
Penderfyniad ar Gais

Ymweliad â safle a wnaed ar 30/01/18

gan Joanne Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 28/02/2018

Application Decision

Site visit made on 30/01/18

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 28/02/2018

Application Ref: COM/3166760

Betws Common, Ammanford, Carmarthenshire

The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.

Register Unit No: CL 34

Commons Registration Authority: Carmarthenshire County Council

- The application, dated 27 October 2017, 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 Betws Common Holdings, c/o Mr C Griffiths, Llwwchisawel, Betws, Ammanford SA18 2PF.

The works comprise: Fencing and the excavation and installation of two number cattle grid crossing points on minor roads, for maintaining vehicular access.

Decision

1. Consent is granted for the works in accordance with the application dated 27 October 2017 and the accompanying plans, subject to the following condition:
 - 1) the works shall begin no later than three years from the date of this decision.

Preliminary Matters

2. I carried out an unaccompanied site inspection on 30 January 2018. My decision has been made on the basis of my observations on this visit, taking account of the application and representations received in response to the advertisement of the application.
 3. Concerns have been made regarding the consultation process, in particular that the applicant has failed to follow the recommendations set out in 'A Common Purpose (2012)' a guide to community engagement for those contemplating management on Common Land. It is essentially guidance or a code of practice to develop a collaborative approach for the management of Common Land. From the evidence before me the applicant has consulted those with a legal interest, the local community and those with an interest on the common. Furthermore a number of local meetings were held to gauge support and concerns relating to the proposal. In any event the guidance states that "it is not suggested that this approach should be followed in its entirety on every common".
 4. I have taken into account the representations made. Of these 4 letters of support were received from the local community, including people who have grazing rights on the common. Cadw, Carmarthenshire County Council, and the Betws Community
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Council raised no objection. Five letters of objection were received from The Open Spaces Society, Harrison Clark Rickerbys Inc Shawcross on behalf of 'The Jacob Partnership', Bettws Common Holdings, Ms W Jacobs and the National Farmers Union on behalf of Messrs A.T & W.A Jacob.

5. I have had regard to the Welsh Government Common Land Consents Guidance, published in August 2014, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
6. Furthermore, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WCFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.

Main Issues

7. 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 are any that prevent or impede access over the land. In considering such an application I am required by section 39 of the 2006 Act to have regard to the following:
 - 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 which includes the interest in nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest; and
 - d) any other matters considered to be relevant.

Reasons

8. The purpose of the application is to enable the construction of stock proof fencing, cattle grids and associated access gates and stiles on two areas of Bettws Common to restrict livestock straying and in the interests of bio-security.
9. Area 1: Section of single line timber post and rail fence, approximately 62 metres length and 1.4 metres height, to connect with the existing post and rail fence line. The proposed fence would cross the River Cathan, with the bottom wire positioned a minimum of 300mm above the water level. A stile would be included to maintain pedestrian access.
10. Area 2: Section of double post and rail fence¹, approximately 1195 metres in length and 1.4 metres height, to connect with the existing boundary fencing. Two cattle grids will be incorporated, where the fence line crosses the highway and these will

¹ Set approximately 3 metres apart.

include access gates for both animals and pedestrians. Seven stiles would be included at regular intervals along the fence line to maintain pedestrian access.

The interests of those occupying or having rights over the land

11. There are 120 registered commoners who have interests in the common. However, the applicant advises that there are currently only 12 active commoners who exercise their grazing rights. The common land register records rights of common pasture, herbage, estover and rights at all times to pasture water and medicate herdable animals. The registered Commoners were all consulted as part of the application, as well as to those Commoners on the neighbouring common known as West Glamorgan (Mynnydd Y Gwair) Common.
12. In support of the application it is stated that the movement of livestock across the commons results in an increased risk of diseases spreading between herds. Indeed I have been advised of a recent case of Bovine TB in the local area, which would potentially impact on all cattle using the common. Accordingly, a double boundary fence (3 metres apart) has been proposed to prevent nose to nose contact of livestock on shared boundaries. I accept that such biosecurity and husbandry practices are important in reducing the risk and spread of infection.
13. However, objections were raised by the West Glamorgan Commoners Association and from their individual members. These objections included: theft of livestock; fencing will create a bottleneck for stock trapped by dogs or people on scramblers; stock will be encouraged to utilise areas adjacent to the fencing for shelter which are wet and boggy; erosion of the ground surrounding the fence posts; increased risk of fire; and ongoing maintenance of the proposed fencing.
14. Livestock theft and sheep 'worrying' is an increasing problem across Wales and I recognise the concerns raised in this respect. However, such crime and antisocial behaviour is difficult to prevent and to some extent appropriate fencing will discourage theft, avoid dogs / motorbikes wandering across the common and allow stock to be better monitored and protected.
15. There are already areas of the common that have been fenced. On my site visit I saw no evidence that these areas were being used by livestock as shelter, neither did I see any erosion around the fence posts. Nevertheless, I note that a warden is employed to patrol the common to identify any livestock welfare issues and to maintain the fence. Similarly the warden will be able to identify any areas of vegetation between the double fence line which could potentially be a fire risk and address such issues.
16. An objector also commented that a right of common '*pur cause de vicinage*' exists, which is disputed by the applicant. Nevertheless, such claims or matters relating to compensation are not a matter for me to consider when deciding a Section 38 application. Further, whilst I accept that the fencing will make it more difficult to move stock between the two neighbouring commons, this would be no different from farmers moving stock between fields or between farms, which is an everyday occurrence.
17. I therefore consider that the proposed works will not adversely affect the interests of those occupying or having rights over the land.

The interests of the neighbourhood

18. Visitors are typically walkers and dog walkers who would undoubtedly value the open area and the distant views this upland common enjoys. Issues in connection with the possible interference with the public right of access caused by the proposed fencing are dealt with below under the heading '*The protection of public rights of access*'.
19. Otherwise there is no evidence that the proposed works will have any significant adverse effect on the interest of the neighbourhood.

The public interest

The protection of public rights of access

20. Use of the common in the vicinity of the works will be available albeit restricted along the route of the proposed works during construction operations. However, access to the remainder of the common will not be restricted.
21. The purpose of the proposed fencing is in the interest of bio-security and to limit straying. In doing so, the fencing will also impact on public access to the land concerned; although the provision of stiles and gates will ensure that such access is restricted rather than prevented. The fencing will not interfere with the use of public footpaths.
22. The appellant has confirmed that there are no bridleways that cross the Common. I also note that the Common is open access land, as established by the Countryside and Rights of Way Act 2000, which provides for a right of access on foot. In any event horse riders using the road will be able to bypass the cattle grids via the animal access gates.
23. Given this, I consider that the proposed fencing would not have a significant adverse impact on public access to and enjoyment of the common land.

Nature Conservation

24. The Common is managed under the Glastir sustainable land management scheme. Glastir encourages farmers to manage their land in a way that the impact on climate change and the environment is reduced. In this regard it is recognised that the grazing of common land plays a key role in the management of habitats. For common land all common graziers must either:
 - Adhere to a closed period of 3 continuous months in a 5 month period between November; or
 - Minimum and maximum stocking densities tailored to each common.
25. The provision of fencing will ensure that stocking densities are adhered to and not undermined by livestock straying from the adjacent common. Over stocking would be detrimental to the biodiversity of the area and would undermine the Glastir scheme.
26. Accordingly, I consider that the proposed works will benefit and conserve the common and therefore that they will have a positive impact on nature conservation.

Conservation of the landscape

27. The proposed fencing will have a detrimental impact on the landscape to a certain extent. However, both sections of fencing will sit below the horizon and will not run concurrently with the highway, thus minimising the visual impact. Additionally, the

fencing will facilitate a better manner of grazing which will have a positive impact on landscape conservation. Besides, there are manmade structures in the area, including wind turbines and electricity pylons, and the fence, with its 'light touch' traditional post and wire appearance, will not be particularly intrusive in views of the wider landscape.

28. Accordingly, whilst there will be some landscape impact from the proposed fence line, I am satisfied that, on balance, the landscape has the capacity to accommodate the proposal without adversely affecting the common as a whole.

Archaeological remains and features of historic interest

29. Cadw has confirmed that the proposed works will not harm any archaeological remains or features of historic interest. With no evidence to the contrary I see no reason to disagree with Cadw's comments.

Conclusion

30. I consider that the proposed works will not significantly harm any of the interests set out in paragraph 7 above. I conclude therefore that consent should be granted for the works subject to the condition set out in paragraph 1.

Joanne Burston

INSPECTOR