



Application Decision

Hearing held on 25 June 2024

by **Claire Tregembo BA (Hons) MIPROW**

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

Decision date: 16 July 2024

Application Ref: COM/3329122

Knowl Moor Common

Register Unit No: CL162

Commons Registration Authority: Lancashire County Council

- The application dated 6 September 2023, 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 Norden, Bamford, and Heywood Bridleways Association.
 - The works comprise permanent fencing, public access points, and one locked vehicular access point for emergencies.
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Decision

1. Consent is granted for the proposed works shown on the revised application plan appended to the end of my decision subject to the following conditions:

- 1) No changes should be made to the layout of the access point at A.

REASON: The proposed layout would not improve equestrian access or safety.

- 2) The surface and drainage of the horse stile at point A should be improved.

REASON: To ensure the horse stile is not waterlogged.

- 3) At point B a wooden chicane should be provided in the corral at least 5m from the roadside entrance and horse stile. Any stones or boulders within the corral should be removed.

REASON: To ensure safe access for equestrian users.

- 4) The proposed equestrian access should be provided at point C in accordance with the plan produced by the BHS and appended to the end of my decision. The access point should be on the north side of Edenfield Road rather than the south side as indicated in error on the plan.

REASON: To ensure public access to Knowl Moor Common for equestrian users is available at point C.

- 5) The gap at point D should be compliant with BS 5709. If it is considered a BS 5709 compliant gap would be used by Off-Road Vehicles (ORV), a kissing gate should be provided to match those currently available at the other access points.

REASON: To ensure suitable access is provided at point D.

- 6) All gates, horse stiles, and gaps should be compliant with BS 5709 and maintained in a safe condition for use.

REASON: To ensure suitable public access is available at all times.

Preliminary Matters

2. I carried out an unaccompanied site visit on 24 June 2024. I looked at the full length of the fence, the access points, and paths over the Common where possible. I was unable to walk the footpath at the southeast corner of Knowl Moor Common due to vegetation and a beck which did not appear to have a crossing point.

Description of the site

3. Knowl Moor Common sits on either side of Edenfield Road, Norden, Rochdale, and has a total area of 395.94 hectares. The works are only on the Common to the north of Edenfield Road.
4. Knowl Moor Common abuts Tottington Higher End Moor (CL94), Cowpe Moor (CL99), Rooley or Shore Moor (CL163), land near Nadden Reservoir (CL173), and Higher Hill (CL174). Scout Moor and Turf Moor (CL175) abut CL94 and CL174 to the west of Knowl Moor. These Commons can all be accessed by crossing Knowl Moor Common from Edenfield Road.

The Application

5. In 2020 Greater Manchester Police (GMP) and Lancashire Police requested support from the local community to reduce illegal ORV activity which causes nuisance to residents, Commoners, and the public. It also damages the moorland and disturbs wildlife and livestock. An Off-Road Mitigation Measure Project (ORMMP) was established to identify illegal access points and provide obstacles to assist the police in catching and prosecuting offenders. Stakeholders include the police, neighbourhood forums, Members of Parliament, local councillors, borough councils, user groups, United Utilities (UU), landowners, farmers, and Commoners.
6. Edenfield Road was identified as a primary access point to the Commons for ORV due to its open access. This led to a proposal to erect a fence with public access points alongside Knowl Moor Common on the northern side of Edenfield Road. A fence was erected in March 2021, but an application for consent for the works was not made until 6 September 2023.
7. The works comprise approximately 1km of fencing along the northern side of Edenfield Road. The fencing is post and wire sheep netting with a strand of barbed wire on top to a height of 1.2m. The application referred to three public access points at A, B, and C, and a locked emergency vehicular access point at point C. These public access points comprise steel kissing gates and horse stiles. At the time of my site visit, no horse stile was provided at point C, but the application proposes to install one. Changes to the access at point A are also proposed. An additional kissing gate was provided at the southeastern corner of Knowl Moor Common when the fence was erected. There was also a locked field gate providing access to a farm with a small gap alongside it which pre-existed the fence. A revised application plan was provided at the hearing with the gate and gap marked at point D, and the kissing gate at point E.

The Main Issues

8. Section 38 of the Commons Act 2006 (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.
9. I am required by section 39 of the 2006 Act to have regard to the following in determining the 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.
10. I have had regard to Defra's Common Land Consents Policy Guidance (Defra's Guidance) 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 own 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 this guidance.
11. Common land legislation enables the safeguarding of commons for use and enjoyment, ensures the special qualities of common land are properly protected, and improves the contribution of common land to enhance biodiversity and conserve wildlife. Works should only take place on common land where they maintain or improve the condition of the common or where they confer a wider public benefit.
12. There is nothing in the legislation or Defra's Guidance to indicate works on a common must only safeguard, protect, and improve the common on which they are undertaken. The purpose of the legislation is to protect all commons. I consider this means I can consider the impact the works would have on the surrounding commons and not just Knowl Moor Common.

Reasons

The interests of those occupying or having rights over the land

13. Knowl Moor is owned by the Lord of the Manor who supports the application. They stated they are custodians of the commons and moors in their ownership. Illegal ORV use damages the Commons and disturbs wildlife. Remedial restoration could be undertaken to help damaged areas recover but this would not be successful unless the cause of the damage is removed.

14. Fourteen people have common rights to graze, eleven people have rights to turbary, eight have a right to take stone, and one a right to bracken. Five people are known to exercise their rights to graze. The fence limits livestock access to the road which has a 50mph speed limit, although it is accepted that animals can pass through the horse stile and sheep can go under the emergency access gate. There have been significant collisions on Edenfield Road between vehicles and livestock in the past, but GMP was not aware of any since the fence was erected.
15. The West Pennine Commoners Association (the WPCA) stated the illegal use of ORV has damaged grazing land on the Commons, so they need to supply more feed to their livestock. Damage to peat also makes it unviable. Illegal ORV has disrupted their working day by displacing livestock which have also been maimed or killed. This increases the economic impact of upland farming and threatens the livelihood of the Commoners. The WPCA considered the fence to be highly effective in preventing incursions by ORV and it indicates measures are being taken to stop their use.
16. It was suggested that members of the WPCA did not have common rights over Knowl Moor. The Commons Register indicates that many of those with common rights over Knowl Moor Common also have common rights over the surrounding Commons.
17. I consider the reduction of illegal ORV use would benefit the landowner and those with common rights over Knowl Moor Common and the surrounding Commons.

The interests of the neighbourhood

18. Illegal ORV activity has been an issue on the commons and moors above Rochdale for many years. This has impacted the neighbourhood in numerous ways including damage to the moorland, walls, gates and fences, threats, intimidation and an assault by an ORV user, road safety issues, noise nuisance, pollution, litter, increased and more difficult mountain rescues, and reduced water quality in the reservoirs resulting in higher water treatment costs. These issues are not confined to the Commons, as ORV use the road network to reach them, often travelling at speed through the neighbourhood. The parking area opposite Owd Betts is used as a meeting point for groups of riders including as many as twenty riders. GMP reported that crime and anti-social behaviour from ORV nuisance is one of the top concerns and priorities for the communities surrounding the Commons, and they have a high number of reports relating to it.
19. The fence has wide support from the local community. Residents and community groups stated the fence has already had a significant impact on the neighbourhood. There were fewer ORV riding through the villages along the A680 improving road safety, and reducing noise nuisance. Those using the Commons felt safer and less anxious. They had seen a dramatic reduction in illegal ORV accessing the Commons from Edenfield Road.
20. Greater Manchester Police (GMP) and Lancashire Police have been running Operation Dragster for many years to reduce these incidents and tackle offenders. The open access along Edenfield Road made it difficult to catch and prosecute those using vehicles on the Commons. The fencing restricts entry and exit points along Edenfield Road helping the police, and their partners to focus their deployments. GMP stated that ORV users were aware of the reduced access from

