



# Application Decision

by **Richard Holland**

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

Decision date: 25 April 2016

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## Application Ref: COM 766

### Boxmoor and Dew Green, Hertfordshire

Register Unit No: CL 24

Commons Registration Authority: Hertfordshire County Council

- The application, dated 7 January 2016, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by the Box Moor Trust.
  - The works comprise the installation of several sections of additional stock fencing totalling 870 metres with associated hand gates and livestock drinking points as part of the River Bulbourne restoration project.
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## Decision

1. Consent is granted for the works in accordance with the application dated 7 January 2016 and the plans submitted with it, subject to the following conditions:
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. the fencing shall be removed no later than ten years from the date it is erected; and
  - iii. all gates shall meet British Standard 5709.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. Since making the application the applicant has confirmed that time limited consent of ten years, rather than permanent consent, is sought. I do not consider that any interested party has been prejudiced by this amendment.
4. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining this application 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE) and Historic England (HE).

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

7. 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>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

8. The applicant is also the landowner. The applicant confirms that there are two rights of common for grazing registered over the common which are not exercised. I am satisfied that the works will not harm the interests of persons occupying or having rights over the land.

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

9. The proposed works form part of a river restoration partnership project involving the applicant, the Environment Agency, the Chilterns Chalk Stream Project and Colne Catchment Action Network, and are required to facilitate better grazing management and protection of the common. The common is grazed by horses and cattle during the summer months. The applicant is of the opinion that the works will also deliver recreational benefits by providing a more traditional and attractive chalk stream experience.
10. The common is subject to section 193 of the Law of Property Act 1925; giving a public right of access, on horseback as well as on foot, for air and exercise. The area is well used by dog walkers, commuters and families during the summer months, although byelaws made under section 193 limit the right to ride horses to designated routes. The proposed works will be set back five metres from the bank top. The fencing will include four 1.2 metre wide hand gates, to British Standard 5709, to facilitate access for maintenance and the public to the protected banks.
11. I am satisfied that the inclusion of access points and the placement of the fencing will adequately facilitate public access. I conclude that the proposed works will not impact adversely on the interests of the neighbourhood or unduly impinge on public rights of access.

### ***Nature conservation***

12. NE acknowledges that grazing is a traditional method of management under the Trust's centuries old pasture ticket system. NE has enlarged upon what the applicant has said about the aim of the works. The intention this year is to reduce stocking density and graze either side of the river alternatively. The current activity by livestock has led to the localised collapse of the banks giving a comparatively upright profile that is not typical of a chalk stream and does not promote the establishment of valuable marginal riparian vegetation. NE agrees that restricting livestock access to

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<sup>2</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.

one side of the river will promote the development of a more diverse flora which will improve the integrity of the restored banks. I am satisfied that the proposed works will benefit nature conservation interests.

### ***Conservation of the landscape***

13. The areas affected by the proposed works are already fenced at their periphery, being situated between two busy roads. The proposed works will link to existing internal fencing and access gates will be powder coated green. I accept that the visual impact of the fencing will be mitigated to some extent by the use of high tensile wire on steel posts and by it being placed away from the roadside. I do not consider the works will be out of keeping with the character of the common; the landscape of the common will therefore be conserved.

### ***Archaeological remains and features of historic interest***

14. HE confirms that the proposed works do not have a direct effect on any designated assets, but recommend that archaeological staff at Hertfordshire County Council are consulted regarding the impact on undesignated archaeological remains and historic features, and to advise on an appropriate archaeological mitigation strategy. The applicant has confirmed that they have consulted Historic Environment Unit at Hertfordshire County Council but has not said whether the unit felt that such a strategy was needed and, if it did, whether one has been agreed. However, I give weight to the fact that the unit has not objected to the application. I am satisfied that, on the evidence before me, the proposed works will not harm archaeological remains and features of historic interest.

### **Conclusion**

15. I consider that the proposed works will not harm the interests set out in paragraph 7 above, and are intended to benefit nature conservation interests by facilitating better grazing management and the restoration of the river banks. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**