

APPLICATION FOR CONSENT TO CARRY OUT WORKS ON COMMON LAND

Commons Act 2006: Section 38

National Trust Act 1971: Section 23

Greater London Parks and Open Spaces Order 1967: Article
12

Return completed application to: commonlandcasework@planninginspectorate.gov.uk

Where possible, please send in your application by e-mail. If you are unable to submit your application by email and require a postal address please telephone: 0303 444 5340.

Please ensure you refer to the current Notes for making an application when completing this form and advertising your proposals. Failure to do so may delay your application and you may be asked to re-advertise if you do not follow the current guidance in full.

-
- Before you apply for consent you should consult informally and widely about the proposed works as this may help you identify and overcome any objections.**
 - Answer all the questions on this form in full, tick all relevant boxes and use a separate sheet where there is insufficient space for your answer.
 - Refer to separate **Notes** on completing this form (the "Notes") and **Guidance Sheets** (listed at **Annex F** of the **Notes**) before applying.
 - Read **Guidance Sheets 1a, 1b and 1c** for all Section 38 cases.
 - Read **Guidance Sheet 2a** if the land is owned by the National Trust.
 - Read **Guidance Sheet 2b** if the land is registered as a town or village green.
 - Read **Guidance Sheet 2c** if the land is regulated by a scheme of management.
 - Read **Guidance Sheet 2d** if the land is owned/managed by a London Borough Council.
-

Legislation

This application is made under:

- Section 38: Commons Act 2006 for land which is:-
 - registered common land
 - other land (e.g. registered town or village green) to which Section 38 applies
- Section 23: National Trust Act 1971
- Article 12: The Greater London Parks and Open Spaces Order 1967

SECTION A – The common land

1. Name and full address of common	New Road Common New Road Kendal
CL no or VG no	CL68
Commons Registration Authority (Usually the county council or unitary authority)	Cumbria County Council

SECTION B1 – The applicant

2. Forename	
Surname	
Organisation (if appropriate)	Environment Agency
Title (Mr/Mrs/Miss/Dr)	
Full Postal Address	Richard Fairclough House Knutsford Road Latchford Warrington

Postcode	WA4 1HT
Telephone No/Mobile	
E-mail address	

3. Do you prefer to be contacted by (ignore if you are using an agent) Post E-mail

SECTION B1a – The agent (where relevant)

3a. Forename	Alice
Surname	Miles
Organisation (if appropriate)	Jacobs UK Ltd
Title (Mr/Mrs/Miss/Dr)	Mrs
Full Postal Address	1 City Walk Leeds
Postcode	LS11 9DX
Telephone No/Mobile	07402 997067
E-mail address	alice.miles@jacobs.com

- Do you prefer to be contacted by Post E-mail

SECTION B2 – The owner of the common land

4. Forename	
Surname	
Organisation (if appropriate)	South Lakeland District Council
Title (Mr/Mrs/Miss/Dr)	
Full Postal Address	South Lakeland House Lowther Street Kendal
Postcode	LA9 4DQ
Telephone No/Mobile	
E-mail address	

SECTION C – Area of common and common rights

5. What is the total area of the common as registered?

6,933m² / 0.69 hectares

What common rights, if any, are registered? (e.g. number and type)

There are no registered common rights, therefore no common rights are exercised.

Are the common rights ever exercised?

Yes

No

6.

If yes, please give details e.g. which commoners are active, which rights are exercised and how frequently?

N/A

7. Give details of any relevant leaseholders, other occupiers, those holding any relevant charges or those with rights of access over the land.

N/A

SECTION D1 – The proposal

8. What works are proposed? (tick **all** that apply)

- fencing
 building(s)
 other structures(s)
 ditch(es), trench(es), embankment(s)
 sealed paths, roads or tracks (e.g. concrete or tarmacadam)
 other works, please specify:

The proposed works referred to by the applicant as Reach F3 (see section 1.1 of the Supporting Statement), include the construction of new linear flood defences (walls and flood gates), landscaping, installation of surface water drainage and reprofiling of the existing slipway to the River Kent.

9. Are the proposed works permanent or temporary?

- permanent
 temporary
 mixed permanent and temporary

If temporary, how long will they be needed?

10. Is this application, or any part of it, for works that have already been carried out?

Yes No

11. Describe the proposed works below, including the area (in square metres) that they will occupy. Please include details such as materials to be used and dimensions of all structures. Make clear which works are permanent, which are temporary, and which works, if any, have already been carried out. (If the works are only for fencing go straight to Section D2)

The proposed works can be split into five sections:

Linear Defences – Flood Wall - The proposed linear defence flood wall is to be constructed along the edge of New Road Common adjacent to the New Road highway boundary. The proposed flood wall extends to approximately 155m long and will replace the current metal fencing bordering New Road Common with New Road. The wall will have a 0.5m wide clearance between the carriageway and flood wall that will be surfaced by deterrent paving to prevent pedestrians from accessing the road side of the flood defence wall. The maximum height of the proposed flood wall is approximately 1.65m. The highest stretches are towards the northern end of New Road Common. Southwards from the pedestrian crossing (opposite Blackhall Road) the wall reduces to approximately 0.4m high where the linear defences meet higher ground towards Miller Bridge. Below ground steel sheet piling would be used to support the above ground defences. Whilst the inner part of the wall will consist of reinforced concrete, the outer surface will comprise masonry stone cladding. The construction results in a wall that will be approximately 0.7m wide. Towards Miller Bridge, where ground levels rise, the stone clad walls will have a metal railing affixed on top.

Gates - As part of the linear defence walling, three flood gates are to be installed including:

- 1 x 4.4m wide asymmetrical double leaf flood gate adjacent to the newly constructed Gooseholme Footbridge to the north-east of New Road Common. This gate would be open under normal conditions;
- 1 x 2m wide single leaf flood gate at the existing pedestrian crossing at the junction of New Road and Blackhall Road in the central area of New Road Common. This gate would be open under normal conditions to facilitate access to the existing pedestrian crossing;
- 1 x 10m wide double leaf flood gate to be located to the southern end of New Road Common opposite the existing slipway into the River Kent. This gate would be closed in normal conditions.

The flood gates will be constructed of steel and black in colour. A fourth gate, which is a lockable pedestrian access gate (3m wide) rather than a flood gate, is to be installed at the southern end of New Road Common. The pedestrian gate will be open under normal conditions and fixed to a railing similar in design.

Surface Water Drainage - New surface water drainage channels will be constructed in New Road Common to allow for the discharge of water into the River Kent.

Slipway to River - The existing slipway that provides access to the River Kent from New Road Common will be reprofiled to retain access for public access and to continue to enable periodic river maintenance activities (gravel removal) by the Environment Agency. The ramp originally comprised stone setts, which are expected to be present beneath a loose covering of stone. The stone setts will be unearthed and reinstated in a similar manner to those visible at the toe of the slipway. The gradient of the ramp will be less than the steepest part of the existing slipway. The reprofiling of the ramp, wall and rails at the top of the ramp will enable Taylor's Fair to egress from New Road Common via the double leaf flood gate.

12. Explain why the proposed works are needed and how they fulfil the criteria set out in Section 39 of the Commons Act 2006. If the proposed works include fencing, please also complete section D2.

A brief summary is below, further detail is provided in section 7 of the Supporting Statement submitted with this application.

The proposed flood risk management works will be undertaken in exercise of the Environment Agency's statutory powers contained in the Water Resources Act 1991 (as amended by the Flood and Water Management Act 2010). The proposed works are necessary to improve flood risk in the town of Kendal. Historically Kendal has been and remains prone to flooding, most notably in recent years in 2015 during Storm Desmond which affected more than 2,135 residential and commercial properties in total. The proposed works form part of the wider Kendal Flood Risk Management Scheme (the Scheme), which was approved by South Lakeland District Council (SLDC) as part of planning application SL/2018/0925. The planning application was for *'Phase 1 Kendal Linear Defences comprising works along the rivers Kent & Mint through Kendal including new & raised flood walls, new & raised flood embankments, ground raising, pumping station & associated changes to the public realm & landscaping'*.

The proposed works on New Road Common (EA 'Reach F3') form an integral part of the Scheme and the planning permission granted. Without undertaking the proposed works on New Road Common a significant area of the town of Kendal would be left with an approximate 20% probability of experiencing a flood event occurring in any given year. Flood resilience will further decrease over time with the effects of climate change. The proposed works are for the common good and have been designed to improve flood resilience for approximately 227 residential properties, 85 unclassified properties and a minimum of 71 businesses against flooding from the River Kent and its tributaries to a 5% Annual Exceedance Probability (AEP) i.e. a flood event that has a 5% probability of occurring in any given year. The reduction of flooding in the area will generate significant economic and human health benefits in the coming years by reducing the amount of disruption and damage suffered by Kendal during flood events. Moreover, the Reach F3 works and the wider Scheme will seek to ensure that the neighbourhood around New Road Common and the town of Kendal as a whole are more resilient to the effects of climate change in the coming years.

The Environment Agency has undertaken consultation with local stakeholders such as SLDC, members of the Kendal River Corridor Working Group (e.g. the Open Space Society and Cumbria County Council), Natural England and Historic England to ensure the interests of the neighbourhood, the public and the natural and historic environment have been properly and conscientiously considered throughout the development of the proposed design for the works.

The policy guidance advises that works may be proposed in relation to common land which do not benefit the common but confer some wider underlying public benefit. It is considered that although the proposed works in New Road Common will cause temporary disruption, the proposed flood risk management works will benefit the neighbourhood and wider community by improving flood resilience whilst ensuring that other local public interests are not permanently compromised by the proposals.

13. Give details of any measures proposed to mitigate the visual impact of the works and, where appropriate, the way in which the common will be restored once the works are completed if consent is granted.

From a visual perspective, the works will not significantly impact the openness across New Road Common from the introduction of the linear defence walling and flood gates. These are the same as those approved by the original 2018 planning application for the Scheme and so no additional changes will be observed. The current 2022 application retains a tree located near Miller Bridge Scheduled monument preserving the current landscape.

SECTION D2 – Where the proposed works include fencing (temporary and permanent)

(If your proposal does not include fencing, go straight to Section E)

14. Please give details of the type(s) of fence proposed, including the height and length, the area (in square metres) it will enclose and the materials used.

The proposed works to New Road Common are for the construction of new linear flood defence walling along the northern edge of the common land. The details of the walling including heights and material usage and drawings illustrating the proposed works can be found in the Supporting Statement.

15. Please explain why the fencing is needed and how it fulfils the criteria set out in Section 39 of the Commons Act 2006. This should cover: why fencing of this type is needed, what the aim of the fencing is, and why it is the length proposed. You should also explain what other types of fencing, if any, have been considered and rejected. If you are applying for permanent consent please explain why temporary consent is not appropriate.

During the construction of the proposed works temporary fencing will be erected along the length of the Common for health and safety reasons i.e. to prevent unauthorised personnel from entering the working area. This will take the form of solid hoarding which will also act to limit noise to the wider area.

16. Please say what other measures (if any) you have considered (i.e. alternatives to fencing) and explain why these are not suitable.

The alternative option would be deployment of temporary demountable defences which is not possible in this catchment due to the speed at which flooding can occur.

17. Give details of any measures proposed to mitigate the visual impact of the fencing.

The linear flood defence walling, as has been done in other areas of the Scheme, will match the existing historic stonework to blend with the surroundings.

18. Give details of the number, type and location of stiles, gates, gaps or other means of access.

Access to New Road Common will be facilitated by the following proposed gates:

- 1 x 4.4m wide flood gate adjacent to the newly constructed Gooseholme Footbridge to the north-east of New Road Common. This gate would be open under normal conditions and provide access at a point similar to the existing situation;
- 1 x 2m wide flood gate at the existing pedestrian crossing at the junction of New Road and Blackhall Road in the central area of New Road Common. This gate would be open under normal conditions to facilitate access to the existing pedestrian crossing. Its position is similar to the existing situation;
- 1 x 10m wide flood gate at the southern end of New Road Common opposite the existing slipway into the River Kent. Unlike the current arrangement whereby there is a gap in the railings at this location (though not at a safe location to cross New Road) this gate would be closed in normal conditions. It would be opened either to allow Taylor's Fairground to mobilise and demobilise, and for the Environment Agency to access the slipway to the River Kent for operational purposes (gravel removal).

Therefore, in non-flood conditions, access to New Road Common as a consequence of the proposed works will largely be similar to current arrangements.

SECTION E – Planning permission

19. a) Is planning permission needed for your proposal Yes No
- If no b) If yes, has planning permission been given? Yes No
- If yes to b), please enclose a copy of the planning permission. Copy enclosed.

Planning permission has been granted under application SL/2018/0925 *"Kendal Flood Risk Management Scheme – Phase 1 Kendal Linear Defences, comprising works along the rivers Kent and Mint through Kendal including new and raised flood walls, new and raised flood embankments, ground raising, pumping station and associated changes to the public realm and landscaping."*

However, changes to the approved design have resulted in the need for a Non Material Amendment (NMA). The NMA application will be submitted to SLDC in parallel with this application for common land consent. The NMA application will be accompanied by detailed design drawings, a review of the relevant sections of the Environmental Statement and an addendum to the Habitats Regulations Appraisal submitted and approved by SLDC under the original 2019 consent, a Biodiversity Protection Plan and details of the proposed construction method of works.

SECTION F – Designations

Yes No

20. Is the proposal in or near a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC) a Special Protection Area (SPA), or a wetland listed in accordance with the Ramsar convention?

If yes, please give details and identify this area on the map (see Section J).

The proposed works are adjacent to the River Kent SAC and River Kent and Tributaries SSSI. Refer to Appendix A of the Supporting Statement.

21. Will the proposal affect a Scheduled Ancient Monument (SAM)? Yes No

If yes, please give details and identify the location of the SAM on the map (see Section J).

The proposed linear defences will tie into Miller Bridge Scheduled Monument at its eastern pier. The height of the flood defences will be low at this location due to the ground already being sufficiently high, such that a concrete kerb will abut the bridge and the joint filled with sealant. This method is acceptable to South Lake District Council (SLDC) planning authority following consultation with their heritage officer.

22. Is the proposal in a National Park? Yes No

If yes, please give the name of the National Park.

- Is the proposal in an Area of Outstanding Natural Beauty (AONB)? Yes No

If yes, please give the name of the AONB.

- Will the proposal affect an area of special landscape value or World Heritage Site? Yes No

If yes, please give details and identify the area on the map (see Section J).

SECTION G – Existing works and adjacent common land

23. Are there any existing buildings, roads, fences or other constructions on the common? Yes No

If yes, please give details. Please also identify these on the map (see Section J).

Existing features to New Road Common include: Tarmac footpaths through the park, Benches, litter bins, planters, Lampposts, road signage and existing trees, Closed Circuit Television Camera (CCTV) operated by Cumbria Police, Slipway (ramp) to the River Kent, Railings and wall alongside the slipway to the river, Stone walling bordering the water's edge for public safety, and Pedestrian ramp for Gooseholme Footbridge. SLDC's 2017 reinstatement of New Road Common from a car park to a predominantly grass covered open space was made to improve the common. The proposals on site work to enhance these features while also increasing Kendal's resilience to flooding.

24. Does any area of common land or village green of a different registration number adjoin the common on which the works are proposed? Yes No

If yes, please give details. Please also identify the boundaries on the map (see Section J).

New Road Common (CL68) is not adjoined to any other areas of common land or village greens. However, Gooseholme Bridge directly connects New Road Common to Gooseholme Common (CL153) and Castle Crescent (VG66) village green.

25. Most applications are determined by the written representation procedure. However, we may decide that a site inspection by an Inspector is needed. Where we decide that there should be a site inspection the Inspector will usually visit the site unaccompanied.

Do you wish to be present or be represented at the site visit? Yes No
If yes, please suggest a suitable meeting place.

Environment Agency Flood Hub
Little Aynam
Kendal
LA9 7AH

SECTION I – Advertisement and consultation

26. **You must advertise your proposal** in one main local newspaper and at the main points of entry to the common (or, if there are none, at a conspicuous place on the boundary of the common). Use the draft notice at **Annex A** of the **Notes**.

27. You must also send a copy of the notice (using the letter at **Annex C, C1** or **C2** of the **Notes**) to the following:

- the owners of the land (if different from the applicant)
- the commons council or commoners' association (if there is one)
- all active commoners
- others with a legal interest e.g. tenants, those with easements, or other rights over the land and any other person occupying the land

- the Parish Council

- the relevant Commons Registration Authority (usually the county council or unitary authority), District or Borough Council
- Natural England (Please send only to enquiries@naturalengland.org.uk)
- Historic England
- National Park Authority (if the proposal is in a National Park)
- AONB Conservation Board or Joint Advisory Committee (if the proposal is in an AONB)
- Open Spaces Society (Please send only to office2@oss.org.uk)
- the local authority archaeological service

28. Which newspaper has the advertisement appeared in?

Westmorland Gazette

On what date?

12 January 2023

On what date will the representation period end?

14 February 2023

This date must be at least 28 days from the date the application is advertised. Incorrect notices are a common problem and may result in you having to re-advertise, so please read Section I of the Notes carefully.

Section J – Maps

29. Please enclose two copies of the map that meets the requirements set out in Section J of the Notes. The map should show everything required by sections F and G of this form, and it must clearly show what you are proposing to do and where. **Incorrect or unclear maps are a common type of problem with applications for works, so please read Section J of the Notes carefully.**

Section K – Checklist (tick to confirm)

30. For all applications:

- I have read the relevant Notes and Guidance Sheets.
- I have answered all the questions on this form in full (where appropriate.)
- I have enclosed a map (2 copies) that meets the requirements of Section J of the Notes.
- I have enclosed a copy of the commons register in respect of this common, where registered, i.e. details of the land, rights, ownership and the register map.
- I have enclosed a copy of any document mentioned in answering the questions on this form (e.g. planning permission, etc.)
- I have completed and enclosed a copy of the health and safety questionnaire
- I understand that any of the application papers may be copied to anyone who asks to see them.

31. For Section 23 (National Trust Act 1971) only:

- I have enclosed a letter from the National Trust confirming its view that the proposed works are "desirable" under Section 23(1)

32. I have:

- Advertised the proposal in one local newspaper
- Posted a copy of the notice at the main entry points to the common
- Sent a copy of the notice to all those listed at Section I
- Placed a copy of the notice, map and application at the inspection point
- Enclosed the letter, based on the example at Annex D of the Notes, confirming that the advertising requirements have been met.

Signed

--

Name

Date

Alice Miles

10 January 2023

You should keep a copy of the completed form.

General Data Protection Regulation

Your application will be in the public domain. Therefore all documents (both paper and electronic) associated with it may be disclosed during the application process to others, including other Central Government Departments, public bodies, local authorities, other organisations and members of the public.

How we use your information

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).
