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| **Application Decision** |
| Site visit on 24 October 2023 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 December 2023** |

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| **Application Ref: COM/3317939**  **Brisley Green, Brisley, Norfolk** |
| Register Unit: CL 68 |
| Registration Authority: Norfolk County Council |
| * The application, dated 1 March 2023, is made under Section 38 of the Commons Act 2006 (“the 2006 Act”) for consent to carry out restrictedworks on common land. * The application is made on behalf of Brisley Parish Council. * The application is for works involving the erection of fencing.  |  | | --- | |  |   **Decision**   1. Consent is granted for the works in accordance with the application and subject to the following conditions: 2. Consent is granted for a period of 6 years from the date of this decision.   REASON: To enable the impact of the additional fencing to be reviewed and provide an opportunity for alternatives to be fully explored.   1. Every area of the common enclosed by the fencing permitted by this consent shall have a British Standard BS5709:2008 compliant gate at two entry points.   REASON: To enable the public to continue to be able to enjoy rights of access over the common irrespective of where the additional temporary fencing is erected. |

**Preliminary Matters**

1. The applicant outlines that graziers are presently permitted to fence 10% of the common (55,000m2), presumably by virtue of *The Works on Common Land (Exemptions) (England) Order 2007 (SI 2007/2587)*. This fencing is temporary in the sense that it can only be erected for a maximum of six months each year in relation to any part of the common. It is evident that the fencing is regularly moved to enable livestock to graze on different parts of the common. Although the existing permission to fence 10% of the common is not before me, it is something that should be taken into consideration in terms of the application outlined below.
2. The applicant requests that permission is granted to increase the area of the common permitted to be fenced by an additional 10% at any one time. It would enable additional temporary electric stock proof fencing around 3 feet high to be permitted on any part of the common for a maximum period of six months in any one year. The applicant does not wish to lose the graziers because the common is too challenging to graze their stock. Whilst the fencing may be viewed as being temporary in that it would only be in place for a maximum period in any one location, clearly the intention is for this fencing arrangement to continue in perpetuity.
3. Four representations were made in response to the application. Some of these raise concerns about certain aspects of the application. This is particularly applicable to the representation from the Open Spaces Society (‘OSS’).

**Main Issues**

1. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application:-
2. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
3. the interests of the neighbourhood;
4. the public interest which includes the 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
5. any other matter considered to be relevant.
6. In considering these tests, regard should be given to the Department for Environment, Food and Rural Affairs Common Land Consents Policy of November 2015 (“the consents policy”).

**Reasons**

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

1. There are rights of common recorded in the Common Land Register for the grazing of livestock. The application is made to facilitate grazing on the common by helping to contain and protect stock. Therefore, the proposed fencing is likely to be beneficial for those who have grazing rights over the common. There is nothing to suggest that the fencing has previously, or would in the future, be erected in such a way as to impact on those people who have the benefit of an easement in order to access their properties.

***The interests of the neighbourhood***

1. The impact of the application on the public interestis considered below. These matters are likely to have particular relevance to local residents, for instance in terms of recreational use of the common. There may also be some benefit for local residents in terms of preventing animals from straying onto the adjacent roads, other land, or properties in the village.

***The public interest***

1. Paragraph 3.2 of the consents policy outlines one of the outcomes sought is that “*works take place on common land only where 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*”.
2. There is nothing to suggest that the proposed works would impact on any archaeological remains or features of historical interest. It is difficult to assess the visual impact of the fencing given its temporary nature. However, the fencing would be limited in height and this type of fencing is currently erected on the common at times albeit to a lesser extent. There is additionally an option to impose a condition to enable the impact of the works to be reviewed.
3. It is generally accepted that the grazing of animals can play a valuable role in the management of the common, which is a county wildlife site. Natural England (‘NE’) says that grazing and the cutting of the site for hay is beneficial for the biological enhancement of the common. They support grazing as a management option. From a nature conservation perspective there will be a positive outcome from facilitating a greater area of the common to be gazed at any one time.
4. The representation from Mr Yaxley points to a few areas of wildlife value that he considers are likely to be affected by excessive grazing between the months of May and July. It seems to me that with a little planning the grazing could be undertaken in such a way to avoidsensitive areas during particular months of the year. However, given that grazing is permitted over the whole of the common, I do not consider that I can impose a condition that would prevent animals from being grazed on these areas during particular months of the years.
5. The applicant outlines that there are no established walking routes and the public wander generally all over the common. The erection of fencing would impact on people using the common for recreational purposes. Unless appropriate means of access are provided for each enclosed area, the public would potentially be prevented from using up to 20% of the common should permission for the additional fencing be granted. This would significantly impact on the amount of the common available for the public to use. The areas of the common available for the public to use would also vary on a regular basis.
6. In my view, if consent is granted, accessible gates should be provided to enable the public to continue to enjoy widespread access over the common. The implementation of such a condition would enable a fair balance to be struck between the different interests.

***Alternatives***

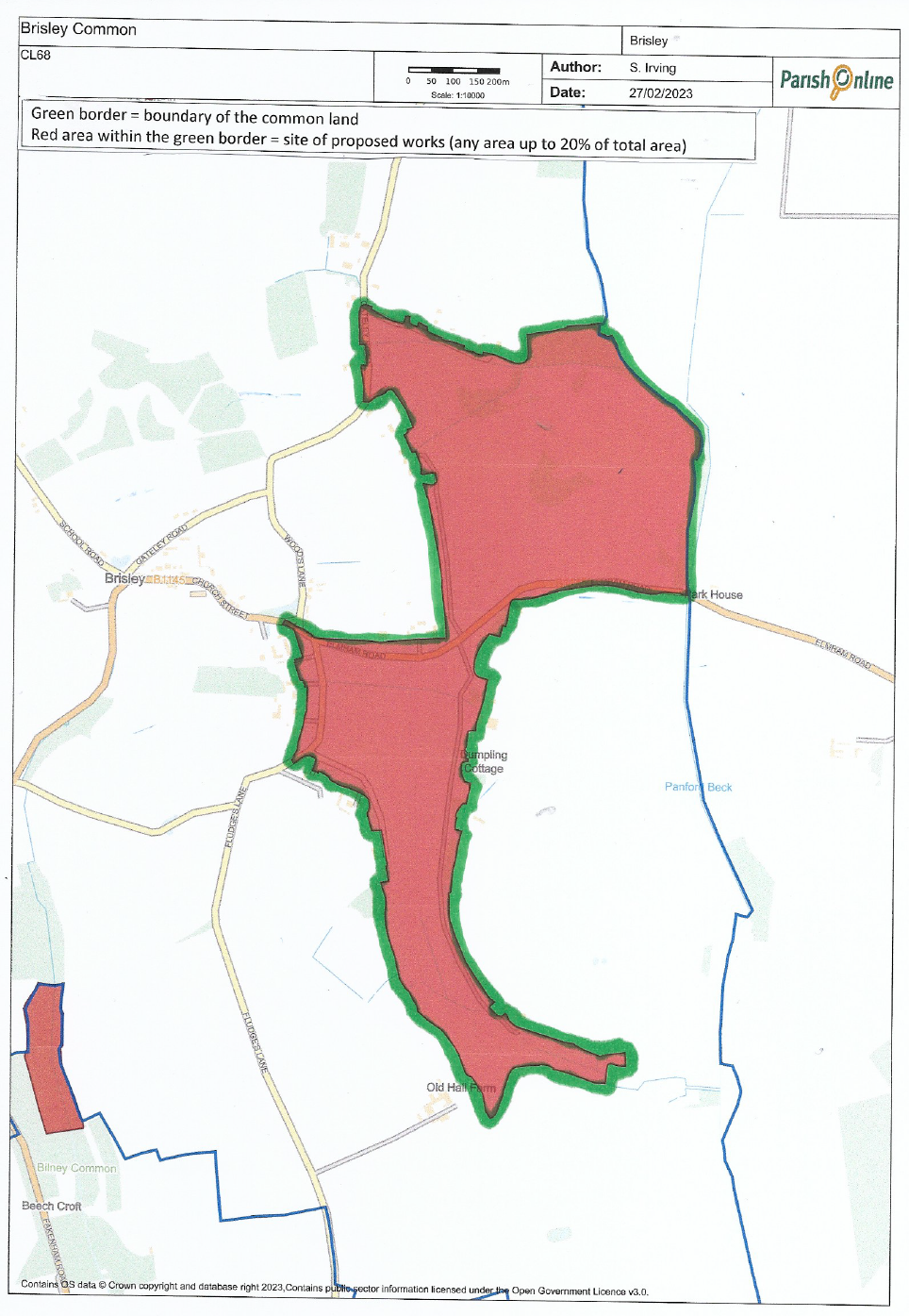
1. Before any consent is granted, consideration should be given to what alternatives might exist to the erection of the additional fencing.
2. In terms of the potential to install cattle grids, the applicant points to the costs involved, the impact on local residents and the views of the highway authority. It is estimated that it would cost £50,000 per grid and on the site visit up to six potential locations were identified as requiring a cattle grid.
3. No correspondence has been provided to show that local residents would oppose the installation of cattle grids due to noise. There are also no details regarding why the highway authority would not permit or support the installation of cattle grids in this locality given the presence of livestock. I visited the site late in the morning and the level of traffic on the B1145 Road was fairly lowat that time of the day. I also noted that the road becomes subject to the national 60 mph speed limit where it passes the common. The same is true of the minor road to the south. There is nothing to suggest that any consideration has been given to the introduction of a more restrictive speed limit to encourage motorists to take care when driving in this locality. On the issue of cost, the OSS suggest potential funding schemes that could be explored.
4. NE have additionally drawn attention to solutions such as ‘no-fence’ technology to limit the extent of livestock grazing. Whilst the costs involved at the present time are considered high, this may not necessarily be the case in the future and there is the potential for further advances in technology to become available.
5. Both NE and the OSS believe that consent should be granted for 6 years. I accept that such a condition would enable the impact of the additional fencing to be reviewed and other alternatives to be fully explored.

***Conclusions***

1. The application would clearly benefit those who have a right to graze livestock on the common. No issues have been identified in relation to any other parties with an interest over the land. There are significant benefits for nature conservation by encouraging and facilitating grazing on the common. In contrast, the proposed fencing would have an impact on the ability of the public to exercise their right of access over the land. However, the access issue could be addressed by temporary gates being erected for each fenced enclosure and moved in conjunction with the proposed fencing.
2. I also agree with the OSS and NE that any consent should be time limited (period of six years) to enable the applicant to investigate alternative options and other sources of funding. It would additionally enable the impact of the fencing over this period to be assessed and for potential adjustments to be made to the fencing scheme if necessary.
3. When all of the relevant matters are taken into consideration, I conclude on balance that consent should be granted for the works included within this application subject to conditions being imposed in relation to how long the additional fencing is initially allowed to remain in place andfor the retention of publicrights of access.

**Mark Yates**

**Inspector**

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