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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: 7 September 2022** |
| **Application Ref: COM/3295252**  **Mary Tavy Common, Devon**  Register Unit No: CL193  Commons Registration Authority: Devon County Council   * The application, dated 11 March 2022, 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 Mary Tavy Commoners Association. * The works comprise the erection of 18 metres of wooden post and rail fencing with a 4 foot wooden gate and a separately positioned second 4 foot gate. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 11 March 2022 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than 3 years from the date of this decision;
3. the gates shall comply with British Standard BS5709:2018, be tied open when the land is not being grazed and affixed with signs saying “*Public access welcome*”; and
4. the works shall be removed on or before 30 September 2028.
5. For the purposes of identification only, the location of the proposed works is shown 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 for works at two separate locations. The application form indicates that two common land units are affected by the works (CL193 and CL3). However, the commons register map shows that both locations are within CL193 and I am satisfied that CL3 is not affected by the works.
3. The common land register describes CL193 as ‘The tracts and pieces of land comprising part Blackdown and West Blackdown, part Willsworthy, Smallacombe Bottom, Kingsett Down, Zoar Common, Black Lion Common, Common Wood and two small pieces of land at Hordon in the parish of Mary Tavy’. The published application notice describes it simply as Mary Tavy Common and the applicant advises that this is the name by which it is known. The notice refers to Creason Wood, whereas the application form refers to Common Wood. The Open Spaces Society (OSS) advises that the two woods are adjacent and I am satisfied that the location of the works is sufficiently clear such that no person wishing to comment on the application has been prejudiced.
4. The application originally sought a 10 year consent. However, following representations made by the OSS, the applicant agreed to amend the proposed duration to five years after expiry of the current Environmental Stewardship Agreement (ESA) in place for the land, which runs until 30 September 2023.
5. 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 OSS.
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
7. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
8. the interests of the neighbourhood;
9. 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
10. any other matter considered to be relevant.

**Reasons**

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

1. The application land is owned by Ms Kate Ashbrook, who was consulted about the application but did not comment. There is no evidence before me to suggest that the works are likely to harm the interests of those occupying the land.
2. The common land register records numerous rights over CL193 and the applicant advises that grazing rights are currently exercised by 17 rights holders. Grazing is overseen by Dartmoor Commoners Council (DCC) and managed through an ESA between the Mary Tavy Commoners and NE, as referred to in paragraph 6 above.
3. DCC and the active commoners were consulted about the application; none commented. The active commoners include Mrs J Littlejohns, who grazes ponies on the application land and in whose interests the application is made. In the absence of any comments, and given that the application is made by the Commoners Association, I am satisfied that the proposed works are in Mrs Littlejohns’ interests and will not adversely affect others exercising rights of common over the land.

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

1. The works are proposed to stop Mrs Littlejohns’ ponies from crossing a leat, over which there are three footbridges, and straying onto the public highway. The works are described as Gateway 1 and Gateway 2. Gateway 1 comprises a fence and gate running from the edge of the leat to a hedge. Gateway 2 is some distance to the east and comprises a short length of fencing either side of a gate located directly in front of the third footbridge.
2. 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 interests of public access.
3. Gateway 1 will allow public access to the corner of the common and the two footbridges via a gate positioned on an existing path. Walkers will not be greatly inconvenienced by the presence of a fence at this location given its relatively short length. Gateway 2 will restrict public access only insomuch as those wishing to use the footbridge will need to open an unlocked gate.
4. NE requested that the proposed gates should be suitable for horse riders if such use is made of the application land. The applicant advises that the land is not suitable for horse riding but that gates are proposed rather than stiles to facilitate access for the public whether on foot or on horseback, although no evidence has been presented to show that the application land is used by horse riders.
5. The applicant has agreed to affix signs on the gates to confirm the right of public access and to tie the gates open when the land is not being grazed; both measures can be secured by attaching a suitable condition to the consent.
6. I conclude that the works will not have a significant impact on the interests of the neighbourhood or public rights of access.

***The public interest***

*Nature conservation*

1. NE accepts that continued grazing of the land is an important aspect of the ESA as it will maintain its ecological interest; it has no objection to the works being in place for up to 10 years.
2. The ESA includes a restoration of woodland element, which requires light grazing by cattle or hardy ponies. I consider that keeping the ponies contained within the intended grazing area is beneficial to the ESA’s conservation aims and I conclude that the proposals are in the interests of nature conservation.

*Conservation of the landscape*

1. To illustrate the likely visual impact of the works the applicant has submitted a photograph of an existing gate on a path beside the leat that is of the same type as that now proposed. The gate is of wooden 5 bar construction and blends in well with the surrounding vegetation. The proposed works are modest and small scale and will sit within similar surroundings. I am satisfied that they will cause little, if any, visual harm and that the natural beauty of the Dartmoor National Park will be conserved.

*Archaeological remains and features of historic interest*

1. There is no evidence before me to suggest that these interests will be harmed by the proposed works.

**Conclusion**

1. I conclude that the proposed works will be of some benefit to nature conservation interests as they will help to keep grazing animals contained within their intended area in accordance with the ESA. I further conclude that the works will not seriously harm the other interests set out in paragraph 8 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

