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| **Application Decision** |
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| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 June 2022** |
| **Application Ref: COM/3290609**  **Burbage Common, Hinckley, Leicestershire**  Register Unit No: CL1  Commons Registration Authority: Leicestershire County Council   * The application, dated 12 January 2022, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land. * The application is made by Hayward Architects for Acorns Coffee Shop. * The works comprise 62m² of block paving to ground at rear of coffee shop. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 12 January 2022 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than 3 years from the date of this decision; and
3. the land shall be fully reinstated within one month from the completion of the works.
4. For the purposes of identification only, the location of the proposed works is shown in red on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) in determining this application under Section 38, 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 policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
2. The application refers to planning permission granted by Hinkley & Bosworth Borough Council (HBBC) in relation to the coffee shop (Decision 21/00435/FUL of 21 June 2021). The planning permission is for canopies to front and rear of Acorn Coffee Shop Visitors Centre and, whilst the paving works are proposed for beneath the rear canopy, the planning permission makes no reference to paving.
3. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS).
4. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
5. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
6. the interests of the neighbourhood;
7. the public interest. (Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest); and
8. any other matter considered to be relevant.

**Reasons**

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

1. Burbage Common is owned by HBBC, which was consulted about the application but did not comment. The common land register records three rights entries for grazing cattle, horses and sheep over the common. The applicant advises that none of the rights are exercised. The rights holders were consulted about the application but none commented. There is no evidence before me to suggest that the works are likely to harm the interests of those occupying or having rights over the land.

***The interests of the neighbourhood and public rights of access***

1. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access.
2. The application land is used as an unpaved seating area to the rear of the café. It was introduced during the COVID-19 restrictions period to increase customer outside space so that the café could continue to function. The seating area is under a canopy for which separate Section 38 consent has been given (Application Decision COM/3280152 of 20 January 2022). The proposal is to surface the area to match the paved seating area to the front of the café.
3. The paving will provide a flat stable surface for chairs and tables and will only benefit café customers. The applicant has confirmed that the chairs and tables to be provided will not be fixed and will be stored inside the café, leaving the rear area clear for public access outside of café opening hours. The works will not benefit the neighbourhood but neither will they affect public access or people’s enjoyment of this part of the common.

***The public interest***

*Nature conservation*

1. The café is approximately 900m to the north of the Burbage Wood and Aston Firs Site of Special Scientific Interest (SSSI). NE advises that it does not believe the proposals will have a significant or detrimental impact on the biodiversity of the common and has no objections to the works.
2. I am satisfied that the works will not harm any nature conservation interests.

*Conservation of the landscape*

1. The common has no special landscape designation. The proposed paving will match the existing paving to the front of the café, which is in keeping with the appearance of connecting gravel footpaths. Views of the area to be paved are limited by its location between the rear of the café and a line of mature vegetation. I conclude that the paving will not seriously detract from the appearance of the common.

*Archaeological remains and features of historic interest*

1. There is no evidence before me to suggest that these interests will be harmed by the works.

**Conclusion**

1. I conclude that the proposed works will not significantly harm the interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

