Planning Inspectorate logo

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| **Application Decision** |
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| **by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 August 2022** |

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| **Application Ref: COM/3282056**  **Therfield Heath, Baldock Road, Royston**  Register Unit No; CL 092  Commons Registration Authority: Hertfordshire County Council |
| * The application, dated 19 April 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 Ms Carol Fossick of The Therfield Regulation Trust * The works comprise the retention of a fence for which permission was given under COM 228 (a previous application). |
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Decision

1. Consent is granted for the proposed works in accordance with the application dated 19 April 2021 and the plan submitted with it, subject to the following condition:

1) Notwithstanding the time period applied for, the existing fencing and associated works shall be removed in full, no later than 10 years from the date of this decision.

1. For the purpose of identification only a copy of the application plan is attached to this decision.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy (November 2015) 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. This application has been determined solely on the basis of written evidence and an accompanied site visit undertaken on 26 April 2022. I also viewed the site from Baldock Road, unaccompanied on 25 April 2022.
3. I have taken account of the representations made by Natural England (NE); the Open Spaces Society (OSS); Royston Wildlife Group (RWG); and a local resident. I have considered all submissions in reaching my decision on this application.
4. 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 (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

d. any other matter considered to be relevant.

Reasons

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

1. There are a number of registered rights recorded over the land as outlined on the Register, which include grazing, the playing of cricket, golf and other games. I am satisfied that the works would also be in the interests of persons exercising rights of common over the land. Furthermore, I am satisfied that the development would not harm the interests of those occupying or having rights over the land.

***The interests of the neighbourhood***

1. The interests of the neighbourhood test relate to whether the works will impact on the way Therfield Heath (the Common) is used by local people. In general terms works should only be permitted if they maintain or improve the condition of the Common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact. There is no definition within the 2006 Act of the term ‘neighbourhood’.
2. Whilst noting the objection to the development from a local resident, the OSS and RWG, I also note that NE do not raise any objections. During my visit, I observed that Baldock Road was well used by motorists, with the speed of vehicles being notable and continuous due to the road conditions. Even if the speed was reduced to 40mph, there would still be benefits derived by local people (and those living within the neighbourhood in particular) from the proposed works. The effective removal of any highway safety implications from Baldock Road and the users of the Common is a factor to be weighed in the balance when determining this application.

***The public interest***

1. 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*

1. The Common is a Site of Special Scientific Interest (SSSI), which includes a nationally important population of pasque flower and other nationally scarce plant species associated with the chalk grassland habitat.
2. There is no evidence before me to indicate that the development harms nature conservation interests. However, I acknowledge that there is some merit in the retention of the fence to encourage the successful development of a mixed species hedge and potentially reduce the predation of young birds and mammals.

*Landscape*

1. Although the location of the fence is within the hedgerow, it does nonetheless, have a moderate visual impact. However, this would be heightened during the winter months, when there would be a reduction in vegetation. In turn, this will become more noticeable when the fence deteriorates through the passage of time. Thus, the development sought under this application for a permanent consent would represent a harmful addition to the landscape. Given the existing character and appearance of the common, especially in the vicinity of the site, the proposed permanent retention of the fencing would detract from the overall visual qualities of the Common.

*Public access*

1. I consider that the development does not unacceptably restrict public rights of access or harm the interests of people from the neighbourhood wishing to use the Common, especially as a gate is located within the hedgerow, with access to Footpath 17. I noted the new residential development being constructed on the opposite side of Baldock Road to the Common, but I do not consider the current situation to form any impediment regarding access to the Common by existing or future residents.

*Archaeological Remains and Features of Historic Interest*

1. There is no evidence to suggest that the development has an adverse effect on any archaeological remains or features of historic interest.

**Conclusion**

1. I conclude that the permanent retention of the fence would seriously harm the interests set out in paragraph 6 above. However, I consider that there is justification to extend the retention of the fence for a further temporary period, due to the wider public benefits through significantly reducing the potential conflict between users of the Common and motorists on Baldock Road. Additionally, the ecological benefits to the SSSI and the improved habitat within the hedgerow, represent material considerations of significant weight.
2. Whilst noting the suggestion of a further extension of 5 years by the OSS, I also note the length of time suggested by NE. Consequently, to ensure that the hedgerow fully establishes, I consider that a further extension of 10 years, as suggested by NE is appropriate in this instance. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

W Johnson

INSPECTOR

