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| **Application Decision** |
| Site visit made on 21 February 2024 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 March 2024** |
| **Application Ref: COM/3325462**  **Name of Common: Greenburn Common**  Register Unit No.: CL29  Commons Registration Authority: Westmorland and Furness Council   * The application dated 4 July 2023, is made under Section 23 of the National Trust Act 1971. * The application is made by the National Trust. * The works comprise 470 tree cages and 1,200 metres of temporary stock fencing with gates and stiles for 15 years. | | |

Decision

1. Consent is granted for the proposed works in accordance with the application dated 4 July 2023 subject to the following conditions:
2. The fencing and tree guards shall be removed within 15 years from the date of this decision unless consent is granted for an extension.
3. The fencing will be provided with the gates and stiles shown on the application plan. The gates and stiles will be retained for the duration of the fencing.
4. The fencing will not include barbed wire.

**Preliminary Matters**

1. I made an accompanied site visit on 21 February 2024 with representatives of the National Trust (NT) and Friends of the Lake District. We were able to view Greenburn Common from vantage points along the road and walk the eastern side of the Common. Poor weather conditions and difficult terrain meant it was not possible to visit the west side of the Common. However, I consider I was able to get a good understanding of the proposed works and their impact.
2. The proposed fencing ties into proposed fencing on Little Langdale Common to the north. This is subject to a separate consent for works application (reference COM/3325376) under Section 38 of the Commons Act 2006 (the 2006 Act) which is before another Inspector. Each application will be determined on its own merits.

Description of the site

1. Greenburn Common is registered as CL29 and consists of 174 hectares as shown on the plan appended to the end of my decision. It is owned by the NT. They and their tenant at Fellfoot Farm, have sole grazing rights.
2. Greenburn Common is within the Lake District National Park (LDNP) and is also within a World Heritage Site (WHS). Two Scheduled Ancient Monuments (SAM), Greenburn Copper Mine and the Roman Road in Wrynose Bottom lie partly within the Common.

The Application

1. The proposed works are part of a Countryside Stewardship Scheme (CSS) commencing in January 2024 to re-establish a moorland fringe through vegetation recovery and long-term tree regeneration. Tree and shrub planting will need to be protected from grazing sheep until they are established.
2. To protect the planting, 170 timber tree cages 3.6 metres square are proposed on the periphery of Greenburn Common where the topography is gentler. On the steeper terrain, up to 300 weld mesh 50cm diameter tree cages will be used. These works will enclose an area of 0.25 hectares. The tree planting will be monitored and removed if trees are sufficiently established to withstand ‘browsing’ by sheep.
3. A temporary 1,200 metre stock fence is also proposed around the lower catchment of Widdygill Foot near the northern boundary of Greenburn Common which will connect to a proposed fence on the adjacent Little Langdale Common. The fence will enclose 10.4 hectares of Greenburn Common. The proposed fence is post and wire with netting and two strands of barbed wire to a height of 1.1 metres. Barbed wire is considered necessary to stop sheep on higher ground from jumping over it. If barbed wire is not used, a 1.4 metre high plain wire fence will be necessary. Two gates and four stiles are proposed within the fence to allow public access.
4. The fencing will enclose priority wetland and mire habitats which have been heavily poached and overgrazed. It will prevent sheep from accessing this area giving vegetation an opportunity to recover. Trees will be planted inside the fenced area which will not need additional protection from tree cages.

The Main Issues

1. Section 23 of the National Trust Act 1971 (the 1971 Act) provides that the NT may carry out works on common land that it considers desirable for the purpose of providing or improving opportunities for the enjoyment of the property by the public, and in the interests of persons resorting thereto. Secretary of State consent is required by virtue of Section 23(2) of the 1971 Act for work whereby access by the public to any NT property to which Section 29 of the National Trust Act 1907 (the 1907 Act) applies is prevented or impeded. Section 29 of the 1907 Act provides that the NT may exercise certain powers over registered common land, as amended by the 2006 Act. The works include a fence and tree cages which will impede access to NT property. Therefore, the works require consent.
2. I am required by section 39 of the 2006 Act to have regard to the following in determining the application:
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, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
6. any other matters considered to be relevant.
7. I will have regard to Defra’s Common Land Consents Policy Guidance in determining this application, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its own merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from this guidance.

Reasons

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

1. The NT and their tenant at Fell Foot Farm have the sole right to graze 900 sheep and followers. The previous tenant had a right to graze 340 sheep plus followers with 25% off wintered. A new tenancy has commenced but I do not have the details of their grazing rights before me.
2. The proposed works are designed to enable a sustainable level of sheep grazing to continue in the interests of the NT and their tenant. The CSS will provide an income to the tenant whilst they establish their farm business. I am satisfied that the proposed works will allow grazing to continue for the benefit of the landowner and their tenant and are therefore in their interests.
3. A hound trailing association has a right to run hound trails over Greenburn Common between 1 March and 31 October every year. They have not made any comments in relation to the proposed scheme. Access to most of the Common will still be available to use for hound trials. Therefore, I do not consider the proposed works will adversely affect these interests.

***Nature conservation***

1. An independent habitat survey undertaken in 2021 found Greenburn Common to be of poor nature conservation value. High-intensity grazing has caused a loss of trees and near removal of seed sources which would allow natural regeneration. This has resulted in the loss of plant diversity, changes in habitat from wetland and heathland habitats to acid grassland, degraded valley mires, areas of blanket bog and the loss of invertebrate, bird, and small animal species. Without intervention, the habitats and landscape of the Common will continue to decline.
2. Tree planting will increase tree and scrub cover to enhance the resilience and contribute to the landscape, help flora and fauna to adapt to climate change, and create better, joined-up habitats across the Greenburn Common and wider landscape. The tree cages will protect the new planting until they are sufficiently established to withstand future ‘browsing’ from sheep.
3. The fence is required to keep sheep out of the poached and overgrazed area along the River Brathay to provide an opportunity for the vegetation to recover and expand over the bare peat. This will establish a riparian corridor for the priority wetland and mire habitats. On the drier bracken slopes, trees and shrubs will be planted in scattered groups to re-establish a fell fringe habitat.
4. The fence and increased tree cover will also add stability to the vulnerable soils, reducing overland flow and aiding infiltration. This will help reduce sediment load being transported off Greenburn Commons into adjacent watercourses which enter the Little Langdale Tarn Site of Specific Scientific Interest (SSSI). This SSSI is failing because of fine sediment input. Therefore, the proposed works will improve the condition and extent of the valley's degraded wetlands.
5. Natural England (NE) does not envisage any significant effects on any of the statutory or non-statutory sites within 2km of Greenburn Common and considers the proposed scheme will benefit priority habitats.
6. I consider the proposed work will have a positive benefit on nature conservation, biodiversity, and priority habitats.

***Conservation of the landscape***

1. The tree cages and fencing will be visible in the immediate locality. The fence is towards the bottom of the valley so most people using Greenburn Common, the adjoining Little Langdale Common, public rights of way and Wrynose Pass will be looking down on it, limiting the ‘skylining’ effect. The fence will follow the natural humps and hollows and an existing wall to tie in with the proposed fence on Langdale Common, minimising its visual impact and length. The fence will enclose only 6% of the Common and its overall openness will be retained.
2. The larger timber cages are at the edge of Greenburn Common on lower slopes and care has been taken to avoid ‘skylining’ for the smaller cages. The location of the tree cages has been chosen to mimic the landscape patterns and allow grazing around them to retain the sheep grazed landscape.
3. The fencing and tree cages mean tree tubes, which would have a greater impact on the landscape, are not necessary. Sheep grazing of the upland fells is a significant part of the landscape and the proposed works allows this to continue.
4. A Landscape and Visual Impact Assessment (LVIA) found the effects of the proposed works on the landscape, views and visual amenities are likely to be negligible or minor provided the recommended mitigations are undertaken. It concludes the proposed works will not have a harmful impact on the Outstanding Universal Value of the WHS and will support the strategies adopted by the Lake District Partnership to sustain it.
5. Some parties consider the fencing, tree cages and planting will have a greater impact on the landscape than stated in the LVIA. There is already some existing fencing within the wider landscape. I found the visual impact of this fencing to be minimal and do not consider the additional fencing or tree cages will have more than a minor impact.
6. If a barbed wire fence is not used, a 1.4 metre high plain wire fence or planting in tubes will be necessary. The NT consider a barbed wire fence to have the least intrusive impact on the landscape. I consider a slightly higher plain wire fence will have a minimal additional impact on the wider landscape views compared with a lower barbed wire fence. Some people may consider a barbed wire fence to be more intrusive than a plain wire fence when stood near to it. The type of fence also needs to be balanced against the overall public interest.
7. The fence and tree cages may be required for a longer period if the tree planting and vegetation are not sufficiently established. NE considers a longer period may be necessary but do not want a longer consent period at this stage. If an extension is required to any consent granted, a further application will be necessary and due consideration will need to be given to it.
8. I consider the temporary visual impact caused by the fencing and tree cages will be outweighed by the creation of additional landscape features, the restoration of priority habitats, increased biodiversity, and nature conservation. In the long term, the proposed works are likely to have a positive impact on the distinctive landscape of the LDNP and WHS.

***The protection of public rights of access***

1. There is a public footpath running east to west across the centre of Greenburn Common. The whole of the Common is Access Land in accordance with the Countryside and Rights of Way Act 2000 which gives the public a right of access for open-air recreation.
2. The proposed tree cages will be at least 5 metres from the public footpath and obvious desire lines. Therefore, the public footpath and other used routes will not be affected by them.
3. The proposed fencing will enclose an area of Greenburn Common, but their purpose is to keep livestock out not the public. The fencing is in an area of very low use due to the nature of the terrain which includes steep slopes, rocky outcrops, bogs and bracken. Access points will be provided approximately every 200 metres to maintain public access and Strava heat maps have been used to identify key desire lines. Gates will be provided on the two most used routes on level ground. Stiles will be provided at four other points where the gradient is too steep for gates. These points are only likely to be reached by the more adventurous and able walkers due to the challenging terrain.
4. Encountering or crossing the fence could be a negative experience for those using Greenburn Common. Concerns are raised about the use of barbed wire along the top of the fence. I consider a barbed wire fence to be a more physical and psychological barrier to public access than a plain wire fence. Barbed wire could also be a hazard to anyone using the Common.
5. There will be no loss of common land if consent is granted and the Greenburn Common will remain accessible to the public. The gates and stiles will limit the impact of the fencing on public access. I consider the impact of the fence will be reduced by using plain wire instead of barbed wire, even if this results in a slightly higher fence.

***Archaeological remains and features of historic interest***

1. The proposed fence and tree planting are not within the sites of the SAMs. A Heritage Impact Assessment (HIA) concludes that there will be little or no impact on the designated SAMs and their setting. The HIA also found there will be little impact on non-designated assets on Greenburn Common. Historic England (HE) and the LDNP Authority agree with these conclusions.
2. I am satisfied the proposed works will not impact on the SAMs, archaeological remains, and features of historic interest.

***The interests of the neighbourhood***

1. The CSS and the proposed works intend to improve natural habitats, preserve farming heritage, and retain communal grazing. The proposed works align with the LDNP Partnership Plan which has been adopted as the statutory plan for the Lake District. The LDNP Authority and HE recognise the need to sustain the cultural heritage and aid nature recovery, so are supportive of the proposed CSS.
2. When considering the interests of the neighbourhood, I must consider all uses of Greenburn Common and determine if the proposed works will interfere with these uses. Some people will find the proposed fencing and tree guards intrusive and unwelcome. However, this must be balanced against the benefits of excluding livestock from the damaged wetland and mire habitat to provide an opportunity for it to recover. An improved habitat will positively benefit the neighbourhood and enhance the public enjoyment of the Common. The farming heritage and grazing will be preserved, further benefiting the neighbourhood and local people will still be able to use the Common with only limited impact on their access.

***Other relevant matters***

1. Alternative options were considered including the use of no-fence electric collars, a temporary six month fence, and the removal of all sheep. Sheep collars would be extremely expensive and are reliant on mobile reception which is almost non-existent on Greenburn Common. A six month fence would be costly, would cause increased disturbance and would not deliver vegetation recovery. Sheep would need to be removed from all the surrounding commons as well as Greenburn Common. Sheep grazing has cultural, economic and landscape significance on upland fells. Therefore, the commons need to remain an active sheep grazed landscape to prevent damage to the LDNP and the WHS and ensure the financial viability and sustainability of upland farming. Therefore, the other options considered are not viable.

Conclusions

1. Overall, I am satisfied the long-term benefits to nature conservation, biodiversity, priority habitats and the landscape, outweigh any temporary impacts on the landscape and public access, providing the proposed fence does not include barbed wire. Any negative impacts on public access, the neighbourhood and the landscape are limited and temporary.
2. Having regard to these and all other matters raised in the written representations, I grant conditional consent for works which will expire 15 years from the date of my decision, unless a further consent application is made and approved before that day, and providing the proposed fence does not include barbed wire.

Claire Tregembo

INSPECTOR

Plan referred to in Paragraph 4
