

Common Land Branch

Common Land and Greens (Protection), Zone 1/14
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Mr T Angell
Litcham Common Management Committee
St Swithins
Lexham Road
Litcham
Norfolk
PE32 2QQ

Our ref CLI 341
Date 12 February 2007

Dear Mr Angell

Law of Property Act 1925: Section 194 Proposed Works on Litcham Common, Norfolk

The Application

1. I refer to your application, dated 1 December 2006, for consent under section 194 of the Law of Property Act 1925, to erect 3700 metres of permanent post and wire fencing; to erect gates to facilitate public access; to place two cattle grids on a track to Kempstone Lodge Farm; and to supply mains water to points either side of the public road on Litcham common, Breckland in Norfolk. You amended the application to time limited fencing for a period of 10 years in a letter received by the Department on 31 January 2007.

The Site

2. Litcham Common, which is approximately 24.0 hectares in area, is registered as common land (CL 367) under the Commons Registration Act 1965. In your application, you stated there were no common rights over the common and that none were registered on 1 January 1926. The Department explained that the provisions of section 194 of the Law of Property Act 1925 apply to land which was subject to rights of common on that date. You took the view that it would be sensible to apply for consent anyway as you were uncertain as to the exact position of the existence of common rights.

The Case

3. In support of your application, you explained that Litcham Common was a local nature reserve and was important because it contained areas of lowland heathland. For the common to be managed effectively the land needed to be grazed to encourage wildlife and stock proof fencing was required in order to prevent any grazing animals from wandering onto adjacent land and the public road. You further explained that:



- the re-introduction of grazing was seen as the only realistic means of controlling the encroaching scrub to prevent further loss of the heathland habitat;
- the fencing, where possible, would be routed through some existing scrub and trees which would not be removed from the site, thus lessening the visual impact of the fence upon the landscape;
- the re-introduction of grazing would enhance the wildlife value of the site and, in turn, members of the public would be able to enjoy such wildlife;
- the common Management Committee is keen that the public should have full access to the common and it is hoped that the re-introduction of grazing would provide an added attraction;
- whilst mechanical means of maintaining the heathland have been used in the past this was labour intensive, expensive in the long term and was considered less beneficial in wildlife terms to the common than grazing; and
- alternatives to the fencing had been considered and in the case of temporary electric fencing, tried. However, temporary electric fencing proved both problematic and labour intensive. Other proposals such as cattle grids were considered but Norfolk County Council considered the road to be inappropriate for this measure.

Responses to the Proposal

4. In support of the application, you provided letters of support from Litcham Parish Council, Natural England, Norfolk Landscape Archaeology and the Lord of the Manor. Litcham Parish Council approved of the scheme and asked the Management Committee to consider the use of cattle grids on the track leading to Kempstones Manor as this would help to reduce the visibility of the fencing scheme and help to maintain the openness of the common.
5. Natural England supported the application stating that grazing was very important in helping maintain the nature conservation interest. It was also noted that it would help to create a diverse sward structure which will benefit many plant and invertebrate species. Furthermore, the proposals would play a part in assisting with scrub control along with preventing some areas of currently open land from being invaded by scrub, with the potential loss of important heathland species and plant communities.
6. Norfolk Landscape Archaeology supported the application stating that they were pleased to see the successful results of the scrub clearance around the common disc barrow and that one of the best ways to ensure future preservation and conservation of Bronze Age burial mounds was for them to be grazed. Therefore, it supported the application to fence the common and re-introduce grazing at the site to protect this feature.

7. The Lord of the Manor agreed to the proposed plans to fence, gate and place cattle grids on the track crossing the common to enable the common to be grazed.
8. A notice giving details of the proposal appeared in the Dereham and Fakenham Times on 7 December 2006. The Department received one letter of objection to part of the proposal from Mrs J D Brown.
9. Mrs Brown was concerned that the cattle grids would make it difficult for both her mother and sister to access the common at these points. The cottage where Mrs Brown's mother and sister lived was situated at the rear of the furthest planned cattle grid, which could make access to the common difficult.
10. You explained that a representative of the Litcham Common Management Committee had spoken to Mrs Brown and explained that each cattle grid would have a gate beside it and that when the time comes the Committee would be happy to meet with Mrs Brown, her mother and sister to discuss exactly what type of gate to install.
11. The Open Spaces Society, which was consulted by the Litcham Common Management Committee and the Department, objected to the proposal. The Society objected on the grounds that the fencing would be both an eyesore and psychological barrier to access. The Society believed that a form of traffic calming measures, such as cattle grids or extending the 30 mph speed limit or speed humps and road narrowings, on the road which crosses the common would be more beneficial than fencing.
12. In response to the Society's objection, you stated that Norfolk County Council ruled out the option of a cattle grid on the public road. You further explained that should the proposal be successful, the existing scrub would be retained beside the road so that the fencing, where possible, could be hidden behind this.
13. The exchanges were then brought to a conclusion by the Department as the objection from the Society was maintained with no new issues being raised.

Consideration

14. In deciding whether to give consent under section 194 of the Law of Property Act 1925, consideration must be given to the "benefit of the neighbourhood" as well as to "private interests" in the land. The "benefit of the neighbourhood" is defined as including the health, comfort and convenience of the inhabitants of any populated places in or near any parish in which the land is situated in the context of the enjoyment of the common as an open space. The "private interests" are defined as including the advantage of the persons interested in the common, i.e. the soil owner and persons entitled to common rights.
15. Your application has been considered in accordance with the provisions set out in paragraph 14 above. It is accepted that for the common to be managed effectively there is a need for grazing and that the only way successful grazing can be achieved is through fencing the common. Grazing will help to control scrub encroachment and this,

in turn, will enhance the wildlife value of the site, thereby providing enjoyment to the local inhabitants and visitors alike. It is noted that the provision of gates would allow continued access for the public, and that access would be improved by the control of scrub. Furthermore, it has been noted that alternatives have been trialled and considered before the application was made. The fencing, where possible, will be hidden from view thus mitigating the visual impact of the fencing. Grazing will also help to create a diverse sward structure and this will benefit many plant and invertebrate species.

16. The representations made about the proposed works and your responses to these have also been carefully considered. In particular, it is noted that concerns have been raised regarding the visual impact and the psychological barrier the fencing might have, along with the access across the points of the common where cattle grids would be situated. However, it is noted that the fencing would be as unobtrusive as possible and that public access points would be located throughout the fence line. Furthermore, the issue of access at the cattle grid points would be discussed fully with the individual who raised concerns about this issue.
17. Having regard to the considerations set out in paragraph 14 above, the conclusion reached is that the works will not adversely affect the health, comfort and convenience of the local inhabitants, and that it is expedient that consent should be given.

Decision

18. Accordingly, in exercise of the powers conferred by section 194 of the Law of Property Act 1925, and of all other enabling powers, consent is hereby given to the works described in paragraph 1 above. For the purposes of identification only, the location of the fence is shown red on the attached plan, with all other works identified by the key.
19. Consent is valid for a period of 10 years starting from the date of this letter. Any proposal for continued fencing after the expiry of this consent would need to be the subject of a new application.

Supplementary

20. This letter does not convey any consent or approval which may be required under any enactment (including byelaws, orders or regulations) other than section 194 of the Law of Property Act 1925.
21. Once an application has been determined, the Secretary of State has no further role in relation to the case, and the Department cannot comment further on the terms of the decision. There is no statutory provision for appeal against the decision but it can be challenged in the Courts within 3 months of the date of the decision letter. The procedure for this involves an application to the High Court for permission to apply for a judicial review under the Supreme Court Rules.

22. Copies of this letter are being sent to Norfolk County Council, Litcham Parish Council, Natural England, Norfolk Landscape Archaeology, and the Lord of the Manor, the Open Spaces Society and Mrs Brown.

Yours sincerely

A handwritten signature consisting of two overlapping circles followed by a long, sweeping horizontal line.

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