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| **Application Decision** |
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| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 July 2022** |
| **Application Ref: COM/3286126****Arkengarthdale Common, North Yorkshire**Register Unit No: CL43Commons Registration Authority: North Yorkshire County Council* The application, dated 25 October 2021, 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 East Arkengarthdale Commons Committee.
* The works are time-limited to 10 years and comprise:
1. Area 2 – Eskeleth enclosure (approx. 47.25 hectares). Retention of 2779 metres of existing fencing for continued restoration of heathland on Eskeleth; and
2. Area 4 – Arndale Hill. Erection of a new line of fencing (1750 metres) to join with existing fence line (947 metres) to enclose a new area of approx. 75.55 hectares for the restoration of habitat.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 25 October 2021, as amended, and the plans submitted subject to the following conditions:
2. the works at Area 4 shall begin no later than 3 years from the date of this decision;
3. all gates and stiles shall comply with British Standard BS5709:2018; and
4. the works shall be removed on or before 5 July 2032.
5. For the purposes of identification only, the location of the proposed works is shown outlined in red and marked 2 and 4 on the attached application plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) 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.
2. The application as originally made included works at Area 1 (Shaw enclosure) and Area 3 (Shaw Gill). The applicant subsequently amended the application by withdrawing all Area 1 and Area 3 works and adding the location of existing and proposed new gates and stiles, An updated plan, dated 30 June 2022, is attached to this decision. I am satisfied that no person wishing to comment on the application has been prejudiced by the above amendments.
3. There have been a number of previous Secretary of State consents for time-limited fencing on the common. However, none of those consents exactly mirror what is now being applied for, especially in the light of the withdrawal of the Area 1 and 3 works, and the proposals now before me are considered on their own merits.
4. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE), Durham County Council (DCC) and the Open Spaces Society (OSS).
5. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
6. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
7. the interests of the neighbourhood;
8. the public interest. (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); and
9. any other matter considered to be relevant.

**Reasons**

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

1. The application is made by Farmoor Services (FS) for East Arkengarthdale Commoners Committee (EACC), which comprises the land owner and those exercising registered rights to graze over the application land in accordance with Countryside Stewardship Agreements. FS acts as EACC Secretary and as agent for the landowner.
2. FS confirms that the proposed works were discussed and agreed at an EACC meeting as part of the current Stewardship Scheme negotiations and that all EACC members were consulted again as part of this application process. In the absence of individual representations from any EACC member I am satisfied that the landowner and those exercising rights of common over the land support the application before me.

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

1. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access. The land the subject of the application is some distance from populated areas but lies within the Yorkshire Dales National Park (YDNP) and is likely to attract many visitors. NE advises that a number of public footpaths and bridleways cross the common, some of which intersect with the existing enclosures.
2. The Area 2 proposals are solely for retention of existing fencing forming the Eskeleth enclosure. Public access is via four stiles (one on each of its four main sides) and one 12 foot gate. The Area 4 proposals are for retention of some fencing, removal of some fencing and the erection of a new line of fencing. This will open up the current enclosure at Arndale Hill and create a new enclosure served by five stiles and four 12 foot gates around three of its four main sides. The proposals will effectively move the Arndale Hill enclosure to the west and reduce its area from 93.53 hectares to 75.55 hectares.
3. NE advises that the British Standard for access infrastructure (BS5709) was updated in 2018 and that it would expect all existing stiles to be replaced with gates and that all new and existing gates should comply with the Standard. In response the applicant advises that they work closely with YDNP to ensure full access compliance and offers two reasons why replacing all stiles with gates would not be practical. Firstly, gates are a perpetual problem for stock management as they are left open by members of the public, resulting in lost stock and time having to be spent by farmers in regathering them. Secondly, gates are unsuitable for the terrain at some locations and may be unsafe to use.
4. I consider that whilst self-closing gates, as suggested by NE, would prevent stock straying, they would not address safety risks of installing gates where the terrain is unsuitable. I am satisfied that the proposed mixture of gates and stiles will allow an acceptable level of public access. The applicant confirms that all gates and stiles will comply with BS5709:18, which can be ensured by attaching a suitable condition to the consent.
5. Public Footpath ‘Arkengarthdale 20.78/24/1’ crosses Area 2 and the amended plan shows stiles at its two points of entry. I am satisfied that the Area 2 proposals will not obstruct the footpath. In response to a suggestion from OSS the applicant has agreed to install an additional stile (not shown on the amended plan) in the Area 2 northern fence line west of the Gull Sike, which I consider will be of benefit to public access.
6. DCC advises that Area 4 is within its boundary and notes that it is close to Bridleway 8. The amended plan shows that the proposed western fence line will run very close to the bridleway for a short distance. The applicant confirms that sufficient distance will be given for bridleway users to pass alongside the fence and I am satisfied that the fence will not interfere with the bridleway. DCC also asked for stiles to be provided in the western and southern fence lines. Such stiles are to be provided and are shown on the amended plan.
7. I am satisfied that the proposals include provision of gates and stiles at suitable points in the Area 2 and Area 4 fence lines. The Area 4 enclosure will be about 20% smaller than the current Arndale Hill enclosure, which is to be opened up, and the impact on public access will therefore be reduced. I conclude that the works will not seriously harm the interests of the neighbourhood and public rights of access.

***The public interest***

*Nature conservation*

1. The western area of Arkengarthdale Common is subject to Special Area of Conservation (SAC) and Special Protection Area (SPA) designations. The application land is not subject to such designations but some of the fencing proposed for retention is sited on the Shaw Beck geological Site of Special Scientific Interest (SSSI). However, NE does not envisage its retention will have any detrimental effect on the features associated with the SSSI.
2. The common has been part of an Environmental Stewardship Scheme for the last 20 years with temporary fences in place to assist with the restoration of the heathland habitat. It is currently part of a 10 year Countryside Stewardship Higher Tier Scheme, which requires careful control of sheep grazing on certain areas of the common; the scheme runs until 31 December 2032. Areas 2 and 4 are both covered by the scheme. The applicant says the fencing is integral to the management works for peat restoration under the scheme and is required to aid the continued restoration of the heathland habitat, particularly the priority blanket bog habitat.
3. NE advises that there is evidence of habitat improvements within the Area 2 enclosure compared to outside of it. The area supports black grouse and there are early signs of possible wet heath indicators. The applicant says stock will be excluded from grazing the area during the winter months and NE agrees that it would benefit from a lower level of grazing to continue habitat restoration.
4. The applicant advises that the current Arndale Hill enclosure has recovered well and will be opened up to be grazed alongside the rest of the moor in line with the current Stewardship Scheme. However, the area alongside it to the west, which will form Area 4, has suffered from a very severe attack by heather beetle which has destroyed a lot of the heath vegetation. The area is also classified as blanket bog (with a peat depth of over 40cm) and peat restoration works are planned as part of the Stewardship Scheme.
5. The extract from the East Arkengarthdale peat restoration survey submitted by the applicant recommended the exclusion of stock, particularly in winter, to allow the habitat to be established. The Area 4 proposals will allow the necessary stock control and NE advises that this will give the habitat extra protection to recover at a faster rate compared to non-fenced areas.
6. I conclude that retention of the works at Area 2 and the forming of a new Area 4 enclosure at Arndale Hill, each for a 10 year period to approximately match the current Stewardship Scheme period, is in the nature conservation interests of the common.

*Conservation of the landscape*

1. The applicant advises that all the fence lines are carefully positioned below the top of any hill and follow the contours of the land. This is to reduce impact on the landscape and to reduce bird strike. All new works will be carried out using low ground pressure vehicles and at a suitable time of year so as not to cause surface damage.
2. NE considers that the use of stock netting and wide post spacing will have lessened the original impact of the fencing and the subsequent weathering of the materials will have lessened any visual impact. NE nevertheless says that the fencing will continue to have a negative impact on the landscape, particularly where the new fence is proposed, and I consider that this is likely to be the case. However, I conclude that the visual harm is not so serious as to outweigh the benefits of the works to nature conservation.
3. YDNP did not comment on the proposals but I am satisfied from correspondence provided by the applicant that it had an opportunity to do so if it so wished. I conclude that the proposed retention and installation of fencing for 10 years will not unacceptably harm the landscape and that the natural beauty of the National Park will be conserved.

*Archaeological remains and features of historic interest*

1. In setting out details about Area 2 the application form refers to the presence of Scheduled Ancient Monuments (SAMs) in “the area”, which will be protected from stock pressure. The applicant subsequently clarified that the fences are well away from the SAMs. I am satisfied that the original reference was not intended to mean there are SAMs within the Area 4 enclosure and there is no evidence before me to suggest that the works will harm archaeological remains or features of historic interest.

**Conclusion**

1. I conclude that retention of the Area 2 works and the works to create a new Area 4 enclosure will benefit nature conservation interests and will not seriously harm the other interests set out in paragraph 7 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

