



Application Decision

by **Richard Holland**

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

Decision date: **6 July 2015**

Application Ref: COM 681

Westland Green and Pigs Green, Little Hadham, Hertfordshire

Register Unit No: CL139

Commons Registration Authority: Hertfordshire County Council

- The application, dated 3 February 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 Hertfordshire County Council, Access & Rights of Way Service.
 - The works comprise the placing of wooden posts/bollards along the edges of the common to the south of the unclassified road (U40) between Chapel Lane and Pigs Green and to the east and west of the public byway (BOAT 10) along a total length of 350 metres.
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Decision

1. Consent is granted for the works in accordance with the application dated 3 February 2015 and the plan submitted with it subject to the condition that the works shall begin no later than 3 years from the date of this decision.
2. For the purposes of identification only the location of the proposed works is shown in red on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy Guidance¹ 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.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the Open Spaces Society and Mr Andrew Baird.
6. 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;

¹ Common Land Consents Policy Guidance (Defra July 2009)

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

Reasons

The interests of those occupying or having rights over the land

7. The owner of the land has been consulted about the proposed works and has not objected.
8. Mr Baird, who holds grazing rights on the common, recognises that leisure off-road vehicular access has caused ruts so deep on boggy areas of the common that horses, sheep and people crossing it had been hindered and that maintenance – harrowing, cutting and reseeding – was impeded. However, he raised concerns that the proposals were a poor solution and would disadvantage livestock and those with grazing rights. He submitted that the best solution would be to exclude leisure off-road vehicles altogether by downgrading a small portion of the byway open to all traffic (BOAT) to a bridleway.
9. However, I note that the applicant has carried out extensive consultations with the parish council and local residents over several years before the application was made. Full consideration was given to downgrading the BOAT by various means, but it was decided that this would not have a realistic chance of success. Furthermore, the applicant believes that local residents would prefer that the BOAT is retained as an alternative means of access to their properties. The proposed works include a lockable, drop down bollard. So that they can continue to exercise their rights and responsibilities legitimate users of the common will have vehicular access to the common as they will be given a key to the bollard. The posts proposed to be installed either side of the byway will leave a 4 metre width for vehicular use of the route, which seems adequate for most purposes. Following the applicant's response, Mr Baird made no further comment and no objections were received from the other rights holders.
10. With the inclusion of the drop-down bollard I am satisfied that the proposals are an appropriate way to prevent further vehicular damage to the common whilst meeting the needs of legitimate users of the common. I am content therefore that the works will not unacceptably harm the interests of persons occupying or having rights over the land.

The interests of the neighbourhood

11. I accept the works are needed to restrict vehicles to the designated byway, preventing them trespassing and causing damage to the common. I consider that this will help to protect the common for current and future generations of local residents to enjoy, thereby benefitting the neighbourhood.

The public interest

The protection of public rights of access

12. The Open Spaces Society has no objection to the proposals provided the bollards do not encroach on the BOAT but felt confident this would be addressed as the applicant is also the highway authority.

²Section 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.

13. I am satisfied that the proposed works will not harm public rights of access as the public will continue to be able to access the common for legitimate purposes and the BOAT will remain accessible to all.

Nature Conservation

14. Natural England, which was consulted about the works, has not objected to the application and there is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

15. Wooden bollards in keeping with the area and the common will be used and I consider that any visual impact will be negligible and will be outweighed by the benefits the proposals will bring about by protecting the common from further unsightly vehicular damage thereby helping to conserve the landscape.

Archaeological remains and features of historic interest

16. There is no evidence before me of archaeological features within the application site or nearby and I am satisfied that the works will not harm any archaeological remains or features of historic interest.

Conclusion

17. I conclude that the works will not unacceptably harm the interests outlined in paragraph 6 above. Indeed, by protecting the common from further vehicular damage, the works will benefit the local community and the landscape. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland