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| **Application Decision** |
| Site visit on 19 December 2023 |
| **by J Ingram LLB (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 February 2024** |

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| **Application Ref: COM/3323563**  **Bethecar Moor, Westmorland, Cumbria** |
| Register Unit: CL 189 |
| Registration Authority: Westmorland and Furness Unitary Authority |
| * The application, dated 2 June 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 Bethecar Commoners Association. * 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. The works shall begin no later than 3 years from the date of this decision. 3. All works shall be removed on or before 1 March 2034. 4. All gates shall comply with British Standard BS5709:2018. 5. For the purposes of identification only the locations of the relevant works are shown on the attached plan. |

**Preliminary Matters**

1. The application seeks permission for three temporary fences on Bethecar Moor Common (‘the common’). The common is an area of low moorland between the south east side of Coniston Water and the south west part of Grizedale Forest. The total area of the common is 551.17 ha. The common is within the Lake District National Park and the English Lake District World Heritage Site. The Dodgson Wood SSSI extends onto the common, and it is open access land. The common is managed by the Bethecar Commoners Association, there are 21 registered rights of pasture.
2. The three proposed fences are 4496 metres, 1559 metres and 128 metres respectively and would divide the common into three areas; 651,248 m2; 1,119,964 m2; and 4,033,596 m2. The applicant states the works are required to enable the exclusion of sheep from the edges of the common in order to promote conditions suitable for threatened butterfly and moth species.
3. Eight representations were made in response to the application. Five state they are in support or have no objections to the application. Three of the representations raise concerns about certain aspects of the application, including the potential harm to some wildlife, the visual impact of the fencing and public access to the common.
4. On the site visit I was accompanied by a representative of the Applicant, the project manager, the ecological consultant, and a representative of Natural England. I walked extensively around the western and northern sections of the common. I was able to view the location of the longest of the proposed fences. Where it was possible, I walked the proposed fence line, some parts were viewed from a distance.

**Main Issues**

1. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works include any that prevent or impede access over the land, including the erection of fencing.
2. In deciding whether or not to grant consent, I am required by Section 39 of the 2006 Act to have regard to the following:
3. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
4. the interests of the neighbourhood;
5. 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
6. any other matter considered to be relevant.
7. In considering these tests, I have had regard 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 proposal is to have cattle only graze the eastern and western parts of the common, sheep and cattle will continue to graze the central part. There are 5 commoners who will use their grazing rights on the common all year round should the application be successful. This segregation of sheep is a significant element of the applicant’s management strategy, which has as an objective to increase the biodiversity on the common. As the works are related to a Higher Tier Countryside Stewardship Application, there would be a benefit to the commoners of an increased income, if that application is successful. They may also benefit from the more effective management of livestock.

***The interests of the neighbourhood***

1. The impact of the application on the public interestis considered below. These matters are likely to have relevance to local residents, for instance in terms of recreational use of the common. However, as the common is very remote there are not many properties in the immediate area. No specific concerns were raised regarding the interests of the neighbourhood by the objectors. I consider there would be no adverse effects on the interests of the neighbourhood.

***The public interest***

*Nature conservation*

1. Paragraph 3.2 of the consents policy makes clear that *works should only take place on common land 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. It is clear that the proposals are aimed at achieving a significant positive impact on the environment and nature conservation. The nature conservation status of the common has previously benefited from schemes which have promoted the introduction of cattle onto the moor and a reduction in the numbers of sheep grazing throughout the year. This has improved the habitat for a number of nationally threatened species of butterfly and moths.
3. The applicant is now seeking to build on this with this proposal. There would be a number of potential benefits to nature conservation from carrying out the proposal to exclude sheep from the eastern and western parts of the common. These include creating upland wood pasture and wood pasture creation within the Dodgson Wood SSSI, restoring priority habitats, threatened species management, and continuing the practice of upland common grazing within the Lake District World Heritage Site. To improve the upland heathland condition, grazing levels will be reduced across the common.
4. There will be a continuation of the bracken control measures to help improve grazing quality for livestock, a reduction in grazing pressure on areas of heathland, as well as the introduction of larval food plants in selected locations all of which will help improve the breeding habitat of the butterflies. Exclusion of sheep from Dodgson Wood SSSI will help to promote suitable conditions for the natural regeneration of juniper scrub. Currently there is no regeneration of juniper, and it is likely that sheep grazing is responsible for this.
5. While I note the concerns raised by objectors in relation to the measures of success of the scheme and the final year outcomes, I note that the indicators are required by Natural England who are the overseeing body for the success of the funded project. Overall, there is no robust evidence which would lead me to conclude that they would not be sufficient.
6. Concerns were raised that reduced grazing means bracken cover and grass sward height will increase to the detriment of ground nesting birds and their predators. There were further concerns in relation to vegetational changes and the negative impact this would have on the Meadow Pipit and Cuckoo populations. However, I note that the bracken has been managed for the last two decades in the same manner as is being proposed and the extent and density of bracken is far less than it was 20 years ago. Furthermore, I note that the applicant does not anticipate any significant changes over the next 10 years that will adversely affect the Meadow Pipit or the Cuckoo.
7. As such, I consider that as there will be no change in the proposed management of the bracken this will have very little or no negative impact on nature conservation.
8. Overall, I do not consider the proposed works would have a significantly detrimental effect on the public interest in nature conservation.

*Conservation of the landscape*

1. The erection of fencing on the common will have a visual impact on this open landscape. They would be visible from some sections of the public footpaths and the unclassified road U5051, although this has been limited where possible. Furthermore, I note the proposal is for wooden posts and sheep netting fencing, which would result in a lower visual impact than some alternatives.
2. The applicant has submitted a Landscape and Visual Appraisal and Heritage Impact Assessment which concludes that the proposed fencing will have some localised and temporary adverse impacts on the common when viewed from some sections of paths. Natural England accept the conclusions of this appraisal and I have no reason to conclude otherwise.
3. However, concerns have been raised by objectors regarding the visual impact of the fencing and the length that is required, noting that careful alignment is needed to avoid it becoming intrusive when viewed from one of the most commonly used access routes.
4. Whilst I acknowledge these concerns, I note that the fence lines are designed to follow the pattern of the land, routing it around knolls rather than over them, and keeping it below the skyline. Furthermore, I note that where possible, the fences have been kept away from the main routes used by visitors to the common. Together, these measures limit the visual impact and provide a good amount of mitigation for the visual impact of the fencing.
5. Moreover, I note that alternative management schemes which would have shortened the fence line, would have required extensive ground works to create cattle grids on the unclassified road U5051. In addition, parallel field gates would have been required for access and drainage works around the cattle grid. I accept that this option would have been visually intrusive and difficult to remove at the end of the temporary period and concur with the applicant that it would result in additional physical impacts which would be difficult to justify.
6. Likewise, I note the applicant has also considered the potential of using GPS collars on sheep thereby creating virtual fencing. While this would not require any visible infrastructure, I note this technology is in its infancy and may not yet be appropriate for the management of sheep.
7. On balance, whilst accepting the proposed fencing would have some visual impact, I accept it would be both localised and temporary. As such, I consider it would not materially impact on the public interest in conservation of the landscape.

*The protection of public rights of access*

1. The whole of the common is Open Access Land. It is crossed by several public footpaths, bridleways, three unclassified roads and a number of informal paths. The proposed fences will obstruct access from the unenclosed outer parts of the common to the enclosed central area, but the provision of kissing gates and stiles will limit the impact of this. The fence will only cross one formal public right of way.
2. The applicant has used Strava data to show where users of the paths mostly walk. Whilst this excludes users of the common who do not use the Strava app, it does give an indication of the most popular routes.
3. The application indicates that gates will be installed to ensure access is maintained, except where a route is an informal path that is little used and located in difficult terrain, in which case there would be a stile. On the western fence there are 10 gates and 8 stiles proposed, and on the 2 eastern fences there would be 5 gates and 1 stile, therefore for the majority the access to the common would be by gate.
4. Nevertheless, the erection of fencing would impact on people using the common for recreational purposes and a number of concerns have been raised regarding access, including that gates should be used in preference to stiles and that access for equestrians should be maintained. In response, the applicant stated that horses are not permitted on the common other than to travel along the unclassified roads and bridleways. I note that the unclassified roads, and bridleways that join them, are not affected by the proposed fencing and I have no reason to conclude that equestrian access would be affected by the proposal.
5. In my view, gates should be provided rather than stiles wherever possible to enable the public to continue to enjoy widespread access over the common and to comply with the premise that infrastructure should meet the least restrictive option. However, I understand that due to the landscape and terrain it may not be possible to install gates in some locations.
6. Overall, while I acknowledge the proposal would result in some restrictions on public access, I agree with Natural England that, provided all the standards are adhered to, the measures proposed will ensure public access is generally maintained across the common.

*Archaeological remains and features of historic interest*

1. There is nothing to suggest that the proposed works would impact on any archaeological remains or features of historical interest. A comment was made seeking clarification regarding the location of one historical feature. The applicant has provided a map which confirms that the location is not near to the proposed fencing. Concerns were also raised regarding the impact of non-fencing elements on historic features for example installing tree cages, increased vegetation and cattle congregating areas. These comments are not related to the fencing, and I note the applicant has stated these issues will be constantly monitored.
2. I am therefore satisfied that the proposal would not adversely impact on the public interest in the protection of archaeological remains and features of historic interest.

*Conclusions on the public interest*

1. I have concluded that the proposed fencing would have some visual impact. There would also be some restrictions on public access. However, on balance the proposals provided a good amount of mitigation. Overall, I am satisfied that there are no sufficiently adverse impacts on the public interest that would cause me to conclude the application should not be granted.

*Other relevant matters*

1. Some of the representations submitted believe that consent should be granted for 15 years. Comments include that it is unlikely that the proposed objectives can be achieved within the 10 year time frame, and concerns that the trees and vegetation will need longer to establish. The applicant has requested the fencing is in place for a period of 10 years to coincide with the period covered by the Higher Tier Countryside Stewardship Scheme. It is recognised that a longer period may be needed for the vegetation to be protected from grazing stock. A further application may be required; however, the applicant is hopeful that the GPS technology will develop and therefore virtual fences for sheep rather than extending the consent maybe an option for the future.

***Conclusions***

1. I have found above that the application would 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. Furthermore, I consider there would be significant benefits for nature conservation by excluding sheep from grazing on some parts of the common. However, I have also found that the proposed fencing would have an impact on the ability of the public to exercise their right of access over the land, albeit this would to some extent be limited by the provision of gates and stiles at the most popular access points. Likewise, while I have found that there would be some adverse visual impact on the landscape, this would be both localised and temporary.
2. On balance, I consider the limited harm I have identified is outweighed by the positive benefits that are likely to arise. Consequently, I conclude that consent should be granted.

**Conditions**

1. The application seeks consent for a period of 10 years. While I acknowledge the comments made by the objectors in relation to a longer period being required to allow the trees to establish, on balance I concur with the applicant that limiting consent to a 10-year period would enable the impact of the fencing over this period to be assessed and for potential adjustments to be made to the fencing if necessary. I have therefore imposed a condition limiting consent to a 10 year period by requiring the removal of the works prior to this.
2. The works shall begin no later than 3 years from the date of this decision. This condition is to provide certainty to the users of Bethecar Moor Common.
3. All gates shall comply with British Standard BS5709:2018. This condition is to enable the public to continue to be able to enjoy rights of access over the common and to comply with the least restrictive option.

J Ingram

**Inspector**

**Plan referred to in paragraph 2

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