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# Application Decision

by Richard Holland

Appointed by the Secretary of State

Decision date: 2 November 2011

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## Application Ref: COM 256

### Rosenannon Downs, Cornwall

Register Unit: CL 192

Registration Authority: Cornwall County Council

The application, dated 3 May 2011, is made under Section 38 of the Commons Act 2006 (the 2006 Act) to construct works on common land.

The works are to enclose an area of 108.3 hectares with 4349 metres fencing for a period of 20 years. The works comprise:

- 1.5 metre high fencing constructed of wooden posts and four strands of barbed wire for the majority of the fencing;
- 1.15 metre high post and rail fencing;
- field gates and stiles;
- cattle grids;
- a timber livestock handling facility.

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

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## Preliminary matters

1. 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 under the Commons Registration Act 1965. Restricted works are any that prevent or impede access to or over the land. They include fencing, buildings, structures, ditches, trenches, embankments and other works, where the effect of those works is to prevent or impede access. They also include, in every case, new solid surfaces.
2. The application is made by Mr Seán O'Hea on behalf of the Cornwall Wildlife Trust, Five Acres, Allet, Truro, Cornwall TR4 9DJ.
3. Rosenannon Downs is registered as common land unit CL 192 under the Commons Registration Act 1965 and is some 124.7 hectares in area. The Cornwall Wildlife Trust owns the land. 11 rights to graze cattle, sheep and horses are registered, but the applicant indicated they are not currently exercised.

4. Rosenannon Downs is part of Rosenannon Bog and Downs Site of Special Scientific Interest (SSSI). There are three burial mounds in the area covered by the proposal registered as Scheduled Ancient Monuments (SAM), and there are additional SAM burial mounds near the area, to the west.
5. This application has been determined solely on the basis of written evidence.

### ***Reasons***

6. The applicant advised that:
    - the proposal had been developed in partnership with the common rights holders, Natural England and the local community;
    - the proposed works would allow the site to be grazed with the aim of bringing the lowland heathland SSSI into "Favourable" condition;
    - grazing would also reduce the risk of fires on the site, which were currently a problem; it would improve the landscape and appearance of the Downs and improve access to and visibility of archaeological features including the burial mounds;
    - Natural England, English Heritage and the commoners supported the application;
    - the proposed cattle grids would reduce the need for roadside fencing and post and rail fencing would be used at strategic points to reduce the visual impact of the fencing. In addition much of the fencing would be hidden by dense scrub or the Cornish hedges marking the site boundary;
    - gates would allow for continued access to the site on foot and horseback as well as by cyclists and horse-drawn vehicles; and
    - fencing and gates would meet the appropriate British Safety Standards.
  7. The original application was for permanent fencing. However, the applicant confirmed in a letter of 6 October 2011 that the life of the fence was projected to be 20 years, enough to cover the duration of two Higher Level Stewardship (HLS) agreements. Defra's policy guidance encourages temporary fencing to be considered, rather than permanent fencing, where the objectives will be achieved within a reasonably predictable timescale and its use can be reviewed from time to time. The Planning Inspectorate has therefore considered the application on the basis that the fencing would be time limited to twenty years.
  8. 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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(c) the public interest;<sup>1</sup>

(d) any other matter considered to be relevant.

9. I will also have regard to Defra's Common Land Consents Policy Guidance<sup>2</sup>, which has been published for the guidance of both the Planning Inspectorate and applicants.

### ***Written Representations***

10. In response to the advertisement of and consultations about the application<sup>3</sup>, three representations were received from Kate Ashbrook on behalf of the Open Spaces Society, Jill Goodman of the Cornwall Ramblers and Mr and Mrs Stray.
11. The Open Spaces Society objected to the proposals because of the adverse effect on the landscape and public access. There was also concern that the fence line did not follow the boundary of the common, leading to parts of the common to be disenfranchised from the rest.
12. Mr & Mrs Stray objected, stating that the fencing was unnecessary and asking for the common to be left as it was. They also expressed concern that the livestock would be detrimental to the existing flora and fauna.
13. The Cornwall Ramblers objected to the proposals mainly on the basis that it would make the access land to the west of the common inaccessible. The fence would make it impossible for walkers to access this land over the ditch and bank currently separating the area from the land subject to this application.
14. The applicant replied separately to each objector stating:
- the fence line would not follow the boundaries of the common because the woodland part of the common did not need to be grazed, and to allow the cattle to graze it would damage the habitat of the legally protected hazel dormouse found in these woods;
  - the fencing scheme was designed to blend into the landscape as much as possible, and the cattle grids minimised compartmentalisation of the common, reduced the need for roadside fencing and facilitated access to the Downs;
  - the purpose of the fencing was to conserve the flora and fauna of the common: grazing improved the conditions for wildlife on heathlands. The principle of grazing Rosenannon Downs for the benefit of wildlife was

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<sup>1</sup> 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.

<sup>2</sup>Defra, Common Land Consents Policy Guidance July 2009  
<http://archive.defra.gov.uk/rural/documents/protected/common-land/consent-policy-guide.pdf>

<sup>3</sup> A public notice appeared in the 4 May 2011 edition of *the Cornish Guardian* and the application was publicly displayed at the St Columb Library for the statutory 28 day period. Consultation letters were sent to interested parties as required, including English Heritage, Natural England and the Open Spaces Society.

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supported by Natural England and ecologists outside of the Cornwall Wildlife Trust;

- fencing was not very visually appealing, but the benefits to wildlife outweighed the relatively minor visual intrusion;
- The Wildlife Trust did not own the adjacent access land of concern to the Cornwall Ramblers. There were no crossing points over the bank between these areas of land, so there seemed no reason to install gates or stiles on this side of the area.

15. In an exchange of correspondence between the Cornwall Ramblers and the applicant, the applicant agreed to install two stiles in the fence adjacent to the neighbouring access land. The Ramblers suggested suitable positions for these stiles where the other boundary features were passable to walkers, one on the northwest corner and one further south where animals cross.

### **Assessment**

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

16. It is noted that:

- the application is made by the landowner;
- the commoners were involved in preparing the proposal for fencing and the Higher Level Stewardship scheme;
- the proposed works will allow the commoners to use some of their rights to graze the common; and
- it is therefore considered that the proposal will not have an adverse impact on the ability of commoners or other rights holders (including the landowner) to exercise their rights as at 3.9.1 of Defra's guidance.

*The interests of the neighbourhood*

17. It is noted that:

- improvements to the condition of the SSSI will benefit the neighbourhood by enhancing the landscape; and
- the provided access points will allow the public to continue to access and enjoy the common.

*The public interest*

18. It is noted that:

*Nature Conservation*

- the proposed works are intended to improve the condition of the SSSI, which is one of the stated policy goals for common land consents (Defra's Guidance 2.2);
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- Natural England strongly supports the application, stating that the proposals will allow the deterioration of the site in ecological, aesthetic and access terms to be reversed, to the benefit of graziers and the local community;

#### *Landscape*

- although fencing of any kind will unavoidably have an impact on the landscape, the proposed works have been designed to minimise the visual impact of the fences;
- the benefits to the landscape offered by the recovery of the SSSI and the reduced risk of uncontrolled burns is considerable;

#### *Public rights of access*

- gates are to be provided to allow access, including access for horses, cyclists and horse-drawn vehicles. The cattle grids allow the sides of the minor road that runs through the common to remain unfenced, preserving the open character of the land;

#### *Archaeological remains and features of historic interest*

- English Heritage replied to early consultation supporting the plan to graze the area because it will help the monuments from becoming overgrown with scrub; and
- grazing is part of the traditional use of the common and fits the historical context.

19. On balance, it is considered that the public interest as detailed at 3.9.3 of Defra's guidance will be served by the works proposed.

#### *Other relevant matters*

20. Defra's policy guidance advises in paragraph 4.6 that commons should be maintained or improved as a result of the works being proposed on them and in paragraph 4.7 that in deciding whether to grant consent to carry out works on common land, the Secretary of State will wish to establish whether the proposed works are consistent with the use of the land as common land. I am satisfied that the proposals are consistent with these policy objectives.
21. Furthermore, paragraph 4.18 of the guidance advises that in considering any application for consent, the Secretary of State will have regard to her duty (in relation to land designated as a site of special scientific interest), "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 by reason of which the site is of special scientific interest"<sup>4</sup>. I consider that the proposals would satisfy these duties.

### **Conclusions**

22. Having regard to the interests set out in paragraph 8 above, the conclusion reached is that the works will not adversely affect those interests, and that consent is hereby given to the works described.

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<sup>4</sup> Section 28G of the Wildlife and Countryside Act 1981.

## **Formal Decision**

23. Accordingly, in exercise of the powers conferred by section 38 of the 2006 Act, and of all other enabling powers, consent is hereby given to the works described, limited to a period of 20 years from the date of this decision. For the purposes of identification only, the location of the works is shown in red on the attached plan.

**Richard Holland**