Application Decision

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

Decision date: 8 June 2012

Application Ref: COM 302
Pebblebed Heaths Commons, East Devon
Register Unit Numbers: CL 28, 35, 39, 49, 54, 55, 82, 136 and 169
Commons Registration Authority: Devon County Council

- The application, dated 31 October 2011, 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 by John Varley, Trustee to East Devon Pebblebed Heaths Conservation Trust, Rolle Estate Office, Bicton Arena, East Budleigh, Budleigh Salterton, Devon, EX9 7BL.
- The works are as described in the application. Briefly, these are 23208.98 metres of permanent perimeter fencing with gates, 7447.66 metres of seasonal enclosures, cattle handling facility and cattle troughs with piped water supply.

Decision

1. Consent is granted for the works in accordance with the application dated 31 October 2011 and the plans submitted with it. For the purposes of identification only the works are shown on the attached plans.

Preliminary Matters

2. I have had regard to Defra’s Common Land Consents Policy Guidance\(^1\) in determining this application under section 38, 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

3. This application has been determined solely on the basis of written evidence.

4. I have taken account of the representations made by the Council to Protect Rural England, Devon Countryside Access Forum, The Badger Trust and other interested parties.

5. 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;

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\(^1\) Common Land Consents Policy Guidance (Defra July 2009)
c. the public interest;\(^2\) and
d. any other matter considered to be relevant.

**Reasons**

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

6. There is only one registered commoner who has rights to cut heather for bedding, to cut unenclosed timber of less than 2” diameter for repair of fences, and to graze two horses, and two cows or two horses and twelve sheep over CL 169 (Colaton Raleigh Common) and CL 136 (Woodbury Common). The commoner does not exercise their rights of common.

7. The owners of the various commons have given their permission for the works to be undertaken.

8. I therefore consider that the proposed works will not adversely affect the rights of the sole commoner or the interests of the land owners.

**The interests of the neighbourhood**

9. The applicant states that there has been concern over a number of years about the continuing encroachment of trees and scrub on the Pebblebed Heaths, accompanied by a progressive change from wet heath and mire species, to grass dominated communities in the damper and wetter areas. The grassland and woodland which replaces the original heathland communities is of much lower biodiversity value and is seen by many visitors as less desirable than the traditional cultural heathland landscape. The application seeks to address this by allowing for the further management of the Commons through grazing. This will help to restore and preserve the viability and value of the site as lowland heath. At present a series of temporary fencing schemes have been in place but to make this conservation method viable for larger areas of the common a more formal fencing scheme, as proposed, needs to be introduced. The grazing will in turn allow for the managed improvement of the landscape and will increase the nature conservation value of the site and therefore the neighbourhood.

10. It is clear that the proposed fencing will have a visual impact on the common as many areas have not been fenced previously. However this will be mitigated to some extent by the fencing being set back from the highways and in most places hidden within areas of woodland or scrub. Elsewhere many of the fences will be set against earth banks or woodland and the installation of cattle grids on the minor road crossing Hawkerland Common and the minor road between East Budleigh Common and Bicton Common will remove the need for fencing on large parts of their boundaries and open them up to be grazed as two larger single units.

11. I note that the proposed works provide a good number of access points in all those places where visitors currently access the commons with gates that cater

\(^2\)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.
for all users. Cattle grids will be provided with bypass gates and all enclosures will be provided with at least two access gates.

12. Taking account of the above I am satisfied that the proposed works accord with 3.9.2 of Defra’s guidance and will benefit the interests of the neighbourhood by the continued maintenance of the Commons as open heathland. While some areas will be fenced, the commons will be able to be accessed adequately through the numerous public rights of way entry points and other proposed access points. The introduction of extensive grazing will also help to maintain the neighbourhood’s cultural landscape of lowland heath common which will contribute to the beauty and diversity of the area.

The public interest

Nature and Landscape Conservation

13. Parts of the Pebblebed Heaths are designated as Sites of Special Scientific Interest, Special Areas of Conservation, and Special Protection Areas. The whole of Pebblebed Commons is also within the East Devon Area of Outstanding National Beauty (EDAONB) and paragraph 4.18 of Defra’s guidance needs to be considered as it sets out the Secretary of State’s duty to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features and the duty to have regard to the purpose of conserving and enhancing the natural beauty of the EDAONB.

14. One of the objectors commented that grazing will not achieve the aims of the applicant and that it will only be possible with a properly managed programme of burning and controlling the growth of gorse and bracken. The applicant agrees that grazing will not in itself achieve the aims of managing the land back to lowland heath as grazing needs to follow the control of scrub by such methods as burning and cutting but those methods are not possible in all areas so a balanced management programme involving all necessary methods is best, with grazing being just one. The proposal for fencing will allow the commons to be grazed and brought back to lowland heath in a managed way inclusive of all necessary methods. This approach is supported by Natural England and other organisations.

15. As stated above the proposal seeks to introduce a programme of grazing onto the commons to manage a return to the traditional cultural heathland landscape of the area in order to help restore and preserve the viability of the site as lowland heath. The grazing will in turn increase the nature conservation value of the site.

16. I consider that the proposed works will benefit and conserve the special status that much of the commons currently hold and therefore that they will have a positive impact on nature and landscape conservation.

The protection of public rights of access

17. It is clear from the representations that visitors have enjoyed access to the commons from any unfenced place and if the proposal goes ahead their ability to do so will clearly be affected. However, as noted at paragraph 11 above, the proposed works provide numerous access points and I am satisfied that the public’s ability to access the commons will not be affected unacceptably by the proposal.
Archaeological remains and features of historic interest

19. There are a number of scheduled monuments and features of historic interest on the commons and the applicant has consulted English Heritage (EH) about the proposed works. EH is satisfied that the proposed works will not cause harm and that works due to be undertaken near any site will be managed sensitively as necessary. I therefore consider that any archaeological remains and features of historic interest will be protected accordingly.

Other relevant matters

Access in the future

20. Although there are no other relevant matters, an objector has expressed concern about access rights being eroded by landowners’ possible future actions regarding the use of their land. However, this is not a matter before me and my decision is based solely on the merits of the application.

Temporary or permanent consent

21. The applicant has applied for the works to be permanent on the basis that “the human management of lowland heathland, primarily by grazing, has for centuries maintained the open heath, and when grazing has stopped, invariably the heathlands have started to scrub up and revert to woodland. Such heathlands have been prevented from succeeding to their natural condition as climax woodland only by human intervention in the past and that situation is expected to continue to the foreseeable future.” The applicant expects the management of the heaths by grazing to continue indefinitely and so the need for the works will remain. I have taken into account paragraph 3.7 of Defra’s guidance and objections received to permanent fencing. I accept that there will be a continual need for the works to remain if the biodiversity and landscape benefits are to be maintained. Therefore, since I have concluded that the works will not have an unacceptable impact in respect of the interests identified in paragraph 5 above, a temporary consent cannot be justified.

Conclusion

22. Having regard to the interests set out above, I conclude that consent should be granted.

Richard Holland