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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: 8 February 2023** |
| **Application Ref: COM/3304873**  **Breach Common and St James Common, Shaftesbury, Dorset**  Register Unit No: CL41  Commons Registration Authority: Dorset County Council   * The application, dated 9 September 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 Ministry of Justice. * The works covering a total of 356m² adjacent to HMP Guys Marsh comprise:  1. tarmac widening of the junction bellmouth onto the B3091 from the recreation ground (from 20m to 25m); 2. creation of a 2m wide tarmac footpath approximately 60m in length with tactile paving at junctions linking the recreation ground to St Anne’s Close; and 3. erection of temporary Heras security/safety fencing during the works period of approximately 4 weeks. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 9 September 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. all temporary fencing shall be removed and 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 on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 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. Planning permission has been granted by Dorset Council for works at HMP Guys Prison and Access (Decision P/FUL/2021/03090) subject to conditions requiring improvements to the B3091 junction and provision of the 2m wide footpath.
3. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Dorset Council Local Planning Authority (DCLPA) and Natural England (NE), neither of which object to the proposals, 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. Pursuant to Commons Commissioner Decision 210/U/76 of 23 March 1984 the CL41 common land register records that the Chief Commons Commissioner was not satisfied that any person was the owner of the land and it remains subject to protection by the local authority under s9 of the Commons Registration Act 1965 (now under s45 of the 2006 Act).
2. The common land register records numerous rights of grazing. The applicant advises that grazing is apparent on the application land but the exact commoners and frequency is unknown. All commoners recorded in the register were consulted about the application but none commented.
3. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

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

1. The application is made for works on the common that are necessary to fulfil planning permission conditions in relation to the creation of a new car park off the common, which will serve HMP Guy’s Marsh. The application affects two parcels of roadside verge common along the eastern side of the B3091 road. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access.

1. The proposed footpath will run through the length of the northern parcel and across the width of the southern parcel. The junction proposed to be widened separates the two parcels, which appear to have little recreational value other than for general access and may be used by pedestrians in the absence of a pavement. The path will provide a formal pedestrian route between the car park and St Anne’s Close to the north. While the proposed widening of the junction bellmouth by 5m will result in the hard surfacing of a small proportion of the common, people will still be able to access this part of the common should they wish to do so.
2. I consider that the works will assist those visiting the prison without unacceptably harming public access.
3. The works will take approximately four weeks to complete, during which the proposed temporary fencing will be in place. I am satisfied that such fencing is appropriate on health and safety grounds and that it will be removed on completion of the works, which can be secured by attaching a suitable condition to the consent.

*Nature conservation and conservation of the landscape*

1. NE advises that the application land is not subject to any statutory designations for nature conservation and consists of a short grass sward which is unlikely to have a notable level of biodiversity interest. I am satisfied that the works will not harm nature conservation interests.
2. The common land has no special designated landscape value. Whilst the works are likely to have some urbanising affect, the applicant advises that the tarmac surface will match with other footpaths around HMP Guys Marsh and I consider that it will not look unduly out of place in its surroundings. I am satisfied that the works will not seriously harm landscape interests.

*Archaeological remains and features of historic interest*

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

**Conclusion**

1. I conclude that the proposed works will not seriously harm the interests set out in paragraph 6 above and will be of wider public benefit, particularly to those using the new HMP Guys Marsh car park. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

