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| **Application Decision** |
| Hearing held on 25 June 2024 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 July 2024** |
| **Application Ref: COM/3329122**  **Knowl Moor Common**  Register Unit No: CL162  Commons Registration Authority: Lancashire County Council   * The application dated 6 September 2023, is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land. * The application is made by Norden, Bamford, and Heywood Bridleways Association. * The works comprise permanent fencing, public access points, and one locked vehicular access point for emergencies. | | |

Decision

1. Consent is granted for the proposed works shown on the revised application plan appended to the end of my decision subject to the following conditions:
2. No changes should be made to the layout of the access point at A.

REASON: The proposed layout would not improve equestrian access or safety.

1. The surface and drainage of the horse stile at point A should be improved.

REASON: To ensure the horse stile is not waterlogged.

1. At point B a wooden chicane should be provided in the corral at least 5m from the roadside entrance and horse stile. Any stones or boulders within the corral should be removed.

REASON: To ensure safe access for equestrian users.

1. The proposed equestrian access should be provided at point C in accordance with the plan produced by the BHS and appended to the end of my decision. The access point should be on the north side of Edenfield Road rather than the south side as indicated in error on the plan.

REASON: To ensure public access to Knowl Moor Common for equestrian users is available at point C.

1. The gap at point D should be compliant with BS 5709. If it is considered a BS 5709 compliant gap would be used by Off-Road Vehicles (ORV), a kissing gate should be provided to match those currently available at the other access points.

REASON: To ensure suitable access is provided at point D.

1. All gates, horse stiles, and gaps should be compliant with BS 5709 and maintained in a safe condition for use.

REASON: To ensure suitable public access is available at all times.

**Preliminary Matters**

1. I carried out an unaccompanied site visit on 24 June 2024. I looked at the full length of the fence, the access points, and paths over the Common where possible. I was unable to walk the footpath at the southeast corner of Knowl Moor Common due to vegetation and a beck which did not appear to have a crossing point.

Description of the site

1. Knowl Moor Common sits on either side of Edenfield Road, Norden, Rochdale, and has a total area of 395.94 hectares. The works are only on the Common to the north of Edenfield Road.
2. Knowl Moor Common abuts Tottington Higher End Moor (CL94), Cowpe Moor (CL99), Rooley or Shore Moor (CL163), land near Nadden Reservoir (CL173), and Higher Hill (CL174). Scout Moor and Turf Moor (CL175) abut CL94 and CL174 to the west of Knowl Moor. These Commons can all be accessed by crossing Knowl Moor Common from Edenfield Road.

**The Application**

1. In 2020 Greater Manchester Police (GMP) and Lancashire Police requested support from the local community to reduce illegal ORV activity which causes nuisance to residents, Commoners, and the public. It also damages the moorland and disturbs wildlife and livestock. An Off-Road Mitigation Measure Project (ORMMP) was established to identify illegal access points and provide obstacles to assist the police in catching and prosecuting offenders. Stakeholders include the police, neighbourhood forums, Members of Parliament, local councillors, borough councils, user groups, United Utilities (UU), landowners, farmers, and Commoners.
2. Edenfield Road was identified as a primary access point to the Commons for ORV due to its open access. This led to a proposal to erect a fence with public access points alongside Knowl Moor Common on the northern side of Edenfield Road. A fence was erected in March 2021, but an application for consent for the works was not made until 6 September 2023.
3. The works comprise approximately 1km of fencing along the northern side of Edenfield Road. The fencing is post and wire sheep netting with a strand of barbed wire on top to a height of 1.2m. The application referred to three public access points at A, B, and C, and a locked emergency vehicular access point at point C. These public access points comprise steel kissing gates and horse stiles. At the time of my site visit, no horse stile was provided at point C, but the application proposes to install one. Changes to the access at point A are also proposed. An additional kissing gate was provided at the southeastern corner of Knowl Moor Common when the fence was erected. There was also a locked field gate providing access to a farm with a small gap alongside it which pre-existed the fence. A revised application plan was provided at the hearing with the gate and gap marked at point D, and the kissing gate at point E.

The Main Issues

1. Section 38 of the Commons Act 2006 (the 2006 Act) provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land, including the erection of fencing; the construction of buildings and other structures; the digging of ditches, trenches, and the building of embankments; and the resurfacing of land if this consists of laying concrete, tarmacadam, coated roadstone or similar material.
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 have had regard to Defra’s Common Land Consents Policy Guidance (Defra’s 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.
8. Common land legislation enables the safeguarding of commons for use and enjoyment, ensures the special qualities of common land are properly protected, and improves the contribution of common land to enhance biodiversity and conserve wildlife. Works should only take place on common land where they maintain or improve the condition of the common or where they confer a wider public benefit.
9. There is nothing in the legislation or Defra’s Guidance to indicate works on a common must only safeguard, protect, and improve the common on which they are undertaken. The purpose of the legislation is to protect all commons. I consider this means I can consider the impact the works would have on the surrounding commons and not just Knowl Moor Common.

Reasons

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

1. Knowl Moor is owned by the Lord of the Manor who supports the application. They stated they are custodians of the commons and moors in their ownership. Illegal ORV use damages the Commons and disturbs wildlife. Remedial restoration could be undertaken to help damaged areas recover but this would not be successful unless the cause of the damage is removed.
2. Fourteen people have common rights to graze, eleven people have rights to turbary, eight have a right to take stone, and one a right to bracken. Five people are known to exercise their rights to graze. The fence limits livestock access to the road which has a 50mph speed limit, although it is accepted that animals can pass through the horse stile and sheep can go under the emergency access gate. There have been significant collisions on Edenfield Road between vehicles and livestock in the past, but GMP was not aware of any since the fence was erected.
3. The West Pennine Commoners Association (the WPCA) stated the illegal use of ORV has damaged grazing land on the Commons, so they need to supply more feed to their livestock. Damage to peat also makes it unviable. Illegal ORV has disrupted their working day by displacing livestock which have also been maimed or killed. This increases the economic impact of upland farming and threatens the livelihood of the Commoners. The WPCA considered the fence to be highly effective in preventing incursions by ORV and it indicates measures are being taken to stop their use.
4. It was suggested that members of the WPCA did not have common rights over Knowl Moor. The Commons Register indicates that many of those with common rights over Knowl Moor Common also have common rights over the surrounding Commons.
5. I consider the reduction of illegal ORV use would benefit the landowner and those with common rights over Knowl Moor Common and the surrounding Commons.

***The interests of the neighbourhood***

1. Illegal ORV activity has been an issue on the commons and moors above Rochdale for many years. This has impacted the neighbourhood in numerous ways including damage to the moorland, walls, gates and fences, threats, intimidation and an assault by an ORV user, road safety issues, noise nuisance, pollution, litter, increased and more difficult mountain rescues, and reduced water quality in the reservoirs resulting in higher water treatment costs. These issues are not confined to the Commons, as ORV use the road network to reach them, often travelling at speed through the neighbourhood. The parking area opposite Owd Betts is used as a meeting point for groups of riders including as many as twenty riders. GMP reported that crime and anti-social behaviour from ORV nuisance is one of the top concerns and priorities for the communities surrounding the Commons, and they have a high number of reports relating to it.
2. The fence has wide support from the local community. Residents and community groups stated the fence has already had a significant impact on the neighbourhood. There were fewer ORV riding through the villages along the A680 improving road safety, and reducing noise nuisance. Those using the Commons felt safer and less anxious. They had seen a dramatic reduction in illegal ORV accessing the Commons from Edenfield Road.
3. Greater Manchester Police (GMP) and Lancashire Police have been running Operation Dragster for many years to reduce these incidents and tackle offenders. The open access along Edenfield Road made it difficult to catch and prosecute those using vehicles on the Commons. The fencing restricts entry and exit points along Edenfield Road helping the police, and their partners to focus their deployments. GMP stated that ORV users were aware of the reduced access from Edenfield Road and were less likely to use it as an escape route. Those that head towards Edenfield Road were more likely to be apprehended. ORV users can no longer enter Edenfield Road at speed, improving road safety, and reducing the likelihood of collisions with vehicles on the road. GMP considered the fencing had improved the effectiveness of Operation Dragster. The fence is also considered to be effective when the police were not present.
4. UU stated illegal ORV activity had increased soil erosion leading to more sedimentation and turbidity in reservoirs. This has a negative effect on water quality and increases the costs of treating water. If fuel from ORV gets into the water supply, it cannot be treated out and ends up in their customer's tap. UU had noticed a reduction in vehicles accessing the Commons from Edenfield Road since the fence was erected. They considered the reduction in ORV activity reduced the likelihood of their staff being confronted by ORV users.
5. The ORMMP considered the fence to be integral to preventing unauthorised motorised access from Edenfield Road. They accepted that the fence will not completely remove illegal ORV from the Commons. However, they considered the removal of the fence would be a backward step to protecting the moorland and would lead to an increase in ORV on the Commons.
6. The evidence provided indicated the fence has reduced illegal ORV activity, aided the police in apprehending offenders, improved safety, reduced noise pollution, and helped UU to supply safe water to their customers. Therefore, I consider the works benefit the neighbourhood.

***Nature conservation***

1. Illegal ORV activity has caused damage to moorland habitats, fauna, and flora. There were concerns that some of the peat bog, which is vital in sequestering carbon, may be damaged beyond repair. Wildlife, particularly ground nesting birds have been disturbed, including some on the Birds of Conservation Concern Red List. Damage to vegetation and the ground causes soil erosion leading to increased sedimentation in streams negatively affecting water quality.
2. Natural England (NE) considered a reduction in ORV use on Commons would support the recovery of the semi-natural vegetation and prevent further damage to upland heath and blanket bog. It would also reduce disturbance to ground nesting birds and other wildlife and reduce stress and harm to livestock.
3. UU has undertaken tree planting and stock management in the area as part of their Sustainable Catchment Management Plan. Damage caused to fencing by ORV users allows sheep to enter plantations and eat saplings.
4. There has been an increase in flora and fauna since the fence was erected, and vegetation damaged by illegal ORV has started to recover which will continue if the fence is retained.
5. Having regard to the above, I consider the works will help reduce damage to the moorland habitats, flora and fauna, and disturbance to wildlife. It will also aid the recovery of moorland already damaged by ORV.

***Conservation of the landscape***

1. A post, sheep netting, and wire fence was chosen because, from a distance, the wires are virtually invisible to the eye. The fence was set back slightly from the side of Edenfield Road and follows the natural undulations of the moorland. Natural vegetation has begun to grow around the fence helping to camouflage it. The visual impact of the fence predominantly affects users of the road. From within the Commons, the fence has very limited visual impact due to the gradient of the land, natural banks and dips, and vegetation around the fence. Other types of fencing would have more of an impact on the landscape.

***Protection of public rights of access***

1. Knowl Moor Common and surrounding Commons are designated as Open Access Land under the Wildlife and Countryside Act 1981 which means the public has a right of access on foot at all times. They are also subject to a legal right of access to air and exercise under the Law and Property Act 1925 which includes a right to ride a horse on the Commons. There are several public footpaths over Knowl Moor Common, four of which join Edenfield Road at points B, C, D, and E. One of the footpaths is part of the Rochdale Way long-distance trail. The public also access Knowl Moor Common at point A.
2. Those using the Commons reported anxiety and fears of collisions with ORV, and verbal and physical abuse from ORV users. The noise of ORV disturbed the peaceful enjoyment of the moorland and horse riders were concerned about their horses being spooked. There had been an increase in mountain rescue callouts for lower limb injuries caused by people slipping in ruts caused by ORV.
3. The Rochdale Metropolitan District Council (RMDC) Rights of Way Officer reported that damage to footpaths caused by ORV forced path users to find alternative routes. Damage reported included deep ruts and boggy areas of as much as 10m wide. This made access difficult for all users of the Common and horses sank into the boggy areas.
4. Access has been provided to Knowl Moor Common at points A to E with some changes proposed as detailed in paragraph 7 above. There did not appear to be any other desire lines over Knowl Moor Common. NE stated aerial photographs and Strava heat maps indicated people had only used points A to E before the fence was erected.
5. It was generally accepted that equestrian users wanted access to Knowl Moor Common at points A, B, and C. Some did not want to use access point A but acknowledged others did. Wet ground conditions at the southeast corner of Knowl Moor Common made it unsafe for horses, even in the hot summer of 1976. Therefore, only pedestrian access was required at points D and E.
6. There was disagreement between equestrian users about the design and specifications of the existing and proposed equestrian access points. Concerns were raised about the lack of equestrian access at point C, and the safety of the existing and proposed equestrian access points at points A, B, and C. Some equestrian users stopped using Knowl Moor Common from Edenfield Road after the fence was erected.
7. NE advised that access controls installed on public rights of way should meet BS 5709: Gaps, Gates, and Stiles which stipulates the least restrictive option should be used.
8. Gaps would be the least restrictive option, but they would also allow ORV access. This would concentrate ORV to the gaps causing damage to the moorland in their vicinity which is likely to have a detrimental effect on legitimate public access.
9. The British Horse Society (the BHS) advice on vehicle barriers on equestrian routes is that they should be set well back from the roadside so that riders have space to align themselves for the structure and negotiate it away from motor vehicles. Structures should not cause equestrians to be delayed on the road, especially when traffic speed is high. Horse stiles must not be used unless there is evidence the danger to users from ORV is greater than the disbenefits to users. Horse stiles should have a clear space of at least 4m long and 2m wide on either side, be level, well-drained, free from overhanging vegetation, and have ample space for at least three horses to wait between the barrier and the road.
10. The BHS and supporters of the application considered ORV activity on the Commons caused a genuine risk to public safety, and this risk is greater than the risk caused by the existing and proposed equestrian access points. Due to concerns about the equestrian access provided, the BHS produced the Knowl Moor Equestrian Access Report (the BHS Report) and designs for improved equestrian access at points A, B, and C. They had already funded changes to the equestrian access at point B.
11. The current equestrian access at point A is waterlogged. Some parties consider it is too close to the road and the pedestrian access. It is proposed to move the horse stile 15m away from the road with a 2m wide corral leading up to it. Some parties objected to the proposed changes due to the use of wire fencing which can cut horses, the lack of a chicane to prevent horses bolting onto the road, and the narrow corral which would prevent horses from turning around. The BHS Report recommended a chicane between the road and the horse stile but a 3m width is required for a chicane. This width cannot be provided if the pedestrian and equestrian access is kept separate due to banking and trees. It does not appear to be possible to provide equestrian access at point A that fully complies with BHS advice.
12. Most equestrian users did not want to access Knowl Moor Common at point A, those that did appeared to be happy with the current arrangement. I consider the proposed changes to the public access at point A would be less safe for equestrian users due to the insufficient width combined with wire fencing, and the lack of a chicane. A wider corral could only be provided if additional works were undertaken to level the ground and remove trees. This would have a negative impact on nature conservation and the landscape. Works could be undertaken to prevent the horse stile from waterlogging and to improve its condition.
13. Concerns were raised about the corral approaching the horse stile at point B because it runs parallel and near to the road, has wire fencing, and is wide enough for a horse to turn and bolt into the road. Suggestions for improvement included reducing the roadside gap to 2m or the installation of a chicane or bollards. There are also boulders within the corral which some users considered to be a trip hazard. Some equestrian users would like the horse stile to be set back 20m to 30m from the road.
14. The land behind point B rises steeply over a rocky outcrop. Setting the horse stile at point B further from the road could be difficult due to the ground conditions. It would also require significantly more fencing which would negatively affect the landscape and access to the Commons, particularly as it would be in an elevated position on top of the rocky outcrop. I consider equestrian access at point B would be safer if the boulders were removed and a chicane provided.
15. The layout of the proposed equestrian access at point C was acceptable to equestrian users, but some users were opposed to the use of wire fencing. The design had been drawn onto the aerial imagery on the wrong side of Edenfield Road. A wooden fence was considered to be safer for horses. However, this would have a greater impact on the landscape and could be more easily damaged by ORV users wishing to gain illegal access to the Commons. There are kickboards along the bottom of the fence on either side of the horse stile to reduce the likelihood of horses catching on the wire.
16. The kissing gates are compliant with BS 5709 and equipped to function as a gate using a RADAR key for increased accessibility. The gap available at point D is approximately 50cm wide and does not conform to BS 5709. I consider this access point should be improved to allow easier pedestrian access, particularly as there is a metalled access road over Knowl Moor Common which provides level access for less mobile users.
17. The fence and access controls restrict access to Knowl Moor Common from Edenfield Road and will be unwelcome for some. However, I must balance this against the benefits of reducing illegal ORV use on the Commons. I consider the works will help protect users of the Commons and the public footpaths. The existing and proposed access points provide sufficient access for legitimate users. However, improvements could be made to the existing and proposed access points to make them safer and easier to use. If I consent to the works, I can make conditions to ensure access is improved and compliant with BS 5709.

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

1. There are no known archaeological remains or features of historic interest on Knowl Moor Common.

***Other relevant matters***

1. Requests for speed reductions and signs warning of livestock on the road have been declined by RMBC Highways Department. Community groups and ward councillors continue to press for them.
2. Operation Dragster aims to tackle illegal ORV activity and after operations, there is a decline in activity, but it is only a few weeks before it recommences. Improved reporting measures have helped the police target their resources and improve operations. A Public Space Protection Order (PSPO) has been introduced in the Borough of Rossendale to help combat illegal ORV activity and PSPO is nearing fruition for RMDC. Notices have also been erected along Edenfield Road stating vehicles are not permitted on the Commons and vehicles could be seized. However, a fence was considered to be the most effective solution by the police and other stakeholders who reported illegal ORV access from Edenfield Road had reduced since the fence was erected.

Conclusion

1. Although not all the ORV activity and damage caused by it are on Knowl Moor Common, Edenfield Road appears to be one of the main access points to the surrounding Commons. Overall, I consider the fence provides benefits to the neighbourhood, landowners, occupiers, and Commoners. A reduction in ORV activity reduces disturbance to wildlife, helps prevent further damage to the Commons, and allows damaged moorland to regenerate. I consider there are benefits to legitimate users of the Commons from the reduction in illegal ORV activity. The existing and proposed works provide sufficient access for legitimate users. I consider the benefits outweigh the negative impacts on public access and the landscape.
2. Having regard to these and all other matters raised in the written representations, I conclude that consent should be granted for the works subject to the conditions set out above to ensure suitable access provision.

Claire Tregembo

INSPECTOR

**APPEARANCES**

**The Applicant**

Gill Morrell Norden, Bamford & Haywood Bridleways Association

**In Support of the Application**

Mark Weston Director of Access, British Horse Society

Nigel Morrell Norden Area Forum

Alan Rawsterne Rooley Moor Neighbourhood Forum

Cllr. James Gartside Norden Ward Borough Councillor

Cllr. Peter Winkler Norden Ward Borough Councillor

Jane Lees West Pennines Commoners Association

Andy Crossley Representing the Lord of the Manor

Tia Dawson United Utilities

PC Martin Giblan Greater Manchester Police

PCSO Peter Smith-Emmanuel Greater Manchester Police

Anne McKown Local Resident

John McKown Local Resident

**In Objection to the Application**

Leslie Tierney Rochdale and Bury Bridleways Association

Irene Pope Local Resident

Sarah Harman Local Resident

Joan Snowdon Local Resident

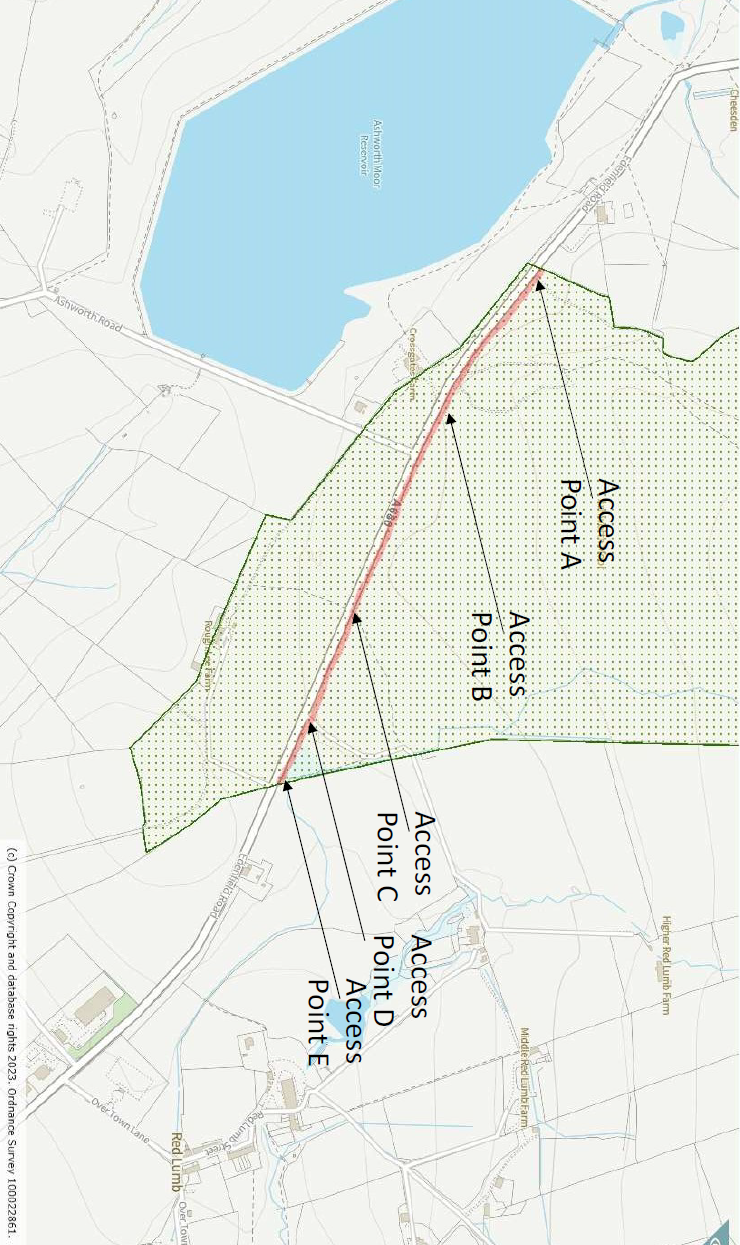
**Interested Parties**

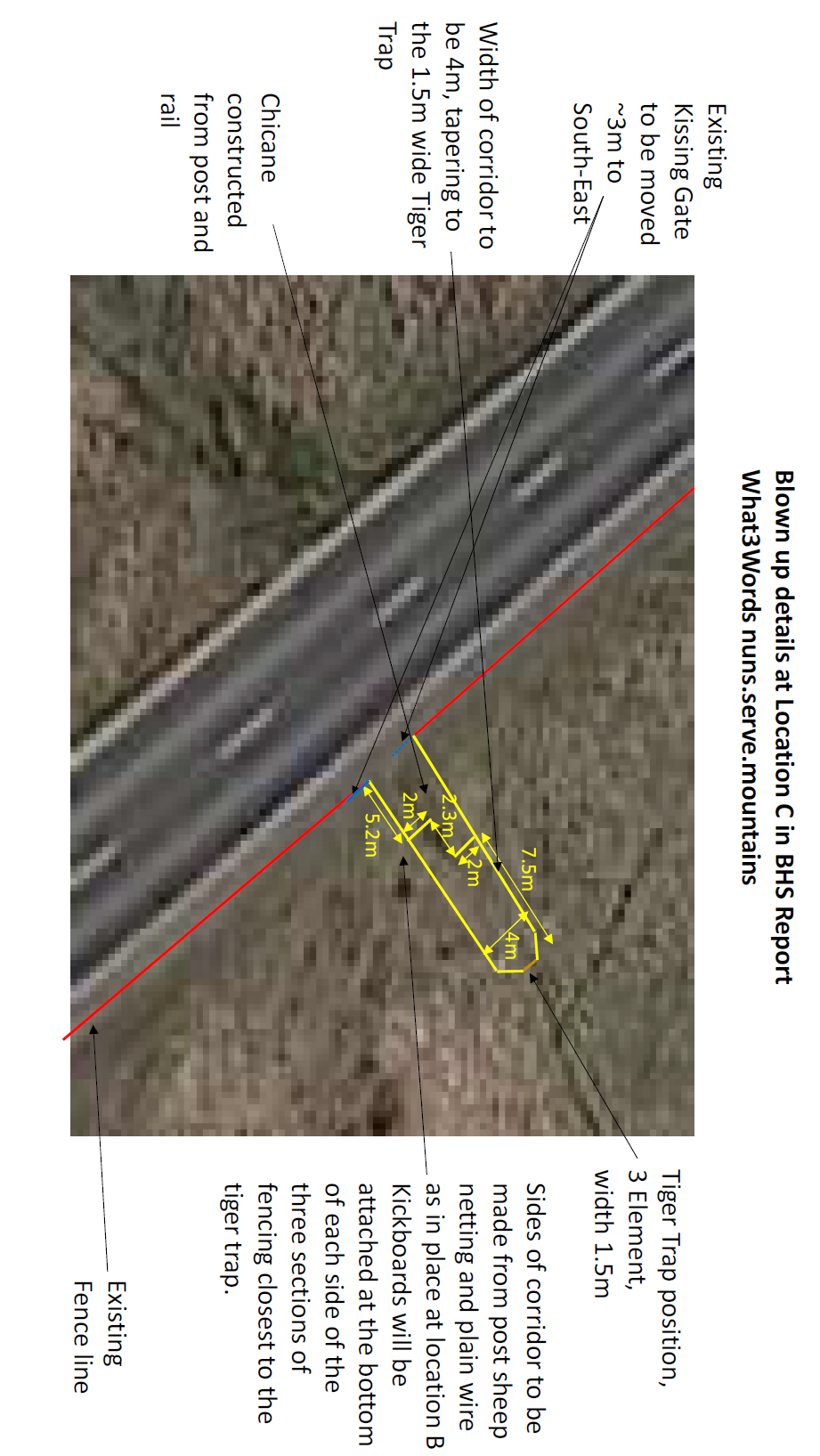
Julie Simpson Rights of Way Officer, Rochdale Borough Council

**Documents Produced at the Hearing**

Revised Application Map showing the additional access points

Details of Access Point Structures

**Revised Application Plan**

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