



Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL 22nd April 2021

Newton Common – Proposed Scheme of Management

Report of the Deputy Chief Executive

Purpose of Report:

The purpose of this report is to provide some background with regard to a request received from Newton-by-the-Sea Parish Council for the County Council to consult upon a scheme of management under the Commons Act 1899.

Recommendations:

It is recommended that authority be given to commence the statutory consultation process with regard to the County Council making a Scheme of Management with regard to Newton Common under the Commons Act 1899.

Key Issues:

1. Newton-by-the-Sea Parish Council has requested that the County Council commences the statutory process to make a Commons Scheme under the Commons Act 1899. The Parish Council has indicated that it would enter into an agency agreement under s101 Local Government Act 1972 to then effectively take on any powers and duties of the County Council under the Scheme. Copies of a Scheme and Management Agreement are attached as Appendices A and B.

Background:

History

2. Newton Common was registered as common land under registration number CL26 on 1st October 1970 pursuant to an application dated 25th April 1968 by the then Clerk of Newton by the Sea Parish Council.
3. The common is not noted on the register of common land as having an owner, the register noting that the land is subject to protection under section 9 of the Commons Registration Act 1965. Section 9 of the Commons Registration Act 1965 was a provision in respect of 'ownerless' commons that provided that in relation to any common land registered under that section any local authority could take such steps for the protection of the land against unlawful interference as could be taken by an owner in possession of the land. This has now been repealed and replaced by s45 of the Commons Act 2006; the provisions of s45 are however similar.

4. The Parish Council have outlined that there are ongoing issues with management and use of the Common and have proposed that a Scheme of Management under the Commons Act 1899 be agreed by the County Council in its capacity as a District Council. They believe that a Scheme would provide clearer powers for management of the common. Should a Commons Scheme be made by the County Council the Parish Council would then enter into an agreement under s101 of the Local Government Act 1972 to manage the scheme on the Council's behalf. While this has not happened with any other registered commons within Northumberland this has happened with regard to other village greens within the County.

Statutory process

5. Should authority be given by the committee then the statutory process can commence which will involve publishing, placing on site and deposit and forwarding to any relevant parties a statutory notice of the intention to make a Commons Act Scheme. A report would then be presented to the committee setting out any representations received and next steps in the process.

The Legislation

6. The governing legislation, the Commons Act 1899 provides that a Scheme may be made for the regulation and management of any common with a view to the expenditure of money on the draining, levelling and improvement of the common, and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order on the common. If 'notice of dissent' is received from persons representing at least one third in value of such interests in the common as are affected by the scheme the Council cannot proceed further.
7. In that regard a Scheme, once made, enables more to be done with regard to management of a common than would otherwise be the case had there not a Scheme in place.
8. Members are therefore requested to consider and resolve upon the recommendations above.

Background Papers:

Appendix A – Example Commons Act Scheme

Appendix B – Example Management Agreement

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**The Northumberland County Council
Commons Scheme**

.....**Order 2019**

**Commons Act 1899
The Commons (Scheme) Regulations 1982**

Northumberland County Council, in exercise of the powers conferred on them by the Commons Act 1899 and the Commons (Scheme) Regulations 1992 hereby make the following Order—

- 1. This Order may be cited as the Northumberland County Council Commons SchemeOrder 20.... and shall come into operation on *****
- 2. The Scheme specified in Schedule 1 shall apply to theNorthumberland as more particularly delineated on the plan attached at Schedule 2 and registered on the Northumberland County Council Register of Common Land as unit number CL.....

Dated this *** day of ***** 20...

The Common Seal of the Northumberland
County Council
was hereunto affixed in the presence of -

.....
Duly Authorised Officer

Seal no.

Schedule 1

Commons Scheme

.....Northumberland

1. The piece of land together with ponds, streams, paths and roads thereon (if any), commonly known as situate in the parish of in the county of Northumberland and hereinafter referred to as “the Common” (registration number CL.....) as shown on a plan sealed by and attached hereto and deposited at the offices of the Northumberland County Council of County Hall, Morpeth, Northumberland NE61 2EF, hereinafter called “the Council” and thereon coloured green, being a common within the meaning of the Commons Act 1899, shall henceforth be regulated by this Scheme, and the management thereof shall be vested in the Council.
2. The Council may execute any necessary works of drainage, raising, levelling or other works for the protection and improvement of the Common, and may, for the prevention of accidents, fence any quarry, pit, pond stream or other like place on the Common, and shall preserve the turf, shrubs, trees, plants and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament and may place seats upon and light the Common, and otherwise improve the Common as a place for exercise and recreation. Save as hereinafter provided, the Council shall do nothing that may otherwise vary or alter the natural features or aspects of the Common or interfere with free access to any part thereof, and shall not erect upon the Common any shelter, pavilion, drinking fountain or other building without the consent of the person or persons entitled to use the soil of the Common and of the Secretary of State for the Environment. The Secretary of State, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Secretary of State before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.
3. The Council shall maintain the Common free from all encroachments and shall not permit any trespass on or partial enclosure thereof or of any part thereof.
4. The inhabitants of the neighbourhood shall have a right of free access to every part of the Common, and a privilege of playing games and of enjoying other kinds of recreation thereon, subject to any byelaws made by the Council under this Scheme.
5. *[Not Applicable]*
6. The Council may set apart for games any portion or portions of the Common as it may consider expedient and may form grounds thereon for cricket, football, tennis, bowls and other similar games, and may allow such grounds to be temporarily enclosed with any open fence, so as to prevent cattle and horses from straying thereon; but such grounds shall not be so numerous or extensive as to affect prejudicially the enjoyment of the Common as an open space or the

lawful exercise of any right of common, and shall not be so near to any dwelling-house or road as to create a nuisance or be an annoyance to the inhabitants of the house or to persons using the road.

7. The Council, may, with the consent of the person or persons entitled to the soil of the Common, and of the Secretary of State, temporarily set apart and fence such portion or portions of the Commons as it may consider expedient for the parking of motor and other vehicles, and may make charges for the use of such part as it may deem necessary and reasonable: provided that any area so set apart shall not be so near to any dwelling-house as to create a nuisance or be an annoyance to the inhabitants of the house. The Secretary of State, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Secretary of State before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.
8. The Council may, for the prevention of nuisances and the preservation of order on the Common, and subject to the provisions of section 10 of the Commons Act 1899, make, revoke or alter byelaws for any of the following purposes, namely –
 - (a) prohibiting any person without lawful authority from digging or taking turf, sods, gravel, sand, clay or other substance on or from the Common, and from cutting, felling or injuring any gorse, heather, timber, or other tree, shrub, brushwood or other plant growing on the Common;
 - (b) regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance, and cutting, felling and taking trees or underwood on or from the Common in exercise of any right of common or other right over the Common;
 - (c) prohibiting the removal or displacement of seats, shelters, pavilions, drinking fountains, fences, notice-boards, or any works erected or maintained by the Council on the Common;
 - (d) prohibiting any person without lawful authority from killing, molesting or intentionally disturbing any animal, bird or fish or engaging in hunting, shooting or fishing or the setting of traps or nets or the laying of snares;
 - (e) prohibiting the driving, drawing or placing upon the Common or any part thereof without lawful authority of any motor vehicle, motor cycle, carriage, cart, caravan, truck or other vehicle (including any aircraft), except in the case of accident or other sufficient cause;
 - (f) prohibiting –
 - [i] the flying of any model aircraft driven by the combustion of petrol vapour or other combustible substances;
 - [ii] the taking off or (except in the case of accident or other sufficient cause) landing of any glider or any other aircraft;

- [iii] the flying of any glider or aircraft in such a manner as to be likely to cause undue interference with the enjoyment of the Common by persons lawfully on it;
 - (g) prohibiting or, in the case of a fair lawfully held, regulating the placing on the Common of any show, exhibition, swing, roundabout or other like thing;
 - (h) regulating games to be played and other means of recreation to be exercised on the Common;
 - (i) regulating assemblies of persons on the Common;
 - (j) regulating the use of any portion of the Common temporarily enclosed or set apart under this Scheme for any purpose;
 - (k) prohibiting or regulating the riding, driving, exercising or breaking in of horses without lawful authority on any part of the Common;
 - (l) prohibiting any person without lawful authority from turning out or permitting to remain on the Common any cattle, sheep or other animals;
 - (m) prohibiting any person from bathing in any pond or stream on the Common, save in accordance with the byelaws;
 - (n) prohibiting camping or the lighting of any fire;
 - (o) prohibiting or regulating any act or thing which may injure or disfigure the Common, or interfere with the use thereof by the public for the purposes of exercise and recreation;
 - (p) authorising any officer of the Council, after due warning, to remove from the Common any vehicle or animal drawn, driven or placed, or any structure erected or placed thereon in contravention of this Scheme or of any byelaw made under this Scheme;
 - (q) prohibiting any person on the Common from selling or offering or exposing for sale or letting for hire or offering or exposing for letting for hire, any commodity or article, unless in pursuance of an agreement with the Council or otherwise in the exercise of any lawful right or privilege;
 - (r) prohibiting the fixing of bills, placards or notices on trees, fences, erections or notice boards on the common;
 - (s) prohibiting the hindrance or obstruction of an officer of the Council in the exercise of his powers or duties under this Scheme or under any byelaw made thereunder.
9. Copies of all byelaws made under this Scheme shall be displayed on notice boards placed on such parts of the Common as the Council think fit.

10. Nothing in this Scheme or any byelaw made under it shall prejudice or affect any right of the person entitled as Lord of the Manor or otherwise to the soil of the Common, or of any person claiming under him, which is lawfully exercisable, in, over, under or on the soil or surface of the Common in connection with game, or with mines, minerals, or other substrata or otherwise, or prejudice or affect any right of the commoners in or over the Common, or the lawful use of any highway or thoroughfare on the Common, or affect any power or obligation to repair any such highway or thoroughfare.
11. Printed copies of this Scheme shall be available for sale at the offices of the Council for such reasonable price as the Council may from time to time determine.

DATED

20...

AGREEMENT

To manage

.....Northumberland

THIS AGREEMENT is made the _____ day of _____ 2020

BETWEEN

1. **NORTHUMBERLAND COUNTY COUNCIL** of County Hall, Morpeth, Northumberland NE61 2EF (“the County Council”) and
2.**PARISH COUNCIL** of (“the Parish Council”)

WHEREAS:

1. The Common Land known as....., Northumberland is registered under reference numberby the County Council as a Common Land in accordance with the provisions of the Commons Registration Act 1965 and the Commons Act 2006 as the case may be
2. The County Council has made a Scheme under the Commons (Schemes) Regulations 1982 (SI 1982 Number 209) for this Village Green (“the Scheme”).
3. A copy of the Scheme is attached to this Agreement.
4. The two Councils enter into this Agreement under the provisions of Section 101 of the Local Government Act 1972 as amended or replaced from time to time

The two Councils now agree

- (1) That the Parish Council shall exercise the powers of the County Council under the Scheme
- (2) The Parish Council may exercise those powers without further reference to the County Council
- (3) The Parish Council shall take reasonable steps to ensure that its general liability cover includes the exercise of functions under this Agreement and the Parish Council shall indemnify the County Council against any loss arising from the exercise of these functions by the Parish Council.

(4) This Agreement may be terminated by twelve months written notice from either Council to the other

**SIGNED on behalf of
NORTHUMBERLAND COUNTY COUNCIL
by**

**SIGNED on behalf of
.....PARISH COUNCIL
by**