



Application Decision

by **Richard Holland**

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

Decision date: 24 January 2018

Application Ref: COM/3176849

Verne Common, Portland, Dorset

Register Unit No: CL 4

Commons Registration Authority: Dorset County Council

- The application, dated 31 May 2017, 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 Weymouth and Portland Borough Council.
 - The works are to erect approximately 1330m of 1.52m high wooden post and wire fencing with stock netting and barbed wire to create two separate enclosures totalling 2.4 hectares for a period of up to 15 years. The southern enclosure to be accessed by one field gate (3.05m wide) and one bridle gate (1.52m wide) and the northern enclosure to be accessed by one field gate (3.05m wide) and two bridle gates (1.52m wide). Both enclosures to contain one free-standing water trough.
-

Decision

1. Consent is granted for the works in accordance with the application dated 31 May 2017 and the accompanying plan (as amended), subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision;
 - ii. all gates 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 fence lines are shown as red lines on the attached plan dated 23 November 2017 with the bridle gates (A), field gates (B) and water troughs (C) marked in black.

Preliminary Matters

3. The original application (dated 31 May 2017 and advertised in the Dorset Echo on 30 May 2017) sought permanent consent for stock fencing with one field gate and one bridle gate for each enclosure. An updated application, dated 31 July 2017 (as advertised in the Dorset Echo on 2 August 2017), clarified the positions of the access gates and troughs. The application has since been further amended seeking temporary consent for 15 years and for the provision of bridle gates. Although these amendments were not formally advertised I am satisfied that no person wishing to make representations about the application has been prejudiced.
4. I have had regard to Defra's Common Land consents policy¹ 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

¹ Common Land consents policy (Defra November 2015)

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 Natural England (NE), the Open Spaces Society (OSS), the British Horse Society (BHS), Mr D Males and Mr Stuart Morris.
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;² 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, Weymouth and Portland Borough Council (the Council). Mr Morris says that he and others have formal common rights over the common but the register of common land shows that there are no registered rights of common. I must be guided by what the register says and there is therefore 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 works are proposed to facilitate scrub clearance and to improve the biodiversity of the land by way of grazing, initially by goats and then by ponies. Stock fencing is required to enclose the grazing animals. 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 and is closely linked with the interests of the protection of public rights of access.
10. Verne Common runs south west to north east with a footpath running long-ways through the centre. The Council says the footpath, which is on the line of a former mining tramway and is built up on an embankment, is a well-used dog walking route serving the local community. As Portland is a coastal tourist attraction I consider it likely that visitors also regularly walk the route.
11. The common land rises sharply, roughly north from the Fortuneswell residential area to south, so that there is a steep incline on either side of the footpath. The land flattens at the southern end of the common in the area known as New Ground. Each side of the footpath is heavily scrubbed, which, together with the topography of the site (including the raised nature of the footpath), discourages users from straying from the path. Consequently, I consider that, as the application sites are hard to access from the footpath and other parts of the common, it is unlikely that they are used much, if at all, for recreation.
12. In response to concerns raised by OSS, BHS and Mr Morris about the limited number of access gates proposed, the application was revised to include bridle gates next to the field gates in both enclosures and an additional bridle gate in the northern enclosure at its south western end. The Council argues that installing gates in the southern enclosure at the south western end of the fence would require very steep steps due to the incline; this would make any gates unusable by horse riders. Furthermore, there is no evidence that anyone has attempted such access and that

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.

no entrances or paths reflecting desire lines exist. The Council contends that scrub removal necessary to install the field gates will make public access at these points easier than it is at present and confirms that access to and along the footpath will be kept open during the fencing works. The Council also confirms that the field gates will be in accordance with British Standard 5709, which can be secured by a condition attached to any consent.

14. In weighing the evidence I bear in mind that one of the expected benefits from grazing the scrub is ultimately to open up inaccessible areas of the common for visitors. Even if this were not an objective, I am satisfied that, given the low recreational value of the two plots, the location, number and type of gates proposed will allow horse riders and others adequate access should they wish to enter the sites. OSS points out that under section 193 of the Law of Property Act 1925 horse riders have a right to access the common. The issue to be decided is whether the proposed works would exclude those rights and, if they do, how much weight this should carry when reaching my decision. The provision of bridle gates to British Standard 5709 will ensure that those rights of access are not excluded.

Nature Conservation

15. Verne Common is part of the Isle of Portland Site of Special Scientific Interest (SSSI) and has been assessed as being in 'unfavourable no change' condition. NE has advised that the cause of the unfavourable condition is the encroachment of scrub, which in some areas has now reached 100% cover and has out-competed the grassland habitat for which the SSSI status is designated. Verne Common is also part of the Isle of Portland to Studland Cliffs Special Area of Conservation (SAC) and has been designated as a Local Nature Reserve.
16. The Council says that as landowner it has a duty to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest. To address the concerns about the condition of the SSSI the Council has entered into a Higher Level Stewardship Agreement (HLSA) with Natural England, which runs until 2024. Through the HLSA the stock fencing works are proposed to facilitate the removal by grazing of 75% of the scrub to restore the species-rich flowery grassland. The aim is also to restore a mosaic of structurally diverse scrub and grassland in some areas to provide resting and foraging opportunities for migrating and breeding birds and habitats for other animals including reptiles, small mammals, insects and butterflies.
17. Clearing and managing scrub by means that do not include fencing the common to contain grazing animals were considered. These include handwork with brush cutter, strimmer and chainsaw or by tractor-mounted flails. Whilst such means will be employed where possible, the Council considers that they are unsuitable for the steep sloping areas subject of this application. The HLSA envisages the introduction of a grazing regime in preference to scrub clearance by hand and the partner organisations have agreed that the use of grazing animals to naturally contain grass and scrub growth is the most effective management solution to meet the challenge.
18. I am satisfied that the scrub management works are in the interests of species and habitat conservation and that the proposed stock fencing will further those interests by facilitating a suitable grazing regime. I consider that the fencing proposals are in the long term interests of nature conservation.

Conservation of the landscape

19. The proposed fencing may be visible, at least in part, from both the northern and southern boundaries of the common and from the central footpath. From the northern boundary there are upward views from the residential area of Fortuneswell. From the south there are flatter views from various laybys overlooking the common and from viewing points to Chesil Beach, the Fleet and Portland Harbour.
20. Any fencing viewed from the north will be below the skyline and be seen from some distance away. It will also be obscured to a certain extent by the topography and the scrub. These factors are likely to considerably reduce any visual harm. The Council says there is some existing post and

rail fencing on the southern boundary. The proposed stock fencing will be positioned slightly downhill of it and will therefore be shielded from direct view to some extent. Fencing will generally be situated on the edge of retained scrub, which will have a screening effect. I am satisfied that the proposed stock fencing is unlikely to cause significant visual harm to the landscape.

Archaeological remains and features of historic interest

21. The Council has highlighted the footpath as a feature of historic interest inasmuch as it follows the route of an old mining tramway. There is no evidence to suggest that the proposed works will harm this feature, or any other features of historic interest or any archaeological remains.

Other matters

22. Mr Males raised concerns about the proximity of proposed fencing to his rear garden. However, the fencing he refers to is not proposed to be erected on registered common land nor does it form part of this application. In any case, the impact of works on local residents' living conditions is not a relevant consideration in determining an application made under Section 38 of the 2006 Act.
23. The Council has confirmed that the two proposed troughs are of a free standing design to be supplied by bowser and will require no water supply pipes or other infrastructure that requires consent under the 2006 Act.

Conclusion

24. I consider that the proposed works (including the water troughs) will not significantly harm any of the interests set out in paragraph 7 above; indeed, they are likely to benefit public access, nature and landscape conservation interests 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

