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| **Application Decision** |
| Site visit on 20 May 2025 |
| **by J Ingram LLB (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 6 June 2025** |

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| **Application Ref: COM/3355703**  **Sheepscombe Common, Stroud, Gloucestershire** |
| Register Unit: CL161 |
| Common Registration Authority: Gloucestershire County Council |
| * The application, dated 13 November 2024, is made under Section 38 of the Commons Act 2006 (“the 2006 Act”) for consent to carry out restrictedworks on common land. * The application is made by Natural England. * The application is for works involving the erection of fencing.  |  | | --- | |  |   **Decision**   1. Consent is granted for the works in accordance with the application and subject to the following condition: 2. All works shall be removed on or before 1 July 2035.   REASON: The consent is limited to 10 years to enable a further review of the works to be undertaken. |

**Procedural Matters**

1. For the purposes of identification only, the location of the relevant works is outlined on the attached plan.
2. On the site visit I was accompanied by a representative of the applicant Natural England. I walked extensively around all sections of the common. I was able to view the fences, and also the unfenced section at the south east part of the common.

**The Application**

1. The application seeks permission to renew the consent (previous consent expired on 20 January 2025) for temporary fences on Sheepscombe Common (‘the common’). The common is an area of unimproved limestone grassland, it forms part of the Cotswold Commons and Beechwoods National Nature Reserve (NNR) and Site of Special Scientific Interest (SSSI). The total area of the common is 12.167 acres. The common is managed by Natural England (the applicant), rights of common of grazing and herbage are registered in respect of the land. The applicant has advised that these rights are not exercised.
2. Consent is sought to retain the existing fixed fencing around the common for a further period of 10 years. The applicant advised that the common has been fenced since 1998. The applicant states the consent would enable the continuation of conservation grazing of the common, which is essential to the maintenance of the favourable status as a SSSI.
3. The previous consent decision of 21 January 2010 permitted an additional length of fencing of 230 metres to include an area of secondary woodland in the south east of the site, between the south side of the cricket club track and Far End Lane. However, the applicant has explained that this additional fencing was not installed following the previous consent, and this application does not seek permission to install it. This application is to retain the fence as it is currently installed as shown on the attached plan.
4. Six representations were made in response to the application. Four state they have no objections to the application or have no comments. Two of the representations raise concerns about certain aspects of the application, including highway safety, public access to the common and signage.

**Main Issues**

1. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works include any that prevent or impede access over the land, including the erection of fencing.
2. In deciding whether or not to grant consent, I am required by Section 39 of the 2006 Act to have regard to the following:
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, 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
6. any other matter considered to be relevant.
7. In considering these tests, I have had regard 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. The landowner has been consulted and is supportive of the application, adding that the transformation and consequent recovery of habitats has been inspiring.
2. There are rights of common recorded in the Common Land Register for the grazing of livestock and herbage, these rights are not currently exercised. However, I consider that the proposals would be beneficial for those commoners if they were to resume grazing, as there would be a reduced risk of livestock straying from 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 relevance to local residents, for instance in terms of recreational use of the common. There are properties in the immediate area of the common, however, no specific concerns were raised regarding the interests of the neighbourhood. I consider there would be no adverse effects on the interests of the neighbourhood.

***The public interest***

*Nature conservation*

1. Paragraph 3.2 of the consents policy makes clear that *works should only take place on common land 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. It is clear that the proposals are aimed at achieving a significant positive impact on the environment and nature conservation. There would be a number of potential benefits to nature conservation from carrying out the proposal. With conservation grazing the cattle eat dominant grasses to enable smaller, delicate herbs to thrive. Grazing results in a varied sward height and bare ground, establishing a habitat for seed germination and insects. Consequently, there are benefits of scrub reduction and an increase in the variety of plant and insect species.
3. Overall, I consider the proposed works would have a positive effect on the public interest in nature conservation.

*Conservation of the landscape*

1. The erection of fencing on the common would have some visual impact on this open landscape. The fences would be visible from some sections of the public footpaths, although this has been limited where possible.
2. I note that where possible, the fence-line follows the perimeter of the common and is also installed within the tree line or coppiced boundary to limit the visual impact. In addition, as the existing fencing has now been in place for over twenty years it has weathered and does integrate to the surroundings. Together, these measures limit the visual impact and provide a good amount of mitigation for the visual impact of the fencing.
3. Moreover, I note that alternatives have been considered by the applicant. Electric fencing is considered unsuitable for the size of the site. It would necessitate significant time and cost to install, maintain, check and remove an electric fence. It is susceptible to failure and there is therefore an increased risk of livestock escaping.
4. Likewise, I note the applicant has also considered the potential of using virtual fencing. While this would not require any visible infrastructure, I note this technology would not be appropriate on this site. This is due to the buffer required to maintain a virtual fence which would restrict the grazing area, and the woodland covering would result in the solar powered batteries being unable to gain enough sunlight to charge sufficiently. This would therefore again result in an increased risk on livestock escaping.
5. On balance, whilst accepting the proposed fencing would have some visual impact, I accept it would be both localised and temporary. As such, I consider it would not materially impact on the public interest in conservation of the landscape.

*The protection of public rights of access*

1. The whole of the common is Open Access Land. It is crossed by a number of public footpaths and informal paths. The proposed fence would obstruct access for the public coming onto the common, but the provision of gates and stiles would limit the impact of this.
2. The application indicates that there are 11 gated entrances onto the common and 2 stiles. Therefore, for the majority the access to the common would be by gate. The 2 main field gate entrances to the common are either left in an open position or removed when grazing has finished.
3. The Open Spaces Society (OSS) have commented that not all the gates and stiles installed are compliant with the current British Standard (BS 5709:2018). The applicant states that some gates and stiles were installed prior to this coming into force. However, all infrastructure is regularly checked for safety, damage and wear and tear. When the infrastructure requires replacement, it would be substituted for one compliant with the relevant British Standard. I consider this approach to be reasonable.
4. Furthermore, the OSS comment that all gates and stiles should be marked with the open access area symbol. The applicant has accepted that open access signs can be fitted to the main entrances to the common. From my site visit I consider that public access is clear and obvious onto the common, there are information boards near to several gates informing the public about the common.
5. Overall, while I acknowledge the proposal would result in some restrictions on public access, I consider that the continuation of the current measures will ensure public access is maintained across the common.

*Archaeological remains and features of historic interest*

1. There is nothing to suggest that the proposed works would impact on any archaeological remains or features of historical interest.
2. I am therefore satisfied that the proposal would not adversely impact on the public interest in the protection of archaeological remains and features of historic interest.

*Conclusions on the public interest*

1. I have concluded that the proposed fencing would have some visual impact. There would also be some restrictions on public access. However, on balance the proposals provide a good amount of mitigation. Overall, I am satisfied that there are no sufficiently adverse impacts on the public interest that would cause me to conclude the application should not be granted.

**Other relevant matters**

1. Section 245 (Protected Landscapes) of the Levelling-up and Regeneration Act 2023 (LURA) imposes an active duty on relevant authorities. In making my decision I must now ‘seek to further’ the statutory purposes of Protected Landscapes. The common is within the Cotswolds National Landscape. The statutory purposes of National Landscapes (areas of outstanding natural beauty) are: conserving and enhancing the natural beauty of the area of outstanding natural beauty.
2. I consider that the continuation of the fencing consent would be reasonable and proportionate and allow the applicant to further these statutory purposes. It is clear that conservation grazing has had a positive impact on the biodiversity of the common and this has been key in maintaining a favourable SSSI status. Without the fencing, which allows for the grazing, there is a danger the common would lose its biodiversity. With the loss of the current grassland habitat, the area would return to scrub. This would also impact on the views which form part of the natural beauty of the area.
3. During the consultation the Highway Authority commented that the fencing should be set back 500mm from the carriageway and that reflective tape/plates should be considered on the uprights of the fence. However, at no point would the fence be so close to the carriageway, it is some distance away. I therefore do not consider reflective plates are necessary.
4. The OSS have made comments on the southern section of the fence. They state that by fencing short of the southern boundary of the common, in parts, this would create an area which is not available to the public or grazing animals. They claim that the applicant has not explained why this unfenced area of the common is unsuited to grazing. The applicant has explained, and it was clear from my own observations on the site visit, that the southern boundary of the common (including the unfenced south east corner) is on very steep terrain. This area is mature woodland and covered with mature hazel and ash scrub. I consider that due to the terrain and mature nature of the vegetation, grazing is not feasible and restoration to grassland in this area is unlikely. The unfenced area is open to the public should they wish to walk there; however, it is not desirable due to the terrain and there are no formal or informal footpaths. I consider that the proposed fencing is on the most practicable alignment on this section due to the terrain.

**Conclusions**

1. I have found above that the application would benefit those who have a right to graze livestock on the common. No issues have been identified in relation to any other parties with an interest over the land. Furthermore, I consider there would be significant benefits for nature conservation. However, I have also found that the proposed fencing would have an impact on the ability of the public to exercise their right of access over the land, albeit this would be limited by the provision of gates and stiles at the most popular access points. Likewise, while I have found that there would be some adverse visual impact on the landscape, this would be both mitigated and temporary.
2. On balance, I consider the limited harm I have identified is outweighed by the positive benefits that are likely to arise. Consequently, I conclude that consent should be granted.

**Conditions**

1. The application seeks consent for a period of 10 years. I acknowledge the comments made by the applicant that it is anticipated that some form of fencing will be required beyond this period. On balance I concur with the applicant that limiting consent to a 10-year period would enable a further review to be undertaken. The impact of the fencing over this period can be further assessed and any potential adjustments could be made to the fencing if necessary. I have therefore imposed a condition limiting consent to a 10-year period by requiring the removal of the works prior to this.

J Ingram

**Inspector**

**Plan referred to in paragraph 2
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