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| **Application Decision** |
| Site Visit conducted on 15 October 2024 |
| **by Rory Cridland LLB (Hons) PG Dip, Solicitor** |
|  **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 9 December 2024**  |

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| **Application Ref: COM/3332668****March Haigh Common, Marsden** Register Unit No: CL484Commons Registration Authority: Kirklees Council |
| * The application, dated 3 November 2023, is made under section 38 of the Commons Act 2006 for consent to carry out restricted works on March Haigh Common.
* The application is made by the Canal and River Trust.
* The application seeks consent for the construction of a permanent vehicular access track.
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 Decision

1. Consent for the construction of a permanent vehicular access track on part of March Haigh Common (Register Unit CL484) is granted in accordance with the application dated 3 November 2023 and accompanying plan.
2. For the purposes of identification only, the location of the relevant works is shown on the attached plan.

**The Application Land**

1. March Haigh Common is located in the South Pennine Moors Phase 2 Special Protection Area (SPA), the South Pennine Moors Special Area of Conservation (SAC) and the South Pennine Moors Site of Special Scientific Interest (SSSI).
2. The application land itself comprises a small section of land currently used as a temporary access route to the reservoir.

**The Proposed Works**

1. The proposed works consist of the construction of a permanent vehicular access track around 4 m wide and around 130m in length. In total it would occupy around 520m2 of CL484. The application form explains that the track is legally required as a ‘measure in the interest of safety’ under the Reservoirs Act 1975 in order to secure vehicular access to the reservoir at all times to facilitate surveillance, maintenance and emergency activities.
2. Planning permission dated 21 June 2024 (Ref: 2023/62/91093/W) was granted for the construction of a permanent vehicular access track and the erection of fencing at Land Adjacent to March High Reservoir, Marsden. The proposed works would be carried out as part of the implementation of that permission.

**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.
2. In determining such an application, s.39 of the 2006 Act requires me to have regard to the following:
3. the interests of those occupying or having rights over the land (and in particular, persons exercising rights of common over it);
4. the interests of the neighbourhood;
5. the public interest; and
6. any other matter considered to be relevant.
7. Section 39(2) of the 2006 Act provides that the ‘public interest’ includes the public interest in:
8. nature conservation;
9. the conservation of the landscape;
10. the protection of public rights of access to any area of land; and
11. the protection of archaeological remains and features of historic interest.
12. I have also had regard to Defra’s Common Land Consents Policy (November 2015).

**Reasons**

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

1. The Common is owned and managed by the applicant and I am satisfied that the provision of an access track to provide vehicular access over the land would be in their interests.
2. CL484 has a total of 3 rights holders. These include rights to graze a total of 186 sheep and two cows over parts of the common, 26 sheep and 3 cows over the whole of the common as well as rights of turbury, bedding and two turf cotes. There is no objection from those who have rights over the land and I note the applicant has agreed compensation with the only active grazier in recognition of the impacts of the proposed track on the exercise of his rights. Furthermore, I note that only a small area of land would be affected.
3. Consequently, I am satisfied that the proposed works will not harm the interests of those occupying or having rights over the land.

*The interests of the neighbourhood*

1. There is no evidence which would indicate that the proposed works would adversely affect the interests of the neighbourhood.
2. The applicant explains that March Haigh Reservoir is designated as a high risk, large, raised reservoir under the Reservoirs Act 1975. It is clear from the evidence submitted that in the event of an uncontrolled release of water from the reservoir, it would pose a serious threat to public safety for those living and working nearby.
3. The proposed track would be located in an area with a low population density and some distance from the nearby village of Marsden. However, in providing an access track to enable supervision and maintenance of the reservoir, and to deal with an emergency response, the proposed works would clearly be of benefit to those living and working nearby.
4. Consequently, in the absence of any evidence to the contrary, I am satisfied that the proposed works would not adversely impact on the interests of the neighbourhood.

***The public interest***

 *Conservation of the landscape*

1. The landscape surrounding March Haigh Common is renowned for its open moorland and extensive views. The applicant acknowledges that there would be some harm to landscape character through the introduction of a permanent access track within this open moorland setting. Furthermore, it recognises that there would be some visual impact, particularly from one public footpath and the open access land to the southwest corner of the reservoir embankment.
2. However, I accept that there is little scope for mitigation measures to reduce the impact of the proposed works in those locations and that the applicant has sought to keep the landscape and visual impacts to a minimum. Furthermore, I am mindful that while NE note the works would inevitably impact on the local landscape, it considers that the impact will reduce over time, and it accepts the overall findings of the Environmental Statement that the effects would be minor adverse.
3. Likewise, I note the OSS have raised no concerns about the landscape impact of the proposed works and that they have indicated that they consider the controls and mitigation would result in minimum amount of harm.
4. Consequently, while I acknowledge there would be some landscape and visual impacts, I am satisfied these would not be significant or have a materially adverse impact on the public interest in the conservation of the landscape.

*The protection of public rights of access*

1. Marsden is a popular hiking destination which offers a variety of walks including from Blake Lea Lane up to the base of the reservoir and beyond. March Haigh Common itself is designated as access land under the Countryside and Rights of Way Act 2000 with a right of way on foot available at all times.
2. While I acknowledge there would be some temporary restriction on public access over this part of the common while the proposed track is under construction, this would be short lived and once complete, the land will remain accessible. Even during construction, the proposed restrictions would not prevent walkers accessing the rest of the common or contain the public’s enjoyment of the Common as a whole.
3. Accordingly, I am satisfied that there would be no long-term adverse impact on public access.

*Archaeological remains and features of historic interest*

1. Historic England consider that the works would not directly affect any heritage assets and has no objection to the proposals. No other concerns have been raised in this respect and, on the evidence before me, I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

*Nature conservation*

1. The site is within an area designated as a Special Protection Area (SPA) and a Special Area for Conservation (SAC). The South Pennine Moors Phase II SPA is designated for its upland breeding bird assemblage, and specifically for golden plover (Pluvialis apricaria) and merlin (Falco columbarius). The SAC is designated for North Atlantic wet heaths with Erica tetralix, European dry heaths, blanket bog, transition mires and quaking bogs, and old sessile oak woods with Ilex and Blechnum***.***
2. It also forms part of the South Pennine Moors SSSI, a large unit notified for Upland acid grassland, blanket and valley bog, North Atlantic wet heaths with Erica tetralix, European dry heaths, upland short sedge acidic fen, subalpine dwarf heath, upland wet heath, aggregations of breeding Curlew (Numenius arquata), assemblages of breeding birds on upland moorland and grassland with and without water bodies, and two forms of Namurian geological features.
3. The proposal would result in the permanent loss of 0.42ha of blanket bog, which is a qualifying feature of the South Pennine Moors SAC. Furthermore, it would result in the permanent loss of approximately 0.5ha of supporting habitat for South Pennine Moors Phase 2 SPA as well as the permanent loss of approximately 0.5ha of designated habitats in the South Pennine Moors SSSI. This would have a negative impact on the public interest in nature conservation.

***HRA Considerations/Appropriate Assessment***

1. As the proposed development is not directly connected with or necessary for the management of the site and is likely to significantly affect a European site, it is necessary, in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations), to undertake an Appropriate Assessment (AA) of the implications of the proposal for the site in view of the site’s conservation objectives.
2. These matters were considered in detail as part of the planning process and an appropriate assessment was carried out by the LPA as competent authority which concluded that the proposal would adversely affect the integrity of the sites. As a result, the matter was referred to the Secretary of State for further consideration. Having considered the matter in detail, the SoS concluded that there is no viable alternative solution that would have no effect or a lesser effect than the proposal on the sites’ integrity and would fully meet the project’s objectives. Furthermore, having considered the applicant’s case for the development to processed on the grounds of IROPI, the SoS was satisfied that there was a strong case for the development to proceed on the grounds of IROPI. I agree with those conclusions.
3. Furthermore, I note that the compensatory measures were fully considered by the LPA when considering whether or not to grant panning permission and that the SoS considered that the applicant has provided satisfactory measures to ensure that the coherence of the network of SPAs and SACs will be protected. These compensatory measures were secured by conditions attached to the planning permission. I also note that NE has advised that, while nature conservation benefits will not accrue within the designated site, there are potential benefits to the natural environment as a result of these measures.
4. Taking all of the above into account, and having considered the proposed habitat compensation works, which will be implemented across at least 3.5ha of purple moor-grass-dominated moorland owned by the National Trust, I concur that a rigorous case has been made to demonstrate there is no current alternative solution, and that the proposal has IROPI. I am also satisfied that satisfactory compensation measures are in place and will be delivered. Consequently, I conclude that the tests set out in the Habitats Regulations 2027 are satisfied.

**Overall conclusion**

1. I have found above that the proposed works would not harm the interests of those occupying or having rights over the land or the interests of the neighbourhood. I have also found that there would be no long-term adverse impact on public access and the proposed works would not harm any archaeological remains or features of historic interest.
2. Furthermore, while I acknowledge there would be some landscape and visual impacts, I am satisfied they would not be significant or have a materially adverse impact on the public interest in the conservation of the landscape.
3. While I have found that there would be some adverse impact on the public interest in nature conservation and that there would be an adverse impact on the integrity of the protected sites, I consider a rigorous case has been made to demonstrate there is no current alternative solution, and that the proposal has IROPI. Furthermore, I am satisfied that the requirements of the Habitat Regulations have been complied with. In addition, I consider that there would be some potential benefits to the natural environment as a result of the compensatory measures secured as part of the planning permission.
4. Taking all of the above into account, and noting that the proposed works are legally required as a ‘measure in the interest of safety’ under the Reservoirs Act 1975, I conclude that consent should be granted.

## Rory Cridland

Inspector

Plan 1 – Location of works

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