Planning Inspectorate logo

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| **Application Decision** |
| Site visit made on 12 November 2021 |
| **by H Baugh-Jones BA(Hons) DipLA MA CMLI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 December 2021** |

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| **Appeal Ref: COM 3272516**  **Clee Liberty Common, Clee St Margaret, Craven Arms SY7 9DT**  Register Unit No. CL4  Registration Authority Shropshire Council |
| * The application dated 30 March 2021 is made under section 38 of the Commons Act 2006 for consent to construct works on common land. |
| * The application is made by Mr Jonathan Maddocks. |
| * The works comprise reinforcement of existing track (twin 50cm tyre tracks, not sealed) using non-reactive stone chippings with earth and grass allowed to grow over. * The proposed works would cover 2 x 50cm wide wheel tracks for a length of 900 metres (i.e. 900 square metres). |
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**Decision**

1. Consent is granted for reinforcement of existing track (twin 50cm tyre tracks, not sealed) using non-reactive stone chippings with earth and grass allowed to grow over, subject to the following conditions:

1. The works shall begin no later than three years from the date of this decision.

2. The works shall be limited to a total area of 900 square metres, less any areas already stoned-up between grid references SO 571 838 and SO 579 840 as shown on the application plans.

3. The materials to be used in the works shall be a mix of 90% dolerite and 10% soil.

**Procedural Matter**

1. I observed at my site visit that some short sections of the application track have already been stoned-up. I do not have any information as to the linear or area measurement of these works. I have nonetheless had regard to these already stoned-up areas (between the aforementioned grid references) in reaching my decision.

**The Land**

1. Clee Liberty Common (the common) is registered in the Register of Common Land under the Commons Registration Act 1965. It lies close to the village of Clee St Margaret and covers an area of around 225 hectares.
2. The works relate to access to the applicant’s property, ‘Thornwell’ situated to the south of the common. The application track (the track) runs generally west-east, branching off (at grid reference SO 571 838 (point A)) from an existing stone track leading north-east from the gate next to a small car park on the road between Clee St Margaret and Stoke St Milborough. The track passes a property known as The Sands and runs next to the southern edge of the common and in part, follows the line of a public footpath. The track’s eastern end (grid reference SO 579 840 (point B)) joins a public bridleway which continues off the common heading south. The bridleway is part of the Jack Mytton Way.
3. The common lies within the Shropshire Hills Area of Outstanding Natural Beauty (AONB). It is an upland area of varying habitat.

**Main Issues**

1. 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 to or over the land, including new solid surfaces.
2. Section 39 of the 2006 Act requires me 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; and

d. any other matter considered to be relevant.

1. Section 39(2) of the 2006 Act provides that the ‘public interest’ includes the public interest in:

a. nature conservation;

b. the conservation of the landscape;

c. the protection of public rights of access to any area of land; and

d. the protection of archaeological remains and features of historic interest.

1. I must also have regard to Defra’s Common Land Consents Policy (November 2015) in reaching my conclusions.

**Reasons**

***The interests of those occupying or having rights over the land***

*The landowners*

1. The land is owned by Clee St Margaret Parish Council, which only allows vehicular access onto the common where it is required for access purposes. The Parish Council supports the laying of stone in twin-wheel tracks in order to prevent the creation of wide muddy areas, where drivers attempt to avoid ruts. It therefore supports this application. There is nothing to indicate any direct benefit to the Parish Council or anything against its interests. Consequently, this matter is neutral.

*Registered rights of common*

1. From my reading of the evidence, there are 48 registered commoners, of which it appears that 4 have been active in the last 10 years. The registered rights include grazing of sheep, cattle and horses and one right of turbary.
2. The appellant argues that the proposed works and thus the limiting of vehicles to a specific route will prevent drivers avoiding the current deep, muddy ruts that form the application track. There is support for this from others, in addition to the Parish Council, including the Open Spaces Society and the Shropshire Hills AONB Partnership. Having observed the ruts, I noted that they are very deep, and I can easily foresee a situation where they become too deep to drive in. The very likely consequence of this is that more of the common will be churned up by vehicles avoiding the ruts.
3. There is currently nothing to be grazed within the muddy ruts themselves, but I accept that there will be some technical loss of grazing land. Moreover, losing 900m2 of grazing land from an area of around 225 hectares would not appear to be anything other than a very minor loss. Having regard to the 2006 Act, I therefore acknowledge that there will be some adverse effect upon those with rights over the common in terms of grazing, but it would be very minimal.

*Private rights*

1. I have been referred to a previous application decision (COM 690) wherein the Inspector was not presented with documentation regarding any licence or rights being granted by the Parish Council for access over the track. The evidence now tells me that a permanent and irrevocable easement was issued in 2017. This post-dates the previous application decision. Clearly, there would be a benefit to the applicant from improved access across the common.

*Conclusions*

1. Overall, there would be a minimal negative impact on the interests of some of those occupying or having rights over the common balanced against positives for others.

***The interests of the neighbourhood***

1. The applicant points out that the Parish Council anticipates use of the track (once stoned-up) by the owners of Upper and Lower Hill Houses instead of their current route over the bridleway from Nordy Bank. However, whilst I can see why that scenario would be an option, I have no conclusive evidence that it would actually be the case. I therefore afford this only very limited weight in support of the application.

***The public interest***

*Nature conservation*

1. The stone proposed for reinforcing the track would be a loose and inert type such as dolerite. It is also proposed to mix the stone with earth with the aim of allowing vegetation to grow within the stoned-up areas. I am satisfied that a locally sourced stone would maintain the ecological value of the common. I am somewhat sceptical about how successful the proposed vegetation growth would be given that it would likely be frequently driven over. However, there is currently no vegetation growing within the rutted track. Overall, I can see no harmful effects on nature conservation and note that there are no objections from Natural England subject to the applicant ensuring the works do not harm protected species.

*Landscape*

1. I spent a considerable amount of time walking across the common, including along the application track and also took in the views from the iron age hill fort, Nordy Bank. The weather was unhelpful being overcast with occasional rain showers. Nevertheless, visibility was sufficient to enable a good assessment of where the application track would be seen from. Parts of it were visible from the high point at Nordy Bank but much of it was not due mainly to the terrain.
2. In any case, even where the track can be seen currently, its appearance has a notable visual presence. I am not convinced that this would be amplified unacceptably by filling the ruts with stone. Indeed, it would be worse in my view for the track to become wider and muddier as drivers seek to avoid the ruts. The potential for this to be more harmful than stoning up the track is recognised by the AONB Partnership.
3. I acknowledge that a stoned-up track would appear different to how it currently looks, but for the reasons just given, I do not consider it would run counter to the interests of the public with regard to landscape.

*Public access*

1. The Countryside and Rights of Way Act 2000 (the 2000 Act) gives the public access rights across the common. Part of the application track is recorded as a public right of way and joins a promoted bridleway at point B. Whilst stoning up the track would allow vehicles to travel a little faster than at present, drivers and those on foot would be well-aware of each-others’ presence such that safe passage could be achieved. I nonetheless acknowledge the downside arising from the possibility of a higher volume of traffic in this rural area but given the small number of property owners who would reasonably use the track, I am not convinced that the effects would be anything other than very minimal.
2. On the other hand, having walked the track, in wet conditions, the proposed works would very evidently be beneficial to those on foot by providing a more convenient and enjoyable route. There was a useful comparison to be drawn between the ease of walking on the existing stoned-up track and a muddy rutted one.
3. I am therefore satisfied that that the proposed works would not have a negative impact on public access on foot under the 2000 Act.

*Protection of archaeological remains and features of historic interest*

1. There would be no direct impacts on any such features arising from the proposed works. I do however recognise that there would be some urbanising effect on the common from filling the existing ruts with stone. However, I have already found that there would not be a profound effect on the landscape and similarly, nor do I find that to be the case in terms ofarchaeological remains and features of historic interest.

*Conclusions*

1. The proposed works would have positive benefits for public access and would prevent a worsening of the current route. There is no indication of harm to nature conservation, landscape or historic features. I do not consider that the objectives of safeguarding the common for current and future generations to use and enjoy; ensuring that the special qualities of common land are properly protected; and improving the contribution of common land to enhancing biodiversity and conserving wildlife would be adversely affected.

***Other relevant matters***

1. Thornwell is not located on the common itself and thus access beyond point B would need to ensure vehicles are able to successfully reach the property without causing issues to those using the common. I observed a well formed and stoned track leading from the field gate beyond point B and am therefore satisfied that the proposed works on the common would be sustainable over the long term.
2. One of the objectors has raised the issue of the potential for alternative routes to be used to access Thornwell. Paragraph 4.3 of the policy says that *“The Secretary of State will wish to know what alternatives have been considered to the application proposal….If these options were considered and rejected, the Secretary of State may seek an explanation…”.* The appellant has investigated the potential for reaching his property via alternative routes.
3. One route would be via a private track across farmland in the ownership of Bockleton Court. Thornwell was once part of the landholding of this property but was sold by previous owners without the grant of a right of access along the private track. The evidence indicates that the current owners do not wish to allow this route to be used for access to Thornwell. I have no clear evidence to the contrary.
4. The other route to/from Thornwell would involve going along the bridleway forming part of the Jack Mytton Way to leave or access to public highway about 1.3km to the south. This route is heavily vegetated for around 300m from where it heads north from the highway. Low hanging trees and hedges provide a significant constraint to access with four-wheeled vehicles. As far as I can see, the only way to provide a satisfactory means of access to Thornwell along this route, would involve significant and harmful cutting back of trees and hedges followed by stoning up of a substantial area of land. Furthermore, there is greater potential for conflict between drivers and those on horses from using this route.
5. I am satisfied that alternative routes have been investigated but the proposed works are the only practical means of access to Thornwell.

**Overall conclusions**

1. The proposed works would result in some loss of grazing land, but this would be minimal and would not detrimentally affect the rights of commoners to any meaningful degree. Given the current appearance of the rutted track, the appearance of proposed works would not be so profound as to be unduly harmful. Other routes have been explored but discounted for good reasons. From point B, there is acceptable access to Thornwell. For these reasons, it is expedient to give consent to the proposed works subject to the conditions set out in my formal decision in paragraph 1.

H Baugh-Jones

Inspector

