



Application Decision

by Harry Wood

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 5 March 2024

Application Ref: COM/3325292

Longmoor Common, Ennerdale, Cumbria

Register Unit No: CL105

Commons Registration Authority: Cumberland Council

- The application, dated 28 June 2023, is made under Section 23 of the National Trust Act 1971 (the 1971 Act) for consent to carry out restricted works on common land.
 - The application is made by the National Trust.
 - The works comprise the retention for a further 15 years of previously consented 1.20m high stock proof fencing constructed from metal poles concreted into the ground with five strands of wire. The fencing is approximately 80m long, encloses 8.97 hectares of common land and incorporates two public access gates.
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Decision

1. Consent is granted in part for the works in accordance with the application dated 28 June 2023 and the plans submitted with it. Consent is granted to retain the fencing for 10 years (rather than 15 years as proposed in the application) subject to the following conditions.
 - i. the Open Access 'Round brown symbol', as set out in the published statutory guidance 'The Countryside Code: advice for countryside visitors', shall be attached to both sides of the access gates and retained throughout the consent period; and
 - ii. the fencing shall be removed on or before 5 March 2034.
2. For the purposes of identification only, the location of the fencing is shown as a red line on the attached plan.

Preliminary Matters

3. Consent under the 1971 Act was granted on 16 May 2008 (the 2008 consent) to erect and retain the fencing for a period of 15 years (Application Decision CLI 379). The consent expired on 16 May 2023.
4. I have had regard to Defra's Common Land consents policy of November 2015 in determining this application under section 23 which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Natural England (NE), Historic England (HE), Open Spaces Society (OSS), Friends of the Lake District (FLD), Butterfly Conservation Cumbria, Ennerdale and Kinniside Parish Council, Ennerdale and Kinniside Primary School and 11 individual parties.
7. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining this application under the 1971 Act:-
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - b. the interests of the neighbourhood;
 - c. 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
 - d. any other matter considered to be relevant.

Reasons

8. NT explains that during the 1980s attempts to graze Longmoor Common were stopped due to increasing conflict with road traffic as cattle could wander off the common at certain points. When grazing ceased on the common the population of Marsh Fritillary butterfly declined and a last individual was recorded in 1989. The Marsh Fritillary and its habitat are protected under The Conservation of Habitats and Species Regulations 2017. The Marsh Fritillary butterfly is also classed as a Section 41 species of principal importance under the Natural Environment and Rural Communities Act 2006 in England and is a UK Biodiversity Action Plan Priority Species.
9. NT further explains that the 2008 consent allowed the installation of two cattle grids (permanent structures) and 80m of time-limited fencing, meaning a large proportion of the common became stock proof and could be grazed again (tethered ponies had previously been used unsuccessfully). Marsh Fritillary butterfly and Devil's Bit Scabious, which is the butterfly's larval host plant, then spread over the common from only a handful of plants and butterflies at the beginning of the current grazing regime. The continued success and management of the site is dependent on the continuation of the current management prescriptions, including the stock-proof fencing.

The interests of those occupying or having rights over the land

10. The common is owned by the applicant, National Trust (NT), which considers the works to be desirable for the purpose of improving opportunities for the enjoyment of the property by the public and are in the interests of visitors to the common. NT confirms that there are no leaseholders, other occupiers or any others holding any relevant charges or rights of access over the land. I am satisfied that retention of the fencing will not harm the interests of those occupying the land.
11. The common land register records one right to graze 30 cattle over the whole of the common in favour of Richard and Joan Taylor of Longmoor Head, Kinniside. As sole graziers, Mr and Mrs Taylor introduced and manage the grazing regime and are fully in

support of the application. I am satisfied that the proposal to retain the fencing for a further period is in their interests.

The interests of the neighbourhood and public rights of access

12. The interests of the neighbourhood test relates to how the works will impact on the way the common land is used by local people and is closely linked with interests of public access.
13. The fencing was erected following the 2008 consent and has been in place for around 15 years. In commenting on the current application, no party has suggested that the two public access gates are insufficient for that purpose or that the fencing has had a harmful effect on neighbourhood interests. There is no evidence before me to suggest that retention of the fence for a further period will harm the interests of the neighbourhood and public rights of access.
14. OSS and FLD suggest that the access gates should be marked on both sides with the Open Access 'Round brown symbol', as set out in the published statutory guidance 'The Countryside Code: advice for countryside visitors' to indicate that the public can explore away from paths. I consider that it is appropriate to mark the gates in this way and NT confirms that it is happy to do so. A suitable condition requiring it is therefore attached to the consent.

The public interest

Nature conservation

15. NE advises that Longmoor Common is not subject to any statutory designations for nature conservation but recognises the value of the grazing regime to supporting nature conservation objectives, particularly its contribution to maintaining an environment suitable for the Marsh Fritillary butterfly.
16. NT explains that the grazing provides ideal habitat for the Marsh Fritillary by promoting the spread of Devils Bit Scabious. The common is subject to a Countryside Stewardship Higher Level Stewardship (HLS) Agreement (ref: AG00417451) for the period 2019 to 2029. The prescriptions within the agreement are, in part, targeted towards maintaining the land of the benefit of the Marsh Fritillary butterfly and the fencing is crucial to achieving this.
17. I conclude that retention of the fence for a further 10 years is in the interests of nature conservation.

Conservation of the landscape and archaeological remains and features of historic interest

18. NT explains that the use of metal fence posts and single strand wires, as opposed to wooden fence posts and stock netting, reduces the visual impact of the fencing as the post are of a slim design and are placed further apart than wooden posts. In the summer months the fence is partially covered by brambles and other vegetation, further reducing its visibility. FLD advises that the fence is obvious in places but, on balance, the landscape and visual amenity of the common are not overly impacted. In commenting on the proposal to retain the fence for a further period, no party has suggested that landscape interests have been harmed, or will be harmed, by it.
19. I consider that the fencing may be of some harm to landscape interests but the harm is unlikely to be serious and is outweighed by nature conservation benefits.

20. Longmoor Common lies within the Lake District National Park (LDNP) and English Lake District World Heritage Site (WHS).
21. LDNP Authority did not comment on the proposals but I am satisfied from correspondence provided by the applicant that it had an opportunity to do so if it so wished. I am satisfied that the natural beauty of the National Park will be conserved.
22. HE advises that the fencing is located close to Longmoor Head farmhouse and adjoining stable, which are listed in Grade II (National Heritage List for England entry number 1346573). However, given that the fencing is already in position, HE does not consider that its retention will adversely affect the setting of the listed buildings. HE has no reason to suspect that any non-designated nationally important archaeological sites would be impacted by retaining the fencing and does not consider that the proposal would have an adverse impact on the Outstanding Universal Value of the English Lake District World Heritage Site.
23. NT confirms that there is nothing registered in its Historic Buildings, Sites and Monuments Record for Longmoor Common. I am satisfied that the proposed works are unlikely to harm archaeological remains and features of historic interests.

Other Matters

24. None of the parties that have made representations objected to the retention of the fencing. However, both OSS and FLD contend that the retention should be for no longer than 10 years rather than for the 15 years requested. The difference of opinion between them and NT is not related to expiry of the current HLS agreement which ends in five years' time. Rather, it is about the likely timing of reliable fenceless grazing technology becoming available that would allow grazing to continue without the need for a physical fence.
25. In making the application NT advised that it hoped it may be possible to remove the fencing at the end of the 15-year period, with alternative methods being employed, such as the use of radio collars (invisible fencing) to control the areas the cattle can graze. OSS considers that consent should be limited to 10 years on the basis that rapidly evolving technology is very likely to make fencing redundant on the common. FLD contends that GPS/virtual fencing collars for cows are becoming more widespread, including Cumbrian examples of how to use them for cows with calves at foot, such as RSPB Geltsdale in the North Pennines National Landscape. For this reason, FLD considers that an extension of ten years is ample time to trial this technology at Longmoor Common and the request for fifteen years is not justified.
26. NT questions the claimed speed of progress in fenceless technology and contends that significant issues remain, citing a recent example of where during a Commons Association trial, dogs startled cows fitted with radio collars. The cows passed the collar pain threshold and the collars did not contain the cows within the intended area. NT also cites concerns from the Commons Association's Animal Welfare Committee about weighing the benefit of such systems against the welfare and safeguarding of the cattle and advises that some insurance companies may not cover the use of radio collars, particularly for grazing on land where there is open access and public rights of way. NT also has concerns about how such collars would be funded through future Environmental Land Management Schemes (ELMS), which are in the process of being rolled out.

27. Whilst I accept the points made by NT, I consider that 10 years is sufficient time to explore whether fenceless technology can provide a solution to containing grazing animals on the common in the long term. If there remains uncertainty as to the effectiveness of fenceless technology as the 10-year period nears expiry, it is open to NT to apply for consent to retain the fencing for a further period at that point and any such application will be considered on its own merits.
28. FLD sought assurances that the necessary funding would be in place to remove the fencing upon expiry of the consent. Whilst the issue of such funding carries little weight in considering whether the application can be granted, NT confirms that its Ranger Team would be capable of removing the fence. Failing that, NT has a database of suitable firms and individuals, and such work would be budgeted for accordingly in advance.

Conclusion

29. I conclude that retention of the fence for a further 10-year period will not seriously harm the interests set out in paragraph 7 above; indeed, it will be in the medium-term interests of nature conservation, especially with regard to the conservation of the Marsh Fritillary butterfly. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Harry Wood



Longmoor Common Near Ennerdale Bridge

Key

Fence



NT Ownership Boundary



13 April 2023
By karen.fowler

GIS Data Team, Strategy Management Unit



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