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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: 3 May 2023** |
| **Application Ref: COM/3309398****Burn Moor (Clapham Portion), North Yorkshire**Register Unit No: C270Commons Registration Authority: North Yorkshire County Council* The application, dated 14 November 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 Mr Alan Woodhouse.
* The works comprise creation of a new access track of approximately 108 square metres (4m x 27m) from the highway over the common land to Giffords Barn. The first 6m from the highway is to be black tarmac, the remainder is to be crushed limestone.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 14 November 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 bordered 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 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).
3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
4. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
5. the interests of the neighbourhood;
6. 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
7. any other matter considered to be relevant.

**Reasons**

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

1. The application land is owned by the Ingleborough Estate, which advises in its letter to the applicant of 22 December 2022 that it fully supports the application and has agreed an easement for residential access across the common.

1. The common land register records extensive grazing rights and one right of estovers and turbury. The applicant advises that three rights holders exercise grazing rights over the common. The three rights holders and the Burn Moor Commoners Association were consulted about the application and no comments were received from them.
2. The proposed access track will remove an area of approximately 108 square metres from potential grazing use. However, no party has suggested that the application land is an area of the common that is used for grazing or that those exercising rights of common will be adversely affected by the proposed works.
3. There is no evidence before me to suggest that the proposed 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 works are proposed to provide vehicular access from the highway to the applicant’s property (Giffords Barn) which has planning permission for its conversion to a dwellinghouse (Craven District Council application 2020/21718/FUL). 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. NE describes the application land as unimproved rough tussocky grassland. I consider that its use is therefore likely to be limited to general access and dog walking. Local people and the public alike will continue to be able to walk over the land once the access track is in place and I conclude that the works will have a negligible impact on the interests of the neighbourhood and public rights of access.

***The public interest***

*Nature conservation and archaeological remains and features of historic interest*

1. NE advises that the site is not subject to any statutory designations for nature conservation and no impact is envisaged on Newbury Moor Site of Special Scientific Interest (SSSI), which is approximately 400m to the north-east. I am satisfied that the works will not harm nature conservation interests. There is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

*Conservation of the landscape*

1. The common lies within the Forest of Bowland Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application and did not comment. However, both NE and OSS raised concerns about the visual impact of the track and suggested that it would introduce an urbanising feature into the AONB setting.

1. I consider that the tarmac section of the track will blend in somewhat with the road surface over time, which will diminish its impact in the long term. The remaining section will be comprised of locally sourced crushed limestone with a central grass strip, which the applicant advises is in keeping with the extensive network of tracks already crossing the common.
2. Although the access track will have a somewhat urbanising effect, it will not appear as an unduly alien feature in the landscape given the existence of other hard surfaced tracks nearby. I conclude that the works will conserve the natural beauty of the AONB.

**Other matters**

1. OSS contends that the applicant could exercise historic rights to access Giffords Barn from the adjacent property (shown as ‘Giffords’ on the application plan), which has established access from the highway. This, in OSS’ view, would provide an alternative to creating a new access track over the common. The applicant disputes that such a right subsists and contends that such access is not available. Whilst it is not clear that the applicant retains a right of way to Giffords along the existing access, I am satisfied that, as the new access will not cause unacceptable harm to the section 39 interests, there is no sound reason to withhold consent.

**Conclusion**

1. I conclude that the proposed works will not unacceptably harm the interests set out in paragraph 5 above. Furthermore, the works will help, albeit in a small way, to facilitate the provision of much needed housing; this has added weight to my decision. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

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