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| **Application Decision** |
| Site visit made on 18 June 2024 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 September 2024** |

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| **Application Ref: COM/3327731****Shereford Common, Dunton, Norfolk****Register Unit No.: CL114****Commons Registration Authority: Norfolk County Council** |
| * The application, dated 1 August 2023, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
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| * The application is made by Thomas Raynham.
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| * The works comprise permanent fencing around the common.
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Decision

1. Consent is refused.

**Preliminary Matters**

1. For the purposes of identification only, the location of the proposed works is shown on the attached plan.

**Background**

1. Shereford Common lies to the south of the village of Shereford and comprises two areas of land, which are separated by a lane. The application concerns the larger area to the north of the lane, which forms the majority of the common. The proposed fencing would enclose the common land along its perimeter, with the exception of small areas at its western end and surrounding a building. Electric fencing and some wooden fenceposts are currently present around much of the land. Notwithstanding this, consent for any current or previous structures on the line proposed is not before me.

**Main Issues**

1. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application:

 (i) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

 (ii) the interests of the neighbourhood;

 (iii) the public interest (Section 39(2) of the 2006 Act provides that the public interest includes the public 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

 (iv) any other matter considered to be relevant.

1. I will have appropriate regard to DEFRA’s Common Land Consents Policy of November 2015 (the 2015 note).

**Reasons**

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

1. The information before me suggests that one person owned the land at the time of its registration in 1969. The applicant for the works is the occupier of the land. The proposed fencing is intended to enable the grazing of cattle on the common, and would consequently have a beneficial effect on the interests of those occupying the land.
2. There are no registered rights of common in respect of the land. The public have a right of access to the land on foot for the purpose of open-air recreation by virtue of the Countryside and Rights of Way Act 2000. Stiles or gates would be present at some points within the fencing to facilitate this access. These could be specified to an appropriate standard in order to comply with the Equality Act 2010. The application would consequently have no adverse effect on the interests of those with rights of access across the land.

***The interests of the neighbourhood and the protection of public rights of access***

1. I have dealt with public access issues above.
2. The 2015 note indicates that the interests of the neighbourhood may include a consideration of whether the works would positively benefit the neighbourhood, whether local people would be prevented from using the common in the way they are used to, and whether the works would interfere with future use and enjoyment of the land as a whole. No potential positive impacts on the neighbourhood are identified.

***Nature Conservation***

1. The land borders the River Wensum Site of Special Scientific Interest (SSSI). Natural England considers that, subject to suggested conditions, the fencing would have no likely significant effect on the designated features of the SSSI. It is submitted that the fencing would ensure that stock do not enter the SSSI and cause poaching. Nevertheless, the ingress of stock to the SSSI is not referred to as a concern by Natural England. Furthermore, if it were desirable to exclude stock from that area, alternative means than the permanent fencing proposed are likely to exist. Thus, the exclusion of stock from the SSSI does not attract any particular weight in favour of the application.
2. It is suggested that benefits to nature conservation would arise from the grazing which the proposal would facilitate. Natural England states that the potential for cattle grazing to have such benefits on semi-natural commons is well-known, however, from the limited information provided, it cannot advise in detail on the level of any such benefits in this instance. As a result, the proposed benefits are not substantiated, and do not attract weight.
3. Overall, there would be no negative effect on nature conservation.

***Landscape***

1. As no consent for any existing or previous fencing is before me, its presence at the site does not indicate any potential acceptance of the land’s enclosure. The open and generally unenclosed appearance of the areas to both sides of the lane distinguishes the land from surrounding areas and signifies their special qualities as common land. The relatively substantial extent of the common land may be appreciated from the lane due to its gently rolling topography.
2. Trees lie along parts of the western boundaries of the land in question, and their presence may partially soften the fencing’s visual effect in these areas. However, much of the land’s eastern boundary with the lane is open, with only sporadic trees and vegetation. The fencing would be highly visible at this location, particularly as it would lie adjacent to the highway. In enclosing the land by a permanent boundary, the application would visually sever the northern from the southern area of common and hence would erode the open and unenclosed appearance of the common as a whole, which may be appreciated in close proximity from the lane across it. The fencing would lie next to the lane for some distance and hence the sense of enclosure would be extensive in degree. These matters would harm the public’s enjoyment of the landscape, although the fenceposts would be as widely spaced as possible and stock fencing would not be used.
3. Whilst temporary fencing may also have some visual effect, alternative means of cattle control including “no fence” systems, temporary speed limits and cattle grids have been proposed. Temporary fencing is consequently unlikely to form the only potential alternative.
4. Thus, the application would have a moderate adverse effect on the conservation of the landscape.

***Archaeological Remains and Features of Historic Interest***

1. The application states that the land does not contain a Scheduled Ancient Monument. No archaeological remains or features of historic interest on the land have been brought to my attention. I am satisfied that the proposed works would have no negative effect in this respect.

***Overall Assessment***

1. The 2006 Act, together with earlier legislation, enables government to safeguard commons for current and future generations to use and enjoy; to ensure that the special qualities of common land, including its open and unenclosed nature, are properly protected; and to improve the contribution of common land to the enhancement of biodiversity and the conservation of wildlife. The consent process, in respect of applications under Section 38 of the 2006 Act, seeks to ensure that any use of common land is consistent with its registered status, and that works take place on common land only when 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 undisputed that grazing, in general, would maintain the condition of the common. The proposal would have a beneficial effect on the interests of those occupying the land.
3. Nevertheless, the limited evidence on the matter fails to substantiate the assertion that the application proposal is the only means to facilitate these benefits. A temporary speed limit could, for example, mitigate the risks of an accident whilst preserving the open nature of the land. The submission that it would be costly and ineffective is unsubstantiated. The use of an electronic “no fence” cattle control system is the main suggested alternative, which is stated to be in widespread reliable use. Submissions that such a system would be unsuitable at this location due to welfare and property concerns are similarly unsubstantiated, and consequently attract only minimal weight. Reasonable alternatives to the application consequently exist.
4. The proposal would have no negative effect on the interests of those with rights of access across the land, nature conservation or the historic environment. Nevertheless, these are neutral matters which do not weigh in its favour.
5. Conversely, the application would have no positive impacts on the neighbourhood, and would result in a moderate adverse effect on the conservation of the landscape. Alternatives to the fencing would maintain the condition of the common and would allow for grazing by preventing cattle from straying, whilst avoiding the adverse effect. The potential alternatives have not been shown to be unsuitable. In light of these considerations, the application should be refused.

**Conclusion**

1. Thus, having regard to the criteria set out in paragraph 4 above, and all the written representations, I conclude that consent for the works applied for should not be granted because the application would have no positive impacts on the neighbourhood; and because alternatives to the application exist which would avoid the identified adverse effect on the interests of the public.

*C Beeby*

INSPECTOR

