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| **Application Decision** |
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| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 08 November 2023** |
| **Application Ref: COM/3317951**  **Marsden Moor, West Yorkshire**  Register Unit No: CL39  Commons Registration Authority: Kirklees Council   * The application, dated 2 March 2023, is made under Section 23 of the National Trust Act 1971 (the 1971 Act) for consent to carry out restricted works on common land. * The application is made by the National Trust. * The works comprise the erection and retention for 15 years of approx. 1315m of 1.05m high fencing constructed from wooden posts, galvanized stock net and plain top wire enclosing approx. 11.95ha at Pule Hill. The fencing will incorporate seven access points; four pedestrian gates, two bridle gates and one vehicle gate. | |

**Decision**

1. Consent is granted for the works in accordance with the application, as amended, dated 2 March 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. all gates shall comply with British Standard BS5709; and
4. all works shall be removed on or before 08 November 2038.
5. For the purposes of identification only, the location of the proposed works is shown as a black dotted line on the attached plan.

**Preliminary Matters**

1. The application, as originally made, also included proposals to renew consent for existing time-limited fencing, the current consent for which expires in 2025. The applicant subsequently withdrew the proposals, which remain shown on the attached application plan but are not included in the consent given in this application decision. Subsequent upgrades to the access points in the proposed new fence are also shown on the plan.
2. I have had regard to Defra’s Common Land consents policy of 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.
3. This application has been determined solely on the basis of written evidence.
4. 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 Commons Act 2006 to have regard to the following in determining this application under the 1971 Act:-
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 by the applicant, National Trust (NT), which considers the works to be desirable for the purpose of improving opportunities for the enjoyment of the property by the public and are in the interests of visitors to the common. I am satisfied that the works will not harm the interests of those occupying the land.
2. The common land register records various rights of sheep grazing, turbury and bedding over CL39. NT advises that the commoners were the first people to be consulted when the scheme was proposed and their comments as to how they gather their sheep, where access is required, and where key areas of grazing and shelter are located informed the design of the scheme. Large areas of the estate were taken out of the project early on because the commoners were not supportive.
3. I am satisfied that those with rights of common were suitably consulted. In the absence of any representations from them there is no evidence before me to suggest that the works will harm the interests of those having rights over the land.

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

1. It is proposed to erect and retain the proposed fence for a period of 15 years. The fence will form three sides of a tree planting enclosure (the enclosure), with the fourth side comprising existing fencing that largely runs parallel to the north/south route of Manchester Road. The purpose of the fencing is to protect grazing stock from accessing the planted trees and damaging them through browsing.
2. The interests of the neighbourhood test relates to how the works will impact on the way the common land is used by local people and is closely linked with interests of public access.
3. OSS advises that the application land it is a popular recreational area close to the Colne Valley conurbation to the east and the Saddleworth district to the south-west. I consider that it is likely to be generally well used by local people and visitors for outdoor recreation.
4. The land is subject to a right of access on horseback under section 193 of the Law of Property Act 1925, although no evidence has been submitted by any party to suggest that horse riding is prevalent. NT advises that the Pule Hill Trail walking route runs through the enclosure and there is reference in the application correspondence to the Standedge Trail, although these two routes are not clear from the submitted plans.
5. The application plan, as amended, shows the intended public access points in the proposed fence. These comprise four pedestrian gates, two bridle gates and a vehicle gate. NT advises that the access points will ensure that all permissive routes and walking routes remain accessible. No bridle gates will be installed on the north-south fence line as the topography of this area does not make it feasible to ride a horse across there, but bridle gates will be installed to allow horse riders to ride north-south (or south-north) through the enclosure.
6. The fence line will be located to the west of the path that leads from the north to the summit of Pule Hill. The fence and the path will run side by side due to the shape of the hill and the impracticality of the erecting a fence on a steep slope. However, the walked route will lie entirely outside of the enclosure to allow unimpeded access to this route to the top of Pule Hill. The fence line will not cross the walked route and will be placed to the west of it along the full length. The vehicle gate will be locked to prevent unauthorised vehicle access but an unlocked pedestrian gate will be positioned next to it.
7. I conclude that the proposed works will harm the above interests to an extent as they will interfere with free public access over the common. However, I further conclude that the harm will not be serious as the proposed gates will provide acceptable access points on foot and horseback into the enclosure and once inside public access will not be restricted.

***The public interest***

*Nature conservation*

1. NE advises that it worked with NT on the details of the planting scheme in advance of the submission of the application. The development and design of the proposals has undergone a process of ecological, landscape and historic environment surveys funded through the Forestry Commission’s Woodland Creation Planning Grant. The proposed planting, fencing and 15 year’s maintenance will be funded through the Trees For Climate Fund, administered by the White Rose Forest.

1. NT advises that the planting is proposed to create a new, scrub habitat to increase diversity in the moor. The planting is expected to support a greater range of insects, and therefore small mammals, songbirds, and species which prey on them. In correspondence direct with OSS, NT further advises that the tree planting forms part of a wider project within the South Pennines to replace clough and scrubby woodland habitat that once existed in these areas.
2. The application land is within an area designated as a Special Protection Area (SPA), Special Area of Conservation (SAC) and the Pule Bents unit of the South Pennine Moors Site of Special Scientific Interest (SSSI). NE advises that on the basis of the ecological surveys used to inform the design of the proposals there will be no likely significant effect on the designated features of the SPA, SAC or SSSI. Indeed, the low density woodland will enhance the ground vegetation thereby improving the condition of the SAC in this area.
3. NE confirms that it understands and supports the ecological rationale for undertaking planting in this area and believes that time-limited fencing to exclude stock will enable the intended ecological and environmental outcomes to be delivered. I am satisfied that the proposed works are in the interests of nature conservation.

*Conservation of the landscape*

1. The application land is not subject to any statutory landscape designations and NT suggests that the proposed post and wire fencing is the least visually intrusive option and is in keeping with other fencing in the local area. Nevertheless, I consider that it is bound to have some detrimental visual impact on the landscape. Surveys carried out appear to have concentrated on the visual impact of the tree planting rather than the enclosure fencing and no evidence has been presented to suggest that landscape interests have been considered in deciding the precise positioning of the fencing.
2. I conclude that the proposed fencing will be of some harm to landscape interests but the harm is unlikely to be serious and is outweighed by nature conservation benefits.

*Archaeological remains and features of historic interest*

1. Historic England, West Yorkshire Archaeology Service and Huddersfield District Archaeology Society were all consulted about the application but did not comment. There is no evidence before me to suggest that the proposed works will harm the above interests.

***Other Matters***

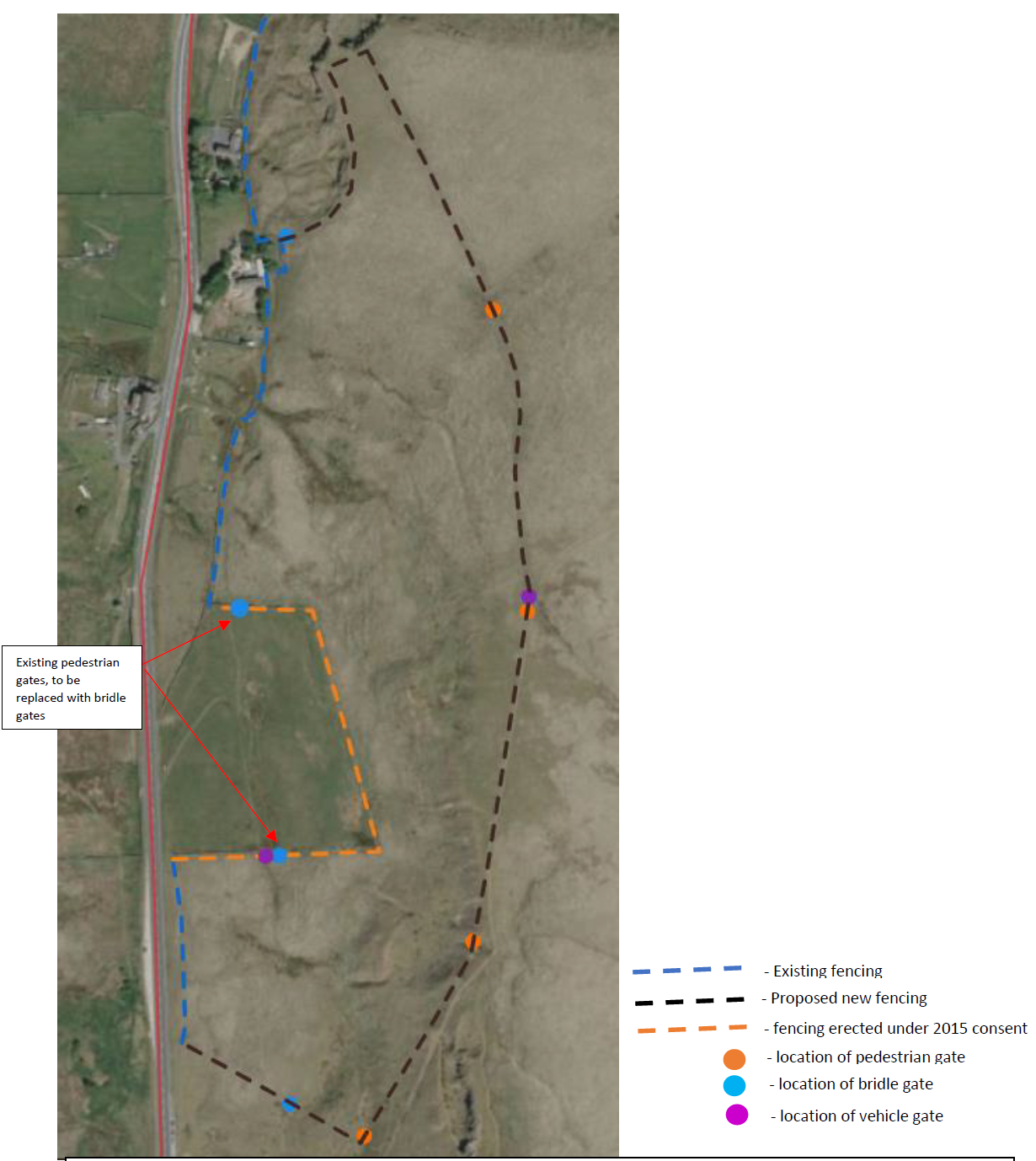
1. OSS contends that the proposed 15 year fencing retention period is unrealisable as it is unlikely that a woodland community can be established and self-sustaining against grazing within that time. NE advises that it will take a minimum of 15 years in this upland environment for trees to become sufficiently established to withstand browsing by livestock.

1. In response, NT considers that under the current upland conditions and a well-managed maintenance schedule the trees should be sufficiently grown within 15 years to withstand low levels of livestock browsing. Nevertheless, before the 15 years is up and the fencing removed, a full assessment of the trees and their ability to withstand livestock browsing will be undertaken. It is open to NT to apply for consent to retain the fencing for a further period at that point and any such application will be considered on its own merits.
2. I am satisfied that 15 years is a realistic timescale. No party has suggested that the application before me should be amended to a longer retention period and it has been decided on the basis of the proposed 15 year period.

**Conclusion**

1. I conclude that the proposed works will not seriously harm the interests set out in paragraph 7 above; indeed, they will be in the long-term interests of nature conservation. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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