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# Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **10 July 2015**

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## **Application Ref: COM 699 Carnkie Common, Cornwall**

Register Unit No: CL239

Commons Registration Authority: Cornwall Council

- The application, dated 16 April 2015, 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 Robert George of Pol Arghans, Carnkie, Wendron, Helston, Cornwall TR13 0DZ.
- The works comprise a domestic garage of block construction with sheet roofing and roller door, covering an area of 97.9m<sup>2</sup>.

## **Decision**

1. Consent is refused.

## **Preliminary Matters**

2. I have had regard to Defra's Common Land Consents Policy Guidance<sup>1</sup> 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
3. This application has been determined solely on the basis of written evidence.
4. I have taken account of the representation of objection made by the Open Spaces Society (OSS).
5. I am required by section 39 of the 2006 Act to have regard to the following in determining this 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;

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<sup>1</sup> Common Land Consents Policy Guidance (Defra July 2009)

- c. the public interest;<sup>2</sup> and
- d. any other matter considered to be relevant.

## Reasons

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

6. The land is owned by the applicant, Mr Robert George. The commons register records one right attached to Sunnyside Farm "to graze 30 head of cattle and to cut and take peat or turf and to take tree loppings or gorse, furze, bushes or underwood over the whole of the land comprised in this register unit". The applicant has advised that these rights are not exercised. The register also records the claim of a right attached to High Hurst, Carnkie of vehicular access to a garage at the south east of the common. The applicant has advised that this claimed right is exercised on a daily basis.
7. While the proposal is clearly in the land owner's private interests, the issue to be decided is whether such private interests are consistent with the use of the land as common land and do not unacceptably conflict with the interests of those having common rights over the land. Works should only take place on common land when they maintain or improve the condition of the common or where they confer some wider public benefit and are either temporary in duration or have no lasting impact. There is no evidence to suggest that the claimed right of vehicular access will be compromised by the proposal. However, although the applicant has said that the rights to graze and to take produce from the common are not exercised it cannot be assumed that the rights holders will never wish to exercise their rights and, in the event that they are exercised, the amount of land available for this will effectively have been reduced by the construction of the garage. I consider that the proposed garage would unacceptably interfere with the exercise of such rights and the proposal is not therefore consistent with the use of the common.

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

8. The applicant says that the common has not been used by the public in decades, if ever. Nevertheless, the public has a right to do so. Defra's policy guidance makes it clear that consent will not normally be granted for permanent buildings on common land because such development is normally incompatible with the use of the land as common land. Whilst consent may be appropriate where such buildings are intrinsically related to the enjoyment or management of the common such as a cricket pavilion, lambing shed or a keeper's hut, a private garage cannot be said to be intrinsically related to the enjoyment or management of common land. Furthermore, the public would be unable to access the area of the common occupied by the garage.
9. Although the land may not currently be used by the public as common land this may be due in large part to the presence of buildings, such as a double garage and a shipping container, and to the general appearance of the site which includes a sizeable area of hard surfacing. These factors are likely to give walkers the impression that the land is not common and is out of bounds to the public. The construction of an additional garage will only reinforce this perception and will further discourage the public from exercising its right to access the whole of the common.

### *Nature conservation*

10. There is no evidence to suggest that the proposals will impact on nature conservation interests.

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<sup>2</sup>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.

### *Conservation of the landscape*

11. The common has no special landscape value. The site of the proposed garage lies to the south of the Rame to Portkellis road. Photographs provided by the applicant show that the site contains a shipping container and double garage, both of which can be seen from the roadside. The business premises, RG Motors, which lies behind the proposed site and beyond the common land boundary, can also be seen from the roadside. I consider that the introduction of the proposed domestic garage into this built environment will have a negligible visual impact on the landscape of the area.

### *Archaeological remains and features of historic interest*

12. Historic England advised that it did not wish to comment on the application. There is no evidence before me of archaeological remains or features within the application site or nearby which would be harmed were the garage to be built.

### **Other matters**

13. The OSS is concerned that the application is of purely private interest and contrary to the interests of the public, who have the right to walk over this land. It suggests that if the applicant wishes to erect a garage on the site he should offer land in exchange and make an application to deregister and exchange common land under section 16 of the 2006 Act. While it is open to the applicant to make an application under section 16 I have decided this application on its merits.

### **Conclusion**

14. Having had regard to the interests set out in paragraph 5 above I conclude that the proposed garage, which is for wholly private benefit, will unacceptably interfere with the public's right to access the whole of the common; this objection is decisive. The proposed garage will also harm the interests of anyone wishing to exercise their right to graze and take produce from the common should they wish to do so. This has added weight to my conclusion that consent should be refused.

**Richard Holland**