

Application Decision

Site visit made on 20 July 2016

By Barney Grimshaw BA DPA MRTPI (Rtd)

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 16/08/2016

Application Ref: COM 753

Bollihope Common, Parish of Stanhope, Durham

Register Unit: CL 38

Registration Authority: Durham County Council

- The application, dated 9 November 2015 is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made on behalf of Starshine Management Company Ltd.
 - The works comprise the erection of a total of 2240 metres of rabbit fencing plus 6 gates and drop boxes. A 30 year consent is sought.
-

Decision

1. Consent is granted for the proposed works in accordance with the application and subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision;
 - ii. the fencing shall be removed no later than 30 years from the date of this decision;
 - iii. the common shall be re-instated no later than one month following removal of the fencing.

Preliminary Matters

2. I made a visit to the land referred to on Wednesday 20 July 2016 accompanied by Valerie Hack, agent for the application, Matthew Watson applicant's land agent, Mr D Heavisides, Mr TE Dobson and Helen Dobson, objectors and Mr G Wilkinson of Bollihope Shield Farm, interested party.
3. For purposes of identification only the location of the works are shown marked in red on the attached plan.

The Application

4. The application is made on behalf of Starshine Management Company Ltd by Valerie Hack of Valerie Hack Restoration Ecology. It proposes that 3 sections of rabbit fencing be erected on common land around Bollihope Shield Farm to supplement similar fencing already erected on land outside the common. The fencing would be erected parallel to and as close as possible to existing walls for the most part and in some sections would be attached to existing fencing.

Gates are proposed opposite existing gates to maintain existing access arrangements to the common.

5. An important feature of the proposed fencing is the installation of drop boxes at regular intervals (approximately every 100m). These would consist of a tunnel through the base of the fence and a box buried in the ground below the tunnel. Periodically a mechanism would be released which would cause the top of the box to open when a rabbit passes over and then close by means of a counter-balance trapping the rabbit. The boxes would be checked on a daily basis and captured rabbits humanely killed and any other animals captured released. It is accepted that the fencing cannot prevent all rabbit movement in the area but the system is said to be effective in significantly reducing the rabbit population.
6. It is stated that wherever possible rabbit fencing has been erected outside the common but due to the topography of the area the remaining sections applied for need to be erected on common land.

Main Issues

7. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application;
 - (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;¹
 - (d) any other matter considered to be relevant.
8. I will also have regard to the department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy Guidance², which has been published for the guidance of both the Planning Inspectorate and applicants.

Interests of those occupying or having rights over the land

9. There are said to be seven active graziers exercising their right to graze sheep on the area of the common affected by the proposed works and two others that hold grazing rights but do not exercise them, one of these being Natural England (NE). Objections to the application have been made on behalf of two active graziers.
10. The grounds for the objections are that fencing is inappropriate on the common and will result in loss of grazing land and be contrary to the interests of graziers. Most of the graziers are involved in an Environmental Stewardship scheme which has required them to reduce the amount of grazing by their stock and therefore they feel that further loss of grazing should be avoided. It is also contended that if more rabbit fencing is required it could and should be located outside the common on the inbye of Bollihope Shield Farm in the same way as that already erected.

¹ 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.

² Defra, Common Land Consents Policy Guidance November 2015

11. On behalf of the applicant it is stated that very little grazing land will be lost as a result of the fencing which will not prevent access to any part of the common except for the relatively narrow strip between the proposed fence and existing walls. It is estimated that this amounts to approximately 2.4Ha in total. It is also stated that this land is almost entirely ill-drained and dominated by soft rush and bracken which is of little value for grazing.
12. The applicant's primary interest is grouse management and overgrazing of heather is detrimental to this. Accordingly, controlling the rabbit population which feeds on the common is important in this regard but the reduction in the amount of grazing by rabbits also means that better grazing will be available for the graziers' stock.
13. With regard to the contention that fencing ought to be erected outside the common within the inbye of Bollihope Shield Farm, the applicant states that this would not be practical. Some fencing has already been erected on the inbye but much of the inbye land adjacent to the section now applied for is unsuitable for various reasons. Some is occupied by plantations where tree roots would make fencing difficult, some is very rocky and the topography of the area means that in some parts it would be impractical to install adequate drainage to the drop boxes which is necessary for animal welfare purposes. There are also shake holes in one area which make the ground unstable and therefore not suitable for the installation of drop boxes.
14. In some sections it is accepted that further fencing on the inbye would be possible but is undesirable. Some fields are used for the grazing of cattle and here a rabbit fence would need to be protected by an additional breast wire and there would still be a risk of a cow damaging a drop box or getting a foot stuck in one. It would also be difficult to rabbit proof the fence at points where it needed to cross from one side of the existing wall to the other. Also, fencing on the inbye of sections 1 and 4 would reduce the value of the existing walls in providing shelter for sheep from the prevailing south-westerly winds.
15. It is also stated that two fields are used as lambing fields and that lambs as young as one day old risked getting ear tags caught in rabbit fencing with resultant damage. This may however be a double edged argument as graziers' sheep might be present on the common side and may suffer similar risks although I do not know how likely it would be for such young lambs to be present on the common and this risk was not referred to by objectors in their written submissions.
16. Overall, it is my view that on the balance of probability the proposed rabbit fencing will not have a significant adverse effect on people occupying or having rights over the land and may be of benefit to graziers as a result of reducing the rabbit population.

Interests of the Neighbourhood

17. There is no evidence to suggest that the proposed fencing would adversely affect the interests of the neighbourhood. The fencing is to be routed so as to avoid any obstruction to access to properties in the locality or to public rights of way. Also, it has been stated on behalf of Stanhope Parish Council that there are no concerns regarding the application.
18. The works will be of benefit to Bollihope Shield Farm as a result of the likely reduction in grazing by rabbits.

Public Interest

Nature Conservation

19. Most of the proposed fencing is to be erected on land that is within a designated Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC) and a Special Protection Area (SPA). NE as the relevant competent authority has already given permission for the proposed works on designated land under the Wildlife and Countryside Act 1981. This indicates that NE is satisfied that the proposed fencing will not have an adverse effect on the designated sites.
20. In fact, it is argued that the proposed fencing will have a beneficial effect for nature conservation on the common. Overgrazing has been identified as a threat to the natural vegetation, including grazing by rabbits. The area is also subject to a Higher Level Scheme (HLS) of Environmental Stewardship to which most of the graziers on the common are party. One of the main aims of this scheme is to reduce overgrazing and control of the rabbit population will be complementary to other measures taken under the scheme.

Landscape

21. The land affected by the proposed works lies within the North Pennines Area of Outstanding Natural Beauty (AONB) and it is therefore important that any adverse effect on the landscape is avoided. However, the proposed fencing will be situated alongside or attached to existing higher walls or fences it will therefore have no significant effect on the landscape. I note also that the Open Spaces Society (OSS) has raised no objection to the application and commented that the fence would not be visible.

Public access

22. There is no general right of public access to the common under section 193 of the Law of Property Act 1925. Two public rights of way run close to the proposed fencing but would not be obstructed by it. Any access currently enjoyed by members of the public by way of existing gates will still be possible as a result of the proposed provision of gates in the fence.
23. Again I note that the OSS raised no objection and commented that the fencing would not have an adverse effect on public access.

Archaeological remains and Features of Historic Interest

24. There is no evidence to suggest that the proposed fencing would have an adverse effect on any archaeological remains or features of historic interest

Other relevant matters

25. Objectors submitted further comments after the close of the public consultation period. These mainly disputed statements regarding the way in which consultation had been carried out and/or challenged statements made on behalf of the applicant. They contained little new evidence as such. Nevertheless, I have taken account of these comments in reaching my decision. I have also satisfied myself that all required consultations have been carried out.
26. The application is for a period of 30 years. I suspect this is a somewhat arbitrary time period as there is no evidence to suggest that the need to control rabbits will cease at the end of this or any other period of time.

Nevertheless, I have no basis upon which to suggest an alternative period and therefore I intend to impose conditions to the effect that after 30 years the fencing should be removed and the common restored.

Conclusions

27. Having regard to these and all other matters raised in written representations I conclude that all the criteria for the approval of the proposed works have been satisfied and the application should therefore be approved, subject to the condition at paragraph 1.

Barney Grimshaw
INSPECTOR

