Planning Inspectorate Logo


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| **Application Decision** |
| Accompanied site visit on 28 February 2024 |
| **by Mark Yates BA(Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 May 2024** |

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| **Application Ref: COM/3323550**  **Edge Common, Painswick, Gloucestershire** |
| Register Unit: CL 156 |
| Registration Authority: Gloucestershire County Council |
| * The application, dated 31 May 2023, is made under Section 38 of the Commons Act 2006 for consent to carry out restrictedworks on common land. * The application is made on behalf of Natural England. * The application is for works involving the retention of temporary 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 10 years from the date of this Decision.   REASON: To enable the retention of the fencing to be reviewed.   1. All gates in the fencing permitted by this consent shall be compliant with British Standard BS5709:2018.   REASON: To ensure that accessible gates continue to remain in place for the duration of this consent. |

**Preliminary Matters**

1. The application is for the retention of fixed fencing for a minimum period of 10 years at which point a further review would be undertaken. This proposal includes the retention of the livestock pen and gates. None of the representations object in principle to the retention of the fencing but some have raised matters regarding the implementation of the fencing scheme.

**Main Issues**

1. I am required by Section 39 of the Commons Act 2006 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. One of the two registered rights holders exercises their rights of common and currently grazes cattle annually between August and April. The other rights holder is the landowner who does not exercise their rights and has leased management of the site to the applicant, Natural England (‘NE’). This site is managed as part of the Cotswold Commons and Beechwoods National Nature Reserve.
2. There is nothing to indicate that there would be any adverse impact arising out of the retention of the fencing on those occupying or having rights over the land. The fencing would aid with the management of the common and serve to prevent cattle from wandering off the common. In this respect, I noted the steady flow of traffic on the two roads that abut the common.

***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.

***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.
3. The site is located within the Cotswold Area of Outstanding Natural Beauty. No concerns were raised by the Cotswold National Landscape Board about the retention of the fencing. The fencing generally comprises of a wire fence, and I noted during the visit that a large proportion of the fencing was obscured by vegetation or the topography of the land. Additionally, all but two of the gates are of traditional wooden construction and they have weathered over time.
4. From the details provided and my observations of the site, I find that the fencing scheme does not presently have a significant impact on the landscape setting of the common. There is nothing to suggest that this position would change if the fencing were to remain for a further 10-year period.
5. The common is a Site of Special Scientific Interest (‘SSSI’). NE outlines that the aim of the application is to facilitate the safe conservation grazing of the site in order to restore and maintain the condition of this nationally important limestone grassland habitat, and to maintain the site's open nature for the benefit of wildlife.
6. NE asserts that the fencing arrangement has enabled the site to be effectively grazed which has improved the SSSI from a previously unfavourable condition to favourable. This improvement is stated to be a direct result of the effective grazing resulting in reduced scrub and rank grasses on the lowland calcareous habitat. In order to maintain this favourable condition status, it is considered crucial for the grazing to be allowed to continue.
7. The details provided are clearly supportive of the grazing being beneficial to nature conservation and the fencing helps with the management of grazing on the common.
8. A number of public rights of way (including the Cotswold National Trail) and other paths cross the site with eleven gates currently in place to facilitate access at various points in the fencing. Two additional gates allow site staff and the grazier to access the site. No new gates are proposed to be erected. There is a cattle coral at the northern entrance which is left open when not in use with alternative provision at the side when it is being used. NE do not consider that gaps are appropriate at this site due to the need for grazing with sheep to remain a viable option. They also point out that the current arrangement has significantly reduced illegal motorcycle use on the common which is likely to be beneficial to lawful users of the common.
9. NE have addressed matters raised in the representations from Gloucestershire County Council regarding the public rights of way. Subject to some minor works, it is outlined that particular gates are compliant with BS 5709:2018 in relation to equestrian users and the other gates are compliant for pedestrians. The relevant gates are also set back from the carriageway to provide a safe refuge. It nonetheless seems appropriate, if consent is granted, that this is subject to a condition that the gates remain compliant with BS 5709:2018.
10. The representation from the Open Spaces Society raises a concern that a section of fencing along the eastern side of the common has been placed inside the boundary of the common and removed an area from public use. In other places the fencing has been placed along the inside of a derelict boundary wall, which is considered visually discordant.
11. I noted that the relevant area of the common would presently have little value for recreational activities if it were available for the public to use. The reason for this area being fenced is the presence of yew trees which are toxic to cattle. In these circumstances, it would be reasonable for the present fencing arrangement to remain. In terms of the boundary wall, this in the ownership of an adjacent property and is not on the common. However, NE have outlined their intention to continue to liaise with the neighbouring landowner and explore options to reinstate the wall as a boundary feature.
12. Overall, I do not find that the fencing arrangement has any significant impact on public rights of access over the common.

***Alternatives***

1. Before any consent is granted, consideration should be given to what alternatives might exist to the fencing.
2. NE have highlighted the potential alternatives that have been considered. Electric fencing was discounted due to the size of the perimeter and virtual fencing is not considered suitable given the close proximity of the two roads and the potential consequences should cattle escape the virtual barrier. NE also consider that the alternative methods of management of cutting and burning of the common are not suitable at this site.
3. NE outlines that they will continue to review alternative measures. However, the information provided reveals that there are presently no viable alternatives to the fencing scheme.

**Conclusion**

1. 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.

**Mark Yates**

**Inspector**

**Application plan
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