



Application Decision

By Gina Warman

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

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Decision date: 2 June
2009

Application Ref: COM 61 Marley Common, West Sussex

Register Unit: No.CL92

Registration Authority: West Sussex County Council

The application, dated 6 January 2009, is made under section 23 of the National Trust Act 1971 (the 1971 Act) for consent to construct works on common land.

The works comprise:

- The erection of 1500 metres of fencing, and gates, enclosing 17 hectares, to facilitate grazing for the purpose of nature conservation. The fencing will be located either on the perimeter of the common, or alongside roads which cross the common. The fencing is limited to the period from the date of this letter to 31 December 2024.

Summary of Decision: The application is granted, in the terms set out below in the Formal Decision.

Preliminary Matters

1. Section 23 of the 1971 Act provides that the National Trust ("the Trust"), if the Trust is to carry out the proposed works, or a third party, if the third party is to carry out the proposed works under an express or implied right, may apply for consent to carry out works which prevent or impede access on any National Trust owned land which is registered as common land under the Commons Registration Act 1965.
2. The application is made by David Elliott, National Trust Head Warden, Swan Barn Farm, Collards Lane, Haslemere, Surrey GU27 2HU. The National Trust owns the land which is subject to this application.
3. Marley Common, which approximately 27.5 hectares in area, is registered as common land (CL 92) under the Commons Registration Act 1965. There are no rights of common registered in respect of the land. The common is within the Sussex Downs Area of Outstanding Natural Beauty.
4. This application has been determined solely on the basis of written evidence.

Reasons

5. The applicant advised that the fencing was being constructed as part of a joint project between The National Trust ("the Trust") and The Lynchmere Society

("the Society") aimed at restoring and managing heathland on Marley Common for nature conservation purposes. The proposed works were intended for the purpose of keeping grazing livestock safe and preventing them from straying onto neighbours' land or surrounding roads and car parks. The sole intention was to keep the animals in, the aim was to minimise any effect on access to the common as much as possible. The works were designed to protect these access rights and help conserve the local landscape. Grazing animals would help the Trust to manage the heathland for nature conservation and retain open spaces across the common.

6. One of the key factors behind this application was the joint partnership that lay behind the project between the Trust and the Society, who owned two neighbouring commons. There was, however, no evidence of the boundary between the two organisations on the ground. Introducing fencing along this boundary would have meant it would have crossed back and forth over some of the desire line paths in this area and would have introduced a division within the landscape that had not existed previously. It would also have meant extra fencing on the commons, which the Trust was able to avoid as a result of this joint project. The aim was to maintain the character of the landscape by creating one grazing area crossing the boundaries between the organisations and thereby maintaining the open feel of Marley Commons. By working in partnership, these two organisations would be able to further the interests of the neighbourhood by delivering larger scale benefits in terms both of nature conservation and access than would have been possible by either organisation working on its own.
7. The open spaces at Marley were primarily heathland, a landscape that had been cherished and highly valued by the inhabitants of the neighbourhood for centuries. Heathland was a term which encompassed a suite of communities that had extremely high biodiversity value. They sustained specialised and often rare wildlife. The development of heathland had been inextricably linked to the activities of man for thousands of years. The ongoing exploitation by successive generations of people, many of whom had to subsist on it, had shaped and maintained the landscape and the species it supported. Heathland was a vegetation community that was maintained by human intervention, in the absence of continued management, successional trends resulted in secondary woodland of lower conservation value developing on the site.
8. There were currently no commoners on Marley although the right to graze livestock was exercised for many years; a number of locals remembered the commons being grazed right up until the late 1950's. Various other activities such as the collection of firewood and quarrying also took place on the common and the effect of these activities combined with the grazing would have prevented succession of the heathland community to scrub and woodland. The return of grazing animals to the heath would help to conserve and manage this rare and threatened habitat and protect its valued open spaces for the public.
9. One of the comments often given by the local inhabitants to Trust staff was that work on managing the common through the opening out of the heath had led to it feeling much less enclosed and oppressive when they were walking on the property. They had commented that the commons felt much safer now that it was possible to see more clearly along and around paths. The proposed works would enable grazing of the common at a level that would keep the

- paths, glades and the main heathland areas open, thereby acting in the public interest by enabling greater access across the common and protecting and enhancing existing access onto and across the common by helping to keep the paths clear.
10. The type of fencing proposed had been specifically selected to minimise its visual effects. The timber and wire used for its construction had been chosen so that as their colour mellowed, over time they would start to blend in to the woodland edge which surrounded the common. Wherever possible the fence would be hidden in blocks of trees and scrub, especially along Marley Lane. There were extensive areas of holly and gorse in this area which would be used as screens wherever possible so that the fence was hidden from view. The fencing aimed to follow as much as was practically possible either existing subdivisions within the common or the common boundary. Hence the fencing following the common boundary or roads for the majority of its length, with the only exceptions being where the fence went around the car park (to keep animals away from parking cars) and a small section to the north where it cut across the common in order to be hidden in blocks of scrub and where otherwise people accessing the common would have been contained within a highly visible funnel of fencing on both sides.
 11. The boundary of the common was traditionally stock proof and this took various forms. Banks, ditches, and the remains of old hedges and fences were all present around the edge of the common; if one looked at the trees on the common boundary along which the fencing was proposed it was still possible to see scars in the bark showing where the wire from fences of decades past was attached to trees to stockproof the common, old gate posts also still survived in some of the places it was proposed to erect new gates. In this context the proposed works would have minimal visual effect on the landscape as they did not change its character.
 12. A wide ranging consultation exercise had taken place locally prior to the application being put forward and the project had a great deal of support locally. Around twenty two letters of support had been received, including ones from both Parish councils within which the two commons affected lay, The Sussex Wildlife Trust, The Haslemere Natural History Society, The South Downs Joint Committee, the Countryside Access Forum for West Sussex, Natural England and a number of local users of and neighbours of the commons. In addition, Natural England had agreed to support the project financially through an agreed programme of works under the Higher Level Stewardship Scheme which aimed to deliver environmental benefits in the countryside.
 13. The open spaces on Marley Common were of great importance for their heathland flora and fauna, management of the heath was essential in order to ensure the continued survival of a number of species on the common. Grazing was the most practical and best suited way to keep the heath open on Marley Common. A full exploration of all the available alternatives to fencing had been considered prior to the formulation of the proposed works but they were considered to be impractical. Mechanical management on the scale which would be required to keep the common open would be extremely time consuming and costly and would have a number of detrimental effects. These would include the loss of the natural feel of the common due to the creation of extensive even aged mowed areas (which were also detrimental to wildlife interest) and the

loss of character due to machinery being active on the common for more extensive periods of time that would otherwise be required. A number of areas of the common also had either steep or very uneven terrain making it very difficult to safely access with machinery. There were trenches on the common which were believed to have been constructed by troops in the first and second world wars, these along with some of the areas where mining took place would no doubt be of future archaeological interest and it would be a great pity to have a negative impact on them through the use of heavy machinery where this could be avoided.

14. In the absence of other practical alternatives for the management of the open areas of the common, grazing would be an essential tool in helping to manage the heath by keeping open spaces on the common. Without the proposed works taking place it would be impracticable to safely and effectively manage the grazing, without the fencing for which consent was being sought the Trust would be unable to keep animals from straying onto roads and car parks and into the woods and gardens which surrounded the common. The lack of a practical method of managing the common would lead to the open areas of the common disappearing under a tangle of regenerating scrub, bracken, rhododendron and trees which would make access impossible for local inhabitants. This loss of access would have a highly detrimental effect on the interests of the neighbourhood, it would be detrimental to the landscape, public access and nature conservation interests in the commons.
15. Every effort had been taken to ensure that the proposed works would not affect people's access to the common. Gates would be provided on all rights of way, gates would also be provided anywhere it could be seen that people had accessed the common in the recent past. As part of the extensive public consultation exercise which preceded this application, as many people as possible were consulted about whether there was anywhere along the proposed fenceline they would like to see gates, and where they asked for this these gates were included within this application. The design of gates and gateways was also discussed and had been formulated to offer easy access for all of the users of the common. Particular attention had been paid to gate fittings to ensure the gates were easy to use for horse riders, walkers and people with push chairs.
16. The proposed works would allow the return of grazing animals to commons which had a long history of having been grazed. Should the proposal be granted consent, local inhabitants would once more be able to share their open space with the animals on the heath in an open, naturalistic landscape. It had been the Trust's experience when grazing other commons in the area that the arrival of animals onto the commons had been seen very much as a positive addition to the landscape. The animals were something which the public enjoyed seeing, they had proved to be popular and helped to make the picture of the landscape complete, as well as delivering wide ranging access and nature conservation benefits to the neighbourhood.
17. The consent for fencing and gates was being sought for 15 years as this would be a reasonable length of time to expect the fence to last, the Trust would then aim to review the effectiveness of the grazing before seeking to repair or replace the fence.

18. Applications under section 23 are determined using the same procedure and criteria as for applications under section 38 of the Commons Act 2006 (“the 2006 Act”). Consequently, I am required 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.

Written representations

19. In response to advertisement and consultations about the application, the Inspectorate received two letters of support. No objections were received.²

20. The Open Spaces Society advised by letter dated 26 January 2009 that it had no objection to the application. It commented that it recognised that it was necessary to fence the land in order to re-introduce low level grazing and improve the habitat for both wildlife and public access. It noted the siting of the fencing and believed it was in the most appropriate place so as to have the least visibility and the least adverse effect on the public who enjoyed the common for recreation.

Assessment

Interests of those occupying or having rights over the land

21. The application has been instigated partly by the landowner and no evidence has been submitted to suggest that the proposals would adversely affect the landowner’s ability to exercise its rights. There are no registered commoners to be affected by the proposals.

Interests of the Neighbourhood

22. Local people would not be prevented from using the common in the way they were used to. In fact, it is considered that the proposals would benefit the neighbourhood positively as they would result in improving and maintaining the common’s openness and accessibility for local people to enjoy.

Public Interest

23. It is considered that the effect of the proposals would apply equally to the wider public as it would to the immediate neighbourhood. The provision of gates would

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 A public notice appeared in the 8 January 2009 edition of the *West Sussex Observer* and the application was publicly displayed at the Northern Area Office of the South Downs Joint Committee, Midhurst, West Sussex for the statutory 28 day period. Consultation letters were sent to interested parties as required, including Lynchmere and Fernhurst Parish Councils, Chichester District Council, West Sussex County Council, South Downs Joint Committee, English Heritage, Natural England and the Open Spaces Society.

facilitate continued access for all users of the common and it would become more open and accessible for public recreation and enjoyment.

24. It is considered that the proposals would have a positive impact on the public's interest in nature conservation, as they would enable the Trust to graze the common which would help to restore and retain the habitat of this valuable site. Furthermore, it is noted that Natural England supports the proposals.
25. It is noted that the proposals would be in keeping with the traditional uses of the common. Furthermore, it is considered that the type of fencing and its proposed location would help to minimise any visual impact, consequently, the public's interest in the conservation of the landscape would not be affected significantly.
26. It is considered that the proposals are the best means of achieving the Trust's objectives whilst ensuring that there is no negative impact on the public's interest in the protection of any archaeological remains or features of historic interest on the site.

Other relevant matters

27. There are no other apparent relevant matters to consider.

Conclusion

28. Having regard to the interests set out in paragraph 18 above, the conclusion reached is that the works will not adversely affect those interests, and that it is expedient that consent should be given.

Formal Decision

29. Accordingly, in exercise of the powers conferred by section 23 of the National Trust Act 1971, and of all other enabling powers, consent is hereby given to the works described, limited to the period from the date of this letter to 31 December 2024. For the purposes of identification only, the location of the works is outlined in red on the attached plan.

Gina Warman