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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: 27 July 2022** |
| **Application Ref: COM/3283838**  **Charlton Kings Common, Cheltenham, Gloucestershire**  Register Unit No: CL172  Commons Registration Authority: Gloucestershire County Council   * The application, dated 21 September 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 Cheltenham Borough Council. * The works comprise the retention of 750m of stock fencing to the south of Daisy Bank Road and no more than 30m of fencing at the southwest corner of Charlton Kings Common where it meets Leckhampton Hill Common and the Cotswold Way. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 21 September 2021 and the plans submitted with it subject to the condition that the works shall be removed on or before 31 July 2030.
2. For the purposes of identification only, the location of the works is shown outlined in red on the attached 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 is to retain works that were previously given consent for a time-limited period of 10 years (Application Decision COM/251 of 7 November 2011). The applicant considers that some of the COM/251 consented works do not actually need consent as they are located on or beyond the boundary of the common. This application includes only those works that the applicant now considers to need consent and excludes most of the previously consented works at the western boundary of Charlton Kings Common.
3. The application as made seeks indefinite retention of the works described above but in response to representations received about the proposals the applicant agreed to instead seek a further 8 year consent period.
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) 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 Common is owned and managed by the applicant, Cheltenham Borough Council (CBC), and it follows that the proposals are in the owner’s interests.
2. The register of common land records no rights of common so there are no rights holders to be affected.
3. CBC advises that ten neighbouring residential properties have rights of access along restricted byway ZCK 56, which is known as Daisy Bank Road and runs inside the common land boundary between the properties and the fence. The residents were consulted by CBC about the retention proposals but none commented. There is no evidence before me to suggest that their interests will be harmed by the retention of the fencing south of Daisy Bank Road.

***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. CBC advises that Charlton Kings Common is an extremely popular area with the public and is regularly used by walkers, runners, dog walkers, mountain bikers, horse riders, nature lovers, history lovers and more.

1. No new works are proposed and retention of the existing works for the period applied for will create no new impediments to public access or change the way in which the land has been used by local people for the last 10 years. The application plan shows six access points in the Daisy Bank Road fencing and two at the Leckhampton Hill site. NE considers that the current access provision on existing desire lines and public rights of way is adequate and conforms to the current British Standard for Gaps Gates and Stiles (BS5709).
2. No specific concerns have been raised about the impact the works have had on public access since they were installed or about any impact they might have in the future. There is no evidence before me to suggest that retention of the works for a further 8 year period will harm the above interests such that consent should be refused.

***The public interest***

*Nature conservation*

1. The application land lies within the Leckhampton Hill and Charlton Kings Common Site of Special Scientific Interest (SSSI). NE advises that the site is one of a series of unimproved Jurassic limestone grassland sites found along the Cotswolds Scarp and is of considerable biological and geological interest. CBC advises that the grassland needs careful management in order to restore and improve its condition. This would typically include preventing scrub and woodland encroachment by sympathetic mowing and/or grazing to restore and improve the prevalence of indicator species flora and fauna.
2. CBC says that due to the very steep topography of the site mowing the land with machinery is impractical and potentially dangerous so the only sustainable way to manage the land is by extensive grazing. NE has supported CBC for many years in developing a sustainable way to manage the special interest of the common through the re-introduction of grazing to tackle the encroaching scrub and rank grassland.
3. The 2011 consent enabled stock-proof fencing to be constructed along the perimeter of the common or as close to it as possible. This created a secure boundary in conjunction with an existing dry stone wall to allow an extensive grazing regime. It also enabled the land to be entered into a Higher Level Stewardship agreement (HLS) with the aim of helping the site to achieve SSSI favourable condition. The HLS agreement was initially for 10 years and was then extended. The current funding agreement runs until the end of March 2023.
4. OSS raised concerns that consent to retain the fencing for a further period is sought without any evidence that envisaged benefits to improving the SSSI have been delivered in the last 10 years or are in prospect. However, NE advises that the grazing and scrub clearance continues to benefit the SSSI interest features and that retaining the fencing for a further limited period will allow CBC to extend the HLS agreement as necessary until such time as they are able to enter one of the new Environmental Land Management (ELM) schemes which may be available from 2024.
5. I am satisfied that intended nature conservation benefits are being realised and that retention of the fencing for a further 8 years is justified to allow further realisation of the benefits.

*Conservation of the landscape*

1. The fencing is of timber post and wire and is approximately 1m high. CBC says such fencing is a common sight in the countryside, is in keeping with the rural setting and the use of wire in between posts maintains the open feel of the common as much as possible.
2. NE advises that the fencing along Daisy Bank Road is set back from the public right of way, which limits the landscape impact. Furthermore, the initial impact will have been reduced by the subsequent weathering of materials and the restoration of limestone grassland. The fencing at the Leckhampton Hill site encroaches up to 5m into the common along the approximate 30m length to accommodate the natural undulations. I am satisfied from contemporary photographs of this fencing submitted by the applicant that it is partially screened by vegetation, that its weathering over time has reduced its visual impact and that it is not causing serious harm to the landscape.
3. The common lies within the Cotswolds Area of Outstanding Natural Beauty (AONB). Whilst the AONB Board did not comment on the application it advised CBC in its email of 10 December 2020 that it would support an application for the retention of the fencing as grazing by livestock is an essential part of the management of the common.
4. I consider that the works have blended into the landscape to an extent since they were put in place and I conclude that their retention for a further 8 years will have little impact on the landscape and that the natural beauty of the AONB will be conserved.

*Archaeological remains and features of historic interest*

1. There is no evidence before me to suggest that retaining the works for a further 8 years will harm archaeological remains and features of historic

*Other relevant matters*

1. CBC is exploring the idea of using ‘no fence’ technology, which involves fitting electronic GPS collars to grazing cattle in order to control their movements. CBC considers that this type of technology would be of huge benefit to the site as it would enable a more targeted form of grazing. If successfully employed it would allow the post and wire fencing to be removed. However, the technology is not immediately available and the animals would need to be trained over a period of time before the fencing could be removed. Both NE and OSS are also keen to see such a system implemented and I conclude that the giving of consent for a further 8 years will give time for the feasibility of the idea to be fully explored.

**Conclusion**

1. I conclude that retention of the works for a further period of 8 years 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**

