



## Application Decision

by **Richard Holland**

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

**Decision date: 8 February 2016**

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### **Application Ref: COM 761**

### **Penrose Green, St Weonards, Herefordshire**

Register Unit No: CL231

Commons Registration Authority: Herefordshire Council

- The application, dated 4 December 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 Mrs Sophie Rainbow and Mr Andrew Newland, 3 Penrose Green Cottages, St Weonards, Herefordshire HR2 8QT.
- The works comprise two hard surfaced (40mm scalplings) access ways across roadside common land from the above address to the adjacent informal road, and are:
  - i) a 48 square metres (approx 16 metres long and 3 metres wide) vehicular driveway;
  - ii) a 12.35 square metres (approx. 9 metres long and 1.3 metres wide) footpath with timber steps to the front door.

### **Decision**

1. Consent is granted for the works in accordance with the application dated 4 December 2015 and the plans submitted with it subject to the condition that the works relating to the footpath shall begin no later than 3 years from the date of this decision.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

### **Preliminary Matters**

3. The application is part retrospective as the vehicular driveway has already been constructed.
4. The application plan shows that the existing driveway and the proposed footpath extending from 3 Penrose Green stop short of joining the informal road. The applicant has advised that in practice the driveway does join the road, as will the proposed footpath, as the road is not edged and has spread laterally as roadside grass has eroded away.
5. I have had regard to Defra's Common Land consents policy<sup>1</sup> in determining this application under section 38 of the 2006 Act, 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

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<sup>1</sup> Common Land consents policy (Defra November 2015)

the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representation made by the Open Spaces Society, which does not object to the application.
8. 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;
  - 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***

9. Common land unit CL231, known as Penrose Green, has no known owner, as set out in Commons Commissioner Decision 15/U/15 of 27 July 1977, and is subject to local authority protection under section 9 of the Commons Registration Act 1965. Herefordshire Council was served notice of the proposals but made no representation to the Planning Inspectorate. There are no registered rights of common over the land. The impact of the works on the interests of those having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it) is not therefore at issue.

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

10. The interests of the neighbourhood test relates to whether the works would impact on the way the common land concerned is used by local people. Penrose Green comprises a single rectangular block of land of approximately 0.5 hectares. It is crossed by several informal access roads, which serve a small number of properties around the outside of the common land boundary. The area of the common land concerned is roadside grass verge abutting 3 Penrose Green. Opportunities for recreational use by the public of the common would therefore appear to be very limited and the presence of a surfaced driveway and footpath would not interfere with access across it on foot. I therefore consider that the works will not adversely affect the interests of the neighbourhood or public rights of access.

### ***The public interest***

#### *Nature Conservation*

11. The grass verge has no identified special habitat or wildlife characteristics and the area to be surfaced is small. Consequently, there is no reason to think that the proposed works will have a harmful impact on nature conservation.

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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*

12. The driveway is located in an area where there are a number of other existing driveways serving neighbouring properties and is not an alien feature in the landscape. I consider that an additional footpath at the location proposed will also not be out of place and will impact on the appearance of the common only negligibly.

### *Protection of archaeological remains and features of historic interest*

13. There is no evidence before me to suggest that the works will unacceptably harm any archaeological remains or features of historic interest.

### *Other matters*

14. Defra's Common Land consents policy advises that where it is proposed to construct or improve a vehicular way across a common, such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access or access for commoners' animals. I am satisfied that the proposals are consistent with these policy objectives.

### **Conclusion**

15. I conclude that the works will not unacceptably affect the interests set out in paragraph 8 above and are consistent with Defra's policy. I therefore conclude that consent should be granted subject to the condition set out in paragraph 1.

**Richard Holland**