



Application Decision

Hearing held on 22 July 2014

by **Susan Doran** BA Hons MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 October 2014

Application Ref: COM519

Greenrigg Common, Cumbria

Register Unit No. CL40

Registration Authority: Cumbria County Council

- The application, dated 4 October 2013, is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
 - The application is made by Tim Nicholson on behalf of Natural England (in association with the Wild Boar Fell Graziers' Group), Juniper House, Murley Moss, Oxenholme Road, Kendal.
 - The works comprise:
The erection of 3.1km (in total) of fencing and the provision of gates, bridle gates and stiles on Greenrigg Common.
-

Decision

1. Consent is refused.

Preliminary matters

2. In summary, the stated purpose of the application is to erect a temporary fence, for 10 years, to the east and west of Stennerskeugh and Fell End Clouds SSSI to prevent sheep grazing. For ease, I shall refer to the area as "The Clouds". The proposed fence would extend for 2.3km between existing walls from Grid Ref SD734991 to NY744008 with two additional sections of 0.5km and 0.3km between existing walls at NY733996 to NY733000 and NY735003 to NY736004, with access provided via gates and stiles. The area proposed to be enclosed is approximately 100 hectares.
3. I made an unaccompanied visit to the site on 21 July. A further vi+ sit to view the southern part of the site was made on 22 July, when I was accompanied by representatives of Natural England, the Wild Boar Fell Graziers' Association¹ ("the Graziers' Association") (joint Applicants) and other objectors to the application.
4. At the Hearing I agreed that written representations could be made solely in respect of a document provided by Natural England concerning a similar scheme in an area of the Yorkshire Dales². These were circulated to the parties and I have taken into account the representations and response from Natural England received in respect of the document.

¹ Also referred to in the Application as the Graziers Group

² Listed at the end of this decision as document 2

The Application

5. The application before me is a revised application: a previous one submitted in 2012 was withdrawn as the proposed amendments were considered too significant a variation to the original proposal. The application is described by Natural England as a compromise having taken into account the concerns of local residents, the concerns of the Graziers' Association, and of their statutory consultees. Consequently, the present application prevents cattle accessing the public highway, the waterfall, and the water trough at Cold Keld through the provision of fencing, these issues having been of concern to local residents.
6. The Clouds has been assessed by Natural England as being of significant ecological value and under serious threat from sheep grazing. This is because the vegetation on the thinner soils adjacent to the limestone outcrops comprises sweeter grasses and plants which are more palatable, so grazing becomes more concentrated in these areas leading to the loss of species. Consequently, Natural England says its botanical interest becomes restricted to inaccessible places in grikes in the pavement, on scars and in areas of scree.
7. Together with the Graziers' Association who have entered a Higher Level Stewardship scheme ("HLS scheme") to achieve biodiversity gains on the fell, Natural England's aim is to protect and enhance the limestone pavement habitat by excluding sheep from it and introducing cattle so as to restore the habitat to a favourable condition. Ponies which already graze the fell would not be excluded by the proposal. To achieve this it is proposed to install stock fencing on the east of the site and between existing boundary walls on the north, west and south sides of the site. The proposal has been made in accordance with Landscape Character Guidelines.
8. It is Natural England's intention to monitor the scheme and assess the degree of recovery, if consent for the application is granted, to review the situation in year 9 and, if necessary, to apply to the Secretary of State to extend the fencing for a further period.

Background

9. The Clouds is designated as a Site of Special Scientific Interest ("SSSI") for its limestone grassland, the flora of the limestone pavement and the geological features of the limestone pavement. As an SSSI it is protected under the Wildlife and Countryside Act 1981. The Clouds is also designated as a Special Area of Conservation ("SAC") under the Habitats Directive (92/43/EEC) as part of the Asby Complex SAC, thus affording it a higher level of protection at European level. The limestone pavement is also a Biodiversity Action Plan Priority Habitat.

Main Issues

10. 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, including the erection of fencing; the construction of buildings and other structures; the digging of ditches, trenches and the building of embankments; and, the resurfacing of land if this consists of laying concrete, tarmacadam, coated roadstone or similar material.

11. 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;
 - (c) the public interest, which includes the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) any other matters considered to be relevant.
12. I have had regard to Defra's Common Land Consents Policy Guidance³ in determining this application, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

Reasons

The interests of those occupying or having rights over the land

13. Two parties are registered as claiming all sporting rights, minerals and stone, turbarry, piscary and to take timber. Other registered rights of common include rights to graze (ewes, hogs, horses, cattle, pigs, geese and poultry), rights of estovers, rights to take bracken, rights of turbarry, to take stone for walling and lime burning, and rights to take rushes. A private right of way is claimed, but there is nothing to suggest that the proposal would have any impact in respect of this right. As regards the registered right of estovers (to take wood), the right of turbarry (to dig turf), the right to take stone, bracken, and rushes, there is nothing to suggest that these rights would be affected by the proposal, and no-one has raised this as an issue. I consider though, that it may be a little more difficult for any commoner exercising these rights to physically remove the material, depending on the location of access points, and where the commoners holding the rights live.
14. However, it is the grazing rights that are most affected by the temporary fencing for which consent is sought. The main concern for the Graziers' Association is that the proposal will have an adverse effect on the existing management of livestock on the northwest part of Greenrigg Common by isolating it. In all, seven flocks are affected by the proposal: four of the graziers' hefts are located in The Clouds area of the Common, including two whose hefts will effectively be removed, with a further 3 hefts affected by the proposal. These concerns are shared by Mrs Bateman and Mrs Trimmer, Mrs Bateman pointing out the requirements of tenancy agreements with regard to hefted sheep. Mr Hutchinson confirmed at the Hearing that the proposal could breach individuals' tenancy agreements.
15. In their written response to the objections, Natural England stated that the Graziers' Association have agreed to address the issue of hefted flocks by allowing those with hefts that would be wholly or partially displaced by the fenced enclosure to move up the fell, thereby accommodating their sheep

³ Common Land Consents Policy Guidance (Defra July 2009)

- elsewhere and forming new heafs where possible. However, it is not clear to me that the issue of tenancy agreements would be satisfactorily addressed having regard to Mr Hutchinson's comment above.
16. The Graziers' Association does not take issue with the need to fence The Clouds to manage livestock to facilitate its recovery to a favourable ecological status. Indeed, I understand they have a responsibility to help protect, manage and maintain the SSSI through the HLS and other schemes. Their objection is to the location of the proposed fence on the southern side of the site, and they seek to minimise its impact on the management of the fell. By erecting the fence closer to the rock outcrops and the SSSI boundary and away from the wall boundaries and access track on the southern side, they argue that livestock would be able to move unhindered from the roadside area in the northwest part of the Common to the higher ground west of the SSSI boundary. This, they say, would reduce the impact of the fence around the SSSI without any detrimental effect on its restoration; and, furthermore, livestock movement around and between the southern end of The Clouds and the main area of Greenrigg Common would be facilitated. As a result, management on the Common to the east would be less adversely affected.
 17. I agree with Natural England in that the graziers' sheep will not be prevented from accessing watering and shelter points in Clouds Gill to the east by the application proposal. However, to reach these areas would require graziers taking their stock through the enclosure which would result in extra work for them. Whereas, the Graziers' Association proposal would allow unhindered access between the east and west sides of the SSSI, whilst avoiding it. I also note Mr Hutchinson's comment that sheep require a varied diet and by fencing The Clouds as proposed, their access to favoured grassland areas would be restricted. In addition, the removal of hefted flocks from the area will mean that displaced animals would have to be located elsewhere on the Common. It seems to me therefore that the application proposal would have a detrimental effect on the ability of commoners to exercise their rights, in particular with regard to hefted sheep flocks.
 18. At the Hearing, Natural England indicated that it would prefer not to fence The Clouds at all, but felt that this was not an option. To achieve their desired goal, the next best option would be to minimise the length of any fencing required which in turn would reduce its visual impact. They were, however, prepared to accept the Graziers' Association suggested fence line if this were considered the best option.
 19. On the negative side, the Graziers' Association suggestion would mean a greater length of fencing, and its consequent impact on the landscape, than is the case with the application proposal: Natural England indicated that, following informal consultations, two of their statutory consultees felt unable to support it for this reason. On the positive side, there would be benefits for the graziers, both in terms of livestock welfare and easier livestock circulation around the area. Indeed, Mr Trimmer pointed out that with the application proposal animals would congregate along the road as they do now in poor weather, but that the Graziers' Association preferred option would allow the animals to move through the corridor. Their suggestion would also be more practical for the local community and the public in maintaining open access between the east and west sides of the SSSI. Both Mr and Mrs Trimmer

- considered it would solve the problem and allow walkers open access to Fell End and back.
20. Notwithstanding the merits or demerits of the Graziers' Association proposal, it has not been fully worked up as a scheme in terms of detailed access points, the additional burden of fencing in terms of installation, maintenance and removal, and so forth. Even if I were to consider it appropriate, it is in my view a significant departure from the application proposal, and too great a change for me to amend it so as to adopt the Graziers' Association proposal.
 21. Mr and Mrs Trimmer offered a further option to effectively cut the corner at the southern end by taking fencing through a gap in the rock outcrops – but this would result in the loss of some 10% of the SSSI.
 22. Mrs Warner believed that Natural England had not investigated other alternatives such as shepherding which would avoid the need for fencing at all whilst still achieving their objective of improving the condition of the SSSI.
 23. The application states that shepherding had been offered as an alternative to fencing but had been rejected by the commoners as being unworkable, mainly due to the lack of human resources available between the farms and the constant commitment, in time and effort, needed to make sure that shepherding was effective over the difficult terrain. From what I heard though, this option had not been thoroughly explored, having been dismissed on the basis that whilst a good idea, similar schemes run in the Lake District had been unsuccessful. Indeed, Mr Hutchinson was of that view.
 24. However a stumbling block expressed at the Hearing was the available funding for such a post (as shepherd) as set aside in the HLS scheme: Natural England's written submissions were that there was funding available for targeted shepherding but that it was limited. However, greater financial incentive it appeared would make shepherding a more attractive and viable solution for the graziers. It was suggested that local agricultural colleges could afford opportunities for such a role, although I agree with Mr Hutchinson that the shepherding role in this situation would require a skilled person. Despite Natural England's written comments that the matter had been fully addressed, I am not convinced that all avenues have been explored further to the comments made at the Hearing.
 25. Another suggestion from Mrs Warner and Mrs Trimmer was to reduce stock numbers over the whole Fell, but this idea had been considered by the Graziers' Association and rejected, Mr Hutchinson said, due to the hefted flocks and that it would be in breach of tenancy agreements. In any event such action would not prevent sheep from congregating on The Clouds SSSI area.
 26. Not all of those enjoying grazing rights are members of the Graziers' Association, or exercise their rights of common. It was suggested that not all had been formally consulted on the proposals, although some had made written representations, and others had been made aware of it by some of those opposing the application.
 27. An area of the land proposed to be enclosed does not form part of the Common: a group of enclosures in the middle, referred to as "Harry Hope's Land", would become isolated and could only be accessed by passing through a gate in the proposed fencing. However, Mr Hutchinson did not see this as a problem, even when needing to access with wagons to collect a hay crop.

Natural England conceded however, that when cattle were present there may be occasions when two people would be needed to deal with the gates.

28. In summary, I consider that there remains uncertainty about whether the application proposal would contravene tenancy agreements. I do not consider that the shepherding option has been fully explored, an alternative that would reduce the impact on the commoners and their rights, and on the residents and the public, by removing the need for fencing. However, the main issue in my view is that the Graziers' Association does not consider that the proposal as made is appropriate, such that they have felt it necessary to propose an alternative to address their concerns. I conclude overall that the application as proposed would have an adverse effect on the interests of those occupying or having rights over the land, in particular with regard to the hefted flocks and the management of livestock on the Common.

The interests of the neighbourhood

29. Those most likely to make use of the land are the community local to Greenrigg Common, in all probability those living along Fell End Road and the A683 where it passes through the locality. Mrs Trimmer's view was that the proposal would prevent free access resulting in inconvenience and a reduction in amenity for the community which uses the Common for recreation purposes. I agree that local people would be unable to use the common in the way that they are used to as the proposal would require users to access the land at the gates and stiles that would be installed.
30. The application plan shows the intended location of the access points, but is not finalised as Natural England indicated it would rely on the local expertise of the Cumbria County Council Access Ranger both to provide the gates, stiles and dog gates and to identify the best locations for them in consultation with the commoners/graziers, Cumbria Local Access Forum and with local residents. In addition to the locations marked on the application plan for gates, the application envisages that stiles would be located at approximately 200m intervals, as required, of a design approved by the Access Ranger.
31. I appreciate that ground conditions may well dictate the final location of access points, and I note that Natural England has indicated that the proposal is flexible such that if more access points were needed then they would be put in. However, no standard has been specified that the intended furniture would meet, nor whether or not due consideration has been given to meeting the needs of users and of providing the least restrictive means of access to the land. Mr Hutchinson expressed the need for gates to be self closing and to be no wider than was necessary.
32. Of particular concern to Mr Trimmer was the possibility of water contamination as a result of the presence of cattle. He explained that the local properties rely on private water supplies which may be sourced from springs and streams anywhere on the Fell, but that the exact source(s) of the water is unknown, thus the potential for contamination, in particular should the cattle gain access to Clouds Gill. The latter seems unlikely as the fencing should prevent this. There is, however, already an issue with dung from sheep, and there was no evidence to suggest that the situation would be any different, better or indeed worse as a result of the proposal, although that may be of little comfort to those raising such concerns.

33. In summary, I conclude that the proposal would result in the loss of open access to this area which is currently enjoyed by the local community, but that this would be mitigated by the provision of gates and other access points, albeit that their design and location have not yet been agreed with all the relevant parties.

The public interest

Nature conservation

34. The primary reason for the proposed fencing is for nature conservation purposes. In summary, Natural England's objective is to protect, enhance and restore the limestone pavement/outcrop habitat so as to return the SSSI to 'favourable' condition. This is argued to require a grazing regime managed with cattle rather than with sheep and, so as to exclude the sheep and control the cattle, this requires that the area be fenced.
35. There was much debate between the parties as to whether the proposal would achieve the ecological benefits sought by Natural England. Critical to this was whether, or the degree to which, actual habitat loss had occurred since the site was designated an SSSI. Mrs Bateman and Mrs Trimmer believed that natural regeneration was already taking place, largely due to a reduction in sheep numbers since the Foot and Mouth outbreak in 2001. Whereas Natural England argued that species previously recorded are now absent, dunging has resulted in nettles and thistles, and that sheep graze the flowers and damage the woody species. There were no statistics available to me about sheep numbers so I am unable to draw any informed conclusions about whether or not destocking has occurred. Neither was data presented to demonstrate the decline of species, although I understand that SSSI condition assessments were carried out in 1997, 2003 and 2009, as well as informal assessments at other times, which pointed to the site being in unfavourable condition. Some recent photographs were submitted to demonstrate the effects of grazing. Mrs Warner pointed out that Natural England's written evidence stated there had been no deterioration in condition from 2010-2014, which suggests there has been some recent stabilisation or at least no further decline of the habitat.
36. Natural England has a statutory duty to put in place management to achieve favourable condition of the site and this is supported by Government and European Union policy regarding biodiversity. Nearby schemes were referred to where mixed grazing has been introduced on fells at Little Asby Common, Crosby Ravensworth Common and cattle only areas at Little Kinmode. Early indications were said to be encouraging with grassland showing increased structure and flowering, and woody pavement species growing above clint tops. But no direct evidence of this was put forward. Instead, Natural England relied on the results of a project run over a three year period (2003-2006) in the Craven Limestone area of the Yorkshire Dales National Park. It monitored changes in vegetation over that period and the effects of different grazing regimes and trials on the landscape, and found that the condition of the SSSIs responded well when grazed by cattle.
37. The reliance on this project was heavily criticised by the Objectors due to the short period it covered: it was accepted that there would be gains in the early years of such a scheme but that longer term monitoring was required to see whether that ecological improvement was sustained or whether less desirable species out-competed those the project was aimed at increasing. In other

words, any early and encouraging improvements would be lost in the longer term. In this particular case, the project recommended that the monitoring sites be re-surveyed in 2011 or 2012, but there was no evidence of such a survey having been completed from which comparisons could be made. Subsequent monitoring has taken place, however, as part of Natural England's responsibility to report on the condition of SSSIs. It says the areas subject to the project that were shown to be unfavourable are continuing to recover as a result of the change in management. Some examples are cited⁴ with recovery of habitats said to be either evident or showing signs of improvement, although no timelines or detailed survey data and analysis were provided to show how such changes were measured and compared over time.

38. In addition, it was argued that the areas were not comparable, Greenrigg Common being subject to more harsh weather and climatic conditions than the test site; although Natural England argued the project areas are the same vegetation type and geological type as those found on The Clouds. Furthermore, it was argued that the project demonstrated for certain grazing regimes that there were detrimental impacts on other species, for example invertebrates.
39. Several objectors, including Dr Frankland whose work led to the original designation of The Clouds as an SSSI, were sceptical as to whether the improvement sought could be achieved due to a lack of such evidence, and suggested that a test area or pilot scheme be deployed before any whole scale fencing was adopted. That may provide an option, but I note there are similar and comparable schemes already in place in the local area that could be monitored to provide meaningful data, and these taken together with the on-going monitoring of sites by Natural England in the Yorkshire Dales National Park could provide relevant evidence one way or the other.
40. Another issue is how much grazing is due to rabbits, a point raised by Mrs Warner. There is no information about this, but Natural England said it would have to be monitored as part of the assessment.
41. In summary, I accept that the restoration of the limestone species is the ultimate aim of the proposal, and that the success of this is to an extent dependent on the grazing regime adopted over the SSSI. I understand that fencing is necessary to contain the cattle and ponies and exclude the sheep from the SSSI with a view to achieving this. There is some evidence from grazing schemes in similar areas showing signs of improvement in early years, and suggestions that this may be sustained in the longer term. But I must agree with the Objectors and conclude that there is a lack of quantifiable evidence to demonstrate that fencing the area as proposed in the application will result in the nature conservation interest being improved over the longer term, as claimed.

Conservation of the landscape

42. The proposal seeks to minimise the extent of the fencing that will be visible by making use of the existing boundary walls of the Common, requiring only two short sections of fencing on the road side of the SSSI; the remaining fencing on the east side of The Clouds not being visible from the public roads. As Mrs Warner pointed out, there is no similar fencing in the locality and to that extent

⁴ Three units at Malham-Arncliffe SSSI, and two units at Ingleborough SSSI and National Nature Reserve

I agree the introduction of fencing would be out of keeping with the landscape. Mrs Trimmer regarded this amount of fencing as having a detrimental effect on the landscape, however, if fencing is required then taking advantage of and utilising the existing boundaries of the Common as proposed, would I consider reduce its overall impact on the landscape.

43. Concerns were expressed about how it would be installed given the thin soils and bedrock. In common with the provision of access points, Natural England indicated that the final alignment of the fencing would be flexible to take into account ground conditions, in consultation with the fencing contractors, and so as not to compromise the provision of access. Similarly, the fencing would be removed in a sympathetic manner in the future.
44. Further issues arose in respect of the boundary walls and their maintenance since the success of enclosing the land would depend to an extent on their continued maintenance. The responsibility for maintaining the fence and of its removal after the temporary period would lie with the Graziers' Association, as part of the HLS scheme which sets aside monies for this, although the view held by some was that the financial aspects of this had not been adequately addressed. As regards the walls, I understand that their maintenance would not fall to the Graziers' Association.
45. There are few natural sources of water within the area proposed to be fenced and this means that stock will require water brought in from outside by water bowsers. Mr and Mrs Trimmer considered that this would have a negative impact on the land causing wear and damage to tracks and/or to the fauna and flora the scheme seeks to restore; and by Mrs Bateman that inadequate consideration had been given to the practicalities of maintaining this system. Again, the responsibility for this would lie with the Graziers' Association, who have agreed to their use, and Mr Hutchinson confirmed that the bowsers would be moved around in any event thus minimising any damage. Indeed, Mr Arkle confirmed that it was a requirement of the HLS to avoid unnecessary damage.
46. In summary, I agree that the proposal would alter the appearance of the landscape by the introduction of fencing, but I conclude that its impact would be reduced through the use of existing features. Similarly, I consider that careful siting of water bowsers would reduce any negative impact they may have on the conservation of the landscape.

The protection of public rights of access

47. The issues for the wider public are not dissimilar to those for people living locally, most notably as regards access in and out of the application site. As discussed above, the location of access points has not been finalised. As Mrs Trimmer pointed out, the number of stiles shown in the application plan does not reflect the number stated in the application itself. It refers to 7 self closing field gates, 5 pedestrian or kissing gates and approximately 12 step-over stiles. The latter are intended to be located so that in good weather the next stile will be visible. The proposal thus seeks to ensure that access for the public to the land, which is designated as open access land, is provided, thus reducing any negative effect resulting from the fencing, albeit that the design and location of access points has not been agreed.

Archaeological remains and features of historic interest

48. Two substantial lime kilns are located close to the roadside but fall outside the area proposed to be fenced. Other features exist within the proposed enclosure and these include mine workings and associated features, other limekilns and stone sheep folds. There was nothing to suggest that the proposals would have any appreciable impact on these features one way or the other.

Other relevant matters

49. A consequence of the fence, Mrs Bateman argued, was its detrimental effect on the welfare of the stock. Firstly, for the animals displaced by it there is a lack of shelter elsewhere on the Common which, in this upland setting, is exposed. This was acknowledged by Mr Hutchinson who explained that in stormy weather sheep shelter on The Clouds: the fence would affect how the sheep access the whole Common. Secondly, the ponies would be unable to access the minerals and calcium found in The Clouds area on which they rely, although Natural England confirmed that mineral licks would be made available if necessary. Finally, there was a risk that cattle could get stuck in shake holes. A further point concerned the fencing itself. It is proposed that a post and net stock fence be installed, but this it was argued would pose a danger to sheep which were likely to get their heads stuck in it.

50. I accept that this is something which can and sometimes does happen, although I understand that the type of fencing proposed is designed to reduce this risk. Further, it would be the responsibility of graziers to check their stock and the fence, regularly, which they would be required to maintain under the HLS Scheme. It was also suggested that ponies would find it difficult to see the fencing and this could lead to injury, although no concerns had been raised with Natural England by their owners. The ponies would not be used to fencing, there being none there at present, however, I note that it is intended the fence be fitted with bird strike markers which would go some way to making it more visible.

51. Some of the objectors considered there was a public safety issue where cattle and people would be mixing, since cattle are known to be unpredictable at times, in particular where walkers with dogs are concerned. The most likely area of concern is at Dale Slack, a small valley which forms a natural shelter and where there is an open area. It is more likely than not that the cattle would favour such open areas away from the more unsuitable stony outcrops and limestone pavement. The proposal would limit cattle to between 15 and 30 animals of a suitable breed and, as Mr Hutchinson clarified, it would be the responsibility of the grazier not to put dangerous cattle on the land. Grazing by cattle would be confined to the late spring, summer and autumn and be subject to signage to indicate that cattle were present. Nevertheless, I accept that some users, including those with dogs, might choose not to access the land during these times, although I note Natural England's comment that they have not experienced any issues on similar open access sites in the area where grazing by cattle has been introduced, nor indeed in the limestone project in the Yorkshire Dales National Park where areas are heavily used by walkers accessing Ingleborough. In addition to the cattle, Natural England confirmed that graziers may graze up to 17 ponies in the enclosure at any one time.

52. The local residents opposing the application did not regard the scheme as representing value for money, but Natural England argued that much of the

money would be going into the local economy. However, I do not regard this as a matter for my consideration.

53. Reference was made in submissions to a 1770 petition by Ravenstonedale landowners against the enclosure of the common, it being upheld by the House of Lords. This seems to refer to the whole of the common rather than a part of it as presently proposed, and in any event, the application concerns a proposal to fence an area of the common temporarily rather than its permanent enclosure. It follows that the 18th century petition has no bearing on the validity of the proposal before me now, which I have determined on its own merits.

Conclusion

54. The consent process provided by the 2006 Act seeks to ensure that works take place on common land only where they maintain or improve the condition of the common or, exceptionally, where they confer some wider public benefit and are either temporary in duration or have no lasting impact⁵.
55. In assessing this application, I am required to consider whether it proposes the best outcome. If I consider there is a better approach it is open to me to impose conditions to improve the outcome. Alternatively, I may refuse the application if, having applied the statutory criteria, there are good grounds for doing so.
56. In reaching my conclusion, I appreciate the difficulty of finding a solution that is acceptable to everyone and that inevitably there will have to be compromise. I recognise that the application proposal is a compromise. However, I am not satisfied that the application before me is the appropriate solution given that the Graziers' Association, in putting forward an alternative proposal, feels unable to support it. I have concluded that there would be a negative effect on the ability of commoners to exercise their rights with regard to hefted flocks and the management of livestock on the Common. I recognise the need to improve the condition of the SSSI, and note that there is evidence from similar schemes operating elsewhere of improvements in the early years. However, I have concluded that evidence to support the longer term effect sought is lacking. Having considered all the matters above, and for the reasons given, I conclude that this application should be refused.

S Doran

Inspector

⁵ Paragraph 3.4 of Defra's Common Land Consents Policy Guidance

APPEARANCES

For the Applicants:

S Lund	Team Leader, Solway, Border & Eden Land Management Team, Natural England
T Nicholson	Land Management & Conservation Lead Adviser, Solway, Border & Eden Land Management Team, Natural England
D Land	Natural England

In Objection:

P Arkle	Cumbria Farm Environmental Partnership, representing Wild Boar Fell Graziers' Association
H Hutchinson	Chairman, Wild Boar Fell Graziers' Association
L Bateman	Local resident
K Trimmer	Local resident
K Trimmer	Local resident
E Warner	Local resident
A Sandell	Kirkby Stephen & District Walkers are Welcome

DOCUMENTS

1. Five photographs showing vegetation and limestone pavement (1-4 The Clouds, 5 Sunbiggin Tarn) submitted by Natural England together with application map showing approximate location of photographs 1-4
2. Yorkshire Dales National Park Authority Conservation Research & Monitoring Project, Monitoring Report No.17, The Limestone Country Project: Monitoring for Ecological Change 2003-06, 31 March 2008, submitted by Natural England