grasmere Village Society

DOCUMENTS HANDED IN AT THE HEARING

- 1 Copy of Landscape Character Area 31 assessment
- 2 Report on the examination into the Core Strategy DPD
- 3 White Moss Woods Grassland and Marsh County Wildlife Site description
- 4 Partial plan of White Moss Woods Grassland and Marsh County Wildlife Site
- 5 Copy of Policy CS26 – Geodiversity and biodiversity
- 6 Judgement in the case of P Fagan v Metropolitan Borough of Knowsley
- 7 Judgement in the case of Hambledon RDC v Hinde and Surrey CC v Hinde
- 8 List of Lake District policies to be revised, dated February 2016