



Penderfyniad ar Gais

Ymweliad â safle a wnaed ar 7/3/22

gan Vicki Hirst BA(Hons) PG Dip TP MA
MRTPI

Dyddiad: 28/04/2022

Application Decision

Site visit made on 7/3/22

by Vicki Hirst BA (Hons) PG Dip TP MA
MRTPI

Date: 28/04/2022

Application Ref: CAS-00059-S7V6G8

**Site Address: Uwch Gwyrfai Common, Y Fron, Llandwrog, Caernarfon,
Gwynedd.**

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

- The application dated 17 March 2021 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 relates to Uwch Gwyrfai Common (CL 16) and the Commons Registration Authority is Gwynedd Council.
- The application is made by Cymdeithas Pori Uwch Gwyrfai.
- The proposed work is the erection of fencing.

Decision

1. The application is allowed and consent is granted for fencing in accordance with the application dated 17 March 2021 and the plans submitted with it and subject to the following conditions:
 - i) The works shall begin no later than five years from the date of this decision.
Reason: To ensure the works are commenced within a reasonable timeframe.
 - ii) The gates shall be provided in the locations shown on the Proposed Works plan and the bridle gate shall be compliant with British Standard 5709:2018.
Reason: To enable appropriate access for horse riders and walkers.

Procedural Matters

1. I carried out an unaccompanied site visit on 7 March 2022.
2. In determining this application under Section 38 of the 2006 Act, I have had regard to the Welsh Government's Common Land Consents Guidance, August 2014, (the Guidance) which has been published for the guidance of both the former Planning Inspectorate (now PEDW) and applicants.

Preliminary Matters

3. Uwch Gwyrfai Common is registered as common land (CL 16) and extends to some 1012 hectares. There are 277 entries in the commons register, mainly relating to grazing and including one for piscary rights. The applicant advises that there are 45 members in the

Uwch Gwyrfai grazing association with 16 active members who use the common for grazing stock.

4. The public have a right of access to the common for air and exercise under Section 193 of the Law of Property Act 1925. The common is not subject to an Order of Limitation made under Section 193 or a Scheme of Management made under the Commons Act 1899.

The Application

5. The application seeks consent for the erection of 34 metres of fencing and would include a five foot wide bridle gate installed to British Standard 5709:2018. The gate would open both ways with a self-closing hinge and an additional 12 foot gate would be provided alongside the bridle gate to allow vehicular access to the common by members of the grazing association. The fencing would be 1 metre in height and would comprise stock netting with double stranded barbed wire at the top and bottom.
6. As the gate would be installed on a bridleway, an application for the bridle gate under section 147 of the Highways Act 1980 was made to Gwynedd Council and was subsequently granted consent.
7. In support of the application it is stated that the fence is required to stop livestock from escaping off the common onto nearby roads and villages.

Application Procedures

8. The procedures to be followed for this application are set out in The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012. The Regulations require that the application be publicised and that an opportunity be provided for representations to be submitted to the determining authority (PEDW acting on behalf of the Welsh Ministers) by any person.
9. In accordance with these requirements, a notice of the proposal was published in the Caernarfon Herald on 24 March 2021. In addition site notices were displayed at the main points of entry to the common and at Snowdonia National Park Authority's offices in Penrhyndeudraeth. Letters were sent to the owner of the land, the Uwch Gwyrfai Grazing Association, all known commoners, Llandwrog Parish Council, Gwynedd Council, Natural Resources Wales, Cadw and the Open Spaces Society.

Summary of Representations

10. In response to the publication of the application two objections have been received from local residents. One objection relates to the visual impact of the fence and that it would reduce enjoyment of the common and bridleway. It is stated that it would be imposing and restrictive to freedom to use the common and reduce enjoyment by horse riders if they have to open and shut a gate. It is contended the fence would not control the sheep, but would force them into the village from other directions and it would be better if fencing was further down the common. It is stated that the fence would also assist a grazier who is wanting a second right of way to their property, and it is not clear if there are access rights over the bridleway. It is alleged that the involvement of this grazier represents a conflict of interest if they are a member of the committee.
11. A second objector states that the fence could not remain if allowed as Section 34 of the Road Traffic Act 1988 would disallow a gate being erected as it would impede access over a path with vehicular access rights. The objection draws attention to surfacing of the bridleway and its reduction in width and two previous cases determined by the Planning Inspectorate in this regard.

12. The Open Spaces Society raises no objections but requested a correct map of the works showing boundaries of the common which the applicant has now provided.
13. Cadw is satisfied that there would be no impact on the World Heritage Site. There are several listed buildings within 500 metres of the fence but they would not be visible and whilst boundaries would have historically comprised stone walls, given that there are lots of wire fences in the area Cadw is satisfied there would be no impact on the settings of listed buildings.

Main Issues

14. In determining this application for consent, I am required by Section 39 of the 2006 Act to have regard to:
 - a) The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising their rights of common over it);
 - b) The interests of the neighbourhood;
 - c) The public interest (including 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 matter considered to be relevant.
15. Common land is a finite resource and the Welsh Government has indicated that it should not be developed unnecessarily, access to it should not be prevented or impeded unnecessarily, and the proper management of it should be encouraged.

Reasons

The interests of persons having rights in relation to the land

16. The applicant states that the fencing is necessary to contain livestock and stop them escaping into the nearby villages and area and causing a nuisance and a risk to highway safety. The decision to make the application was made by the grazing association who represent the interests of those with rights using the common and who, in the main have not objected to the proposal.
17. In respect of concerns that the proposal will not stop livestock escaping from the common, from the evidence before me other measures have been/are being put in place to stop livestock from leaving the common from other locations. In any event, the proposal before me would block a significant escape route from this part of the common.
18. The proposed fencing would result in this part of the common being contained for grazing and would ensure that stock are secure. I note that at present graziers are reluctant to use the common due to the risk of stock escaping and the proposal would enable the graziers to exercise their grazing rights without this risk. The fencing would be located at a point where the common narrows and would not unduly restrict the area available for grazing. The works to erect the fence itself would be short term in nature and would not interfere with the graziers' use of the common during the work taking place.
19. The commoners have rights of access onto the common. Whilst the proposal would impede free access, the provision of a 12 foot access gate (and a 5 foot bridle gate) would continue to enable those with rights to the common to gain access.
20. Similarly, in respect of the rights of the public to use the common for air and exercise, access would be through a new gateway which would also be located on a public bridleway. The gate would be provided to the relevant British Standard, with two way

opening and an 8 second self-closing mechanism. Whilst a fence and gate would interfere with open access to the common, the fencing would impede free access over a very short stretch of the common and access would remain available through the new gate. As such, I am satisfied that the proposal would not unacceptably interfere with the public's enjoyment of the overall common.

21. In my assessment the proposed works would not unacceptably interfere with the interests of those having rights in relation to the land.

The interests of the neighbourhood

22. There is no definition of neighbourhood in the 2006 Act. The Guidance requires consideration to be given to whether the works mean that local people will be prevented from using the common in the way that they are used to. Furthermore the Guidance requires consideration to be given to whether the works would interfere with the future use and enjoyment of the land as a whole.

23. The common is accessible to the public under Section 193 of the Law of Property Act 1925 and the Countryside and Rights of Way Act 2000 (the CROW Act). The parcel of land concerned provides links to other rights of way and parts of the common. It is close to several small villages and is likely to be used for recreational users from the local surroundings and by those visiting the area.

24. The fence would extend for a relatively short distance of some 34 metres. As set out above gates would be provided to enable public access through the fence and onto the surrounding common. The fence and gate would prevent the free use of the common for a short distance, and thus would have a very minor impact on the way that people are used to using the common. Nevertheless, I do not find this would interfere with the future use and enjoyment of the land as a whole.

25. The fence would also have the benefit of stopping stock straying from this part of the common into the local neighbourhood and causing a nuisance and road hazard. I find these benefits to the neighbourhood outweigh the very minor negative impact of restricted access onto this part of the common and requiring access through a gate.

26. I conclude that the proposal would not unacceptably affect the interests of the neighbourhood.

The public interest

Nature Conservation

27. The land is not located within an area designated for its nature conservation interests and I have no evidence before me that the proposal would impact on such interests. I also note that grazing of the common assists with management of the common in habitat terms. I am satisfied that the works would not harm the public interest in nature conservation terms.

Conservation of the Landscape

28. In respect of the impact on the landscape, the site does not lie within an area designated for its landscape interest. Nevertheless, the common is an attractive tract of land with expansive views over the surrounding countryside.

29. I noted on my site visit that the wider common in the vicinity is characterised by a number of similar fences and enclosed areas. The fence would be of a typical stock proof design and would be situated on the hillside. Whilst it would be visible from localised views it

would not break the skyline or interrupt wider views across the common. I am satisfied that the fence would not be harmful to the landscape character.

Protection of archaeological remains and features of historic interest

30. Cadw has raised no objection to the proposal in respect of its impact on archaeological remains and features of historic interest. On the evidence before me I have no reason to believe that the proposal would have any adverse effects on such interests.

Protection of public rights of access

31. The proposal would retain public access into the area, albeit slightly restricting open access across this small part of the common. Given the very short distance that the fence would cover I find this impact to be very minor.

32. I conclude the works would not unacceptably affect the public interest.

Other Relevant Considerations

33. I note the applicant has considered whether other options to control stock using the common could be implemented including alternative locations for gates and the use of cattle grids. I have no reason to disagree with the applicant that other locations for gates would impede the use of the common by the graziers to a greater extent than the current proposal and that the provision of cattle grids would be impractical given the topography.

34. I note the advice in the Guidance that in deciding whether to grant consent it is necessary to establish whether the works are consistent with the use of the land as common. I am satisfied that the works would be consistent with the use of the land as common for public access and grazing.

35. I have considered the advice in the Welsh Government Circular 016/2014 “The Use of Conditions for Development Management” in considering the need for conditions. A condition requiring the development to be commenced within five years is reasonable and necessary and a requirement for the gate to be provided in accord with BS 5709:2018 is necessary to enable appropriate access for walkers and horse riders.

Conclusion

36. I have taken into account all other matters raised. Matters relating to whether there is a right of vehicular access under other legislation, any conflict of interest arising from the Grazing Association’s involvement and private access issues are not relevant to my consideration of this application made under the 2006 Act. Concerns relating to other alleged unauthorised works on the common (irrespective of the Planning Inspectorate’s involvement in previous cases) are not before me and should be directed to the Council.

37. I find no matters that lead me to conclude other than the proposal is acceptable. The works would be in conformity with the policy objectives set out in the Guidance. For the reasons given above, I allow the application and grant consent for the proposed works subject to the conditions specified in paragraph 1 of this decision.

38. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act’s sustainable development principle through its contribution towards one or more of the Welsh Minister’s well-being objectives as required by section 8 of that Act.

VK Hirst

INSPECTOR