



# Application Decision

by **Richard Holland**

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

Decision date: 26 April 2017

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## Application Ref: COM/3160861

### Kirkby Moor, Kirkby in Furness, Cumbria

Register Unit No: CL 52

Commons Registration Authority: Cumbria County Council

- The application, dated 10 October 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 Holker Estates Company Ltd for the Trustees of Holker Estate.
  - The works are to:
    - i) infill the void at Winnow End Quarry (area 2.11 hectares) to the level of the surrounding ground and restore as heather moorland; and
    - ii) erect 2450m of 1.1m high post and sheep netting stock fencing with three stiles and one 3m wide gate, enclosing approximately 10 hectares of land, for a period of up to 15 years.
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## Decision

1. Consent is granted for the works in accordance with the application dated 10 October 2016 and the plan 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. all gates and stiles shall meet British Standard 5709; and
  - iii. all fencing shall be removed no later than 15 years from the date it is erected.
2. For the purposes of identification only the locations of the works are shown as a red line on the attached plan with gates and stiles marked as indicated in the plan key.

## Preliminary Matters

3. The works are the infilling of the former Winnow End Quarry using waste material to be generated by an extension to Kirkby Quarry and fencing 10 hectares of land on the common for the restoration of dry heath habitat. The works are required to mitigate the environmental impacts of the proposed extension to Kirkby Quarry and have been agreed between the applicant and Natural England (NE) as part of the planning application for the extension. The applicant has confirmed that the necessary planning permissions have been granted but the land required for the extension is registered common for which no consent under section 38 has been sought. However, a separate application, reference COM/3160859, has been made to the Secretary of State under section 16 of the 2006 Act to deregister the land. The outcome of the section 16 application is not a material consideration in determining the application before me.
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

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<sup>1</sup> Common Land consents policy (Defra November 2015)

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 NE, Historic England (HE), Friends of the Lake District (FLD) and the Open Spaces Society (OSS).
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 common land is owned by the applicant, the Trustees of Holker Estate. There are extensive registered grazing rights over it and the applicant has advised that there are six active commoners with grazing rights for a total of 1955 sheep. Two graziers additionally exercise rights to cut bracken for animal bedding. The six graziers operate as the High Furness Commoners Association through an Entry Level Stewardship agreement with NE. The applicant consulted the Commoners Association about the application but it has not commented. There is no evidence before me to suggest that the proposals will harm the interests of those occupying or having rights over the land.

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

9. 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 former Winnow End Quarry takes up 2.11 hectares of common land and is a large void which cannot currently be used by local people or the wider public. The proposed infilling works will restore the land and enable it to be brought back into public recreational use. I consider this to be in the long term interests of the neighbourhood and public rights of access.
10. The fencing will restrict rather than prevent public access into and across the 10 hectare site. The northern boundary of the site alongside the A5092 road is already fenced and access can be gained via two existing stiles. The applicant proposes to provide stiles or gates at all rights of way and desire lines crossing the fence line. I take this to mean that the three new stiles and the gate are to be positioned at these points and are as shown on the application plan. The applicant has also confirmed that the stiles and gate will be in accordance with BS5709, which can be secured by a condition attached to any consent. Given the provision of the stiles and gates I consider that the proposed fencing will not significantly harm the interests of the neighbourhood and the protection of public rights of access.

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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.

## *Nature Conservation*

11. The Winnow End Quarry void to be infilled adjoins the SSSI. The infilling is primarily to enable the removal and deposition of waste material from the Kirkby Quarry extension works. However, once the void is infilled it will be restored to heather moorland using the topsoil and heather turves from the quarry extension site; this should bring benefits for biodiversity and nature conservation.
12. The fencing of the 10 hectare site will create an enclosure from which grazing stock will be restricted so that the habitat can be restored to dry heath. The bracken currently covering the site will be removed by spraying. The land to be fenced is within the Kirkby Moor Site of Special Scientific Interest (SSSI) that is in *unfavourable recovering condition*. NE has advised that removing the bracken and reducing the grazing regime will increase the prevalence of dwarf shrubs and associated dry heathland species, thereby increasing the habitat for which Kirkby Moor SSSI is notified. The applicant is amenable to NE's suggestion that the fencing also presents an opportunity to plant some trees, which are generally lacking on Kirkby Moor. I consider that the fencing proposal is in the long term interests of the SSSI and nature conservation.

## *Conservation of the landscape*

13. I consider that the infilling of the former Winnow End Quarry and restoration of the land to heather moorland will benefit the landscape, whilst the proposed fencing of the 10 hectare site will have a detrimental impact on the landscape to a certain extent. However, the fencing will sit below the skyline and will follow the contours of the land, thus minimising the visual impact. It is also time limited and will therefore not form a permanent feature in the landscape. I consider that restoration of the land will enhance the landscape in the long term and that the fencing is required in the medium term to allow the benefits to be realised.

## *Archaeological remains and features of historic interest*

14. HE has confirmed that it has no objections to the proposals. There is no evidence to suggest that the proposed works will harm any archaeological remains or features of historic interest.

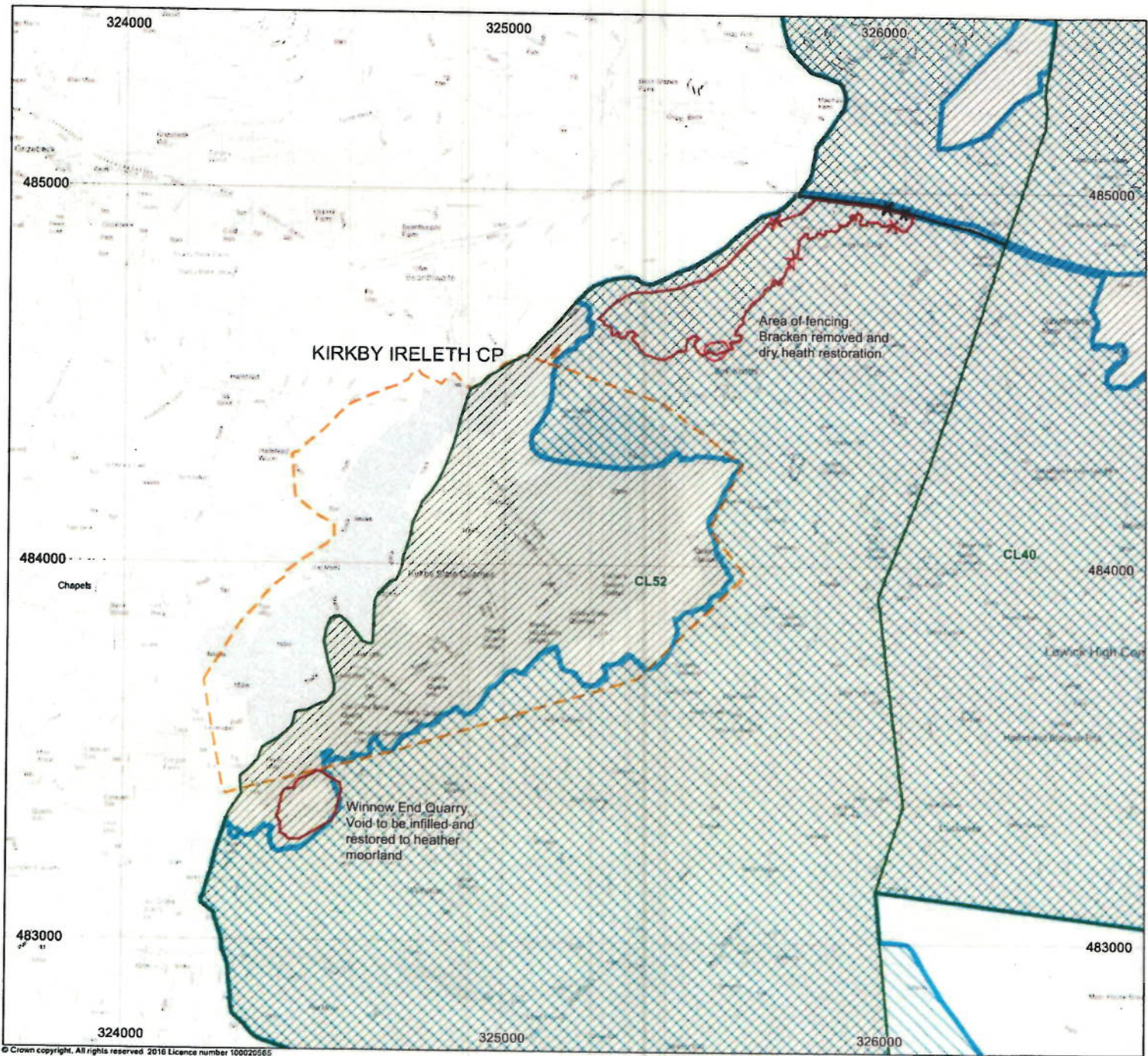
## **Other relevant matters**

15. FLD suggested that in the event of consent being granted there should be a review of the need to retain the fencing after ten years. OSS objects to a 15 year term and considers that 10 years is ample to allow the desired restoration of the land. Whilst I acknowledge the OSS position and I note that the applicant has agreed to a 10 year review, consent for the fencing is sought for up to 15 years as NE advises that this is the likely period required for the land to be suitably restored. On this basis I consider 15 years to be a reasonable timescale and that it is unnecessary to attach a condition requiring a review.

## **Conclusion**

16. I consider that on balance the proposed works will not materially harm any of the interests set out in paragraph 7 above; indeed, they are likely to benefit nature and landscape conservation in the long term. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

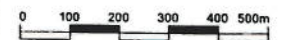


# Kirkby Moor Common

**FIGURE 1**  
Section 38 Application

**KEY**

- Areas Subject of the Section 38 Application
- Registered Common Land
- Site of Special Scientific Interest (SSSI)
- Kirkby Quarry
- Existing Fence
- X Existing Stiles
- X Proposed Stiles
- Proposed Gate



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