



# Application Decision

by **Richard Holland**

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

Decision date: **29 September 2016**

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**Application Ref: COM 3154100**  
**Kilburn Village Square, North Yorkshire**

Register Unit No: CL 193

Commons Registration Authority: North Yorkshire County Council

- The application, dated 23 June 2016, 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 Kilburn Parish Council
  - The works comprise: resurfacing of the tarmac in the square and re-bedding the granite setts. The total area of the works involves approximately 580 square metres.
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## Decision

1. Consent is granted for the works in accordance with the application dated 23 June 2016 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown as a dotted red line on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy<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 policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
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 (OSS) and the North Yorks Moors National Park Authority (NYMNP)
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;

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

- 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***

- 7. The applicant is also the landowner. There are no rights of common. I am satisfied that the proposed works will not harm the interests of those occupying the land and the interests of those having rights over the land is not at issue.

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

- 8. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. The applicant explains that the tarmac surface on the village square was laid over 25 years ago and has deteriorated to an extent that it is now considered hazardous.
- 9. I accept that the proposed works are needed urgently in the interests of public safety and, as they are simply a 'like for like' resurfacing of the existing worn tarmac area and re-bedding of the granite setts, I do not consider that they will harm public rights of access or impact adversely on the interests of the neighbourhood. Indeed, I consider that these interests will benefit from a safer and more usable village square.

### ***Nature conservation***

- 10. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

### ***Conservation of the landscape***

- 11. The common lies within the North York Moors National Park. The NYMNPA comments that any enhancement work to the appearance of the village square would be welcomed such as natural planting or the use of a bonded gravel surface. The applicant explains that, due to the current state of the square, it wishes to go ahead with a tarmac surface in the autumn but, subject to funding, finish the square in the warmer months of 2017 with the bonded gravel surface. The NYMNPA confirms that it does not object to the works and will work with the applicant to investigate the potential for grant assistance for the bonded gravel surface in due course.
- 12. Whilst a more sympathetic surface such as bonded gravel would be preferable to tarmac, I accept that the applicant, due to safety concerns, cannot delay the resurfacing until mid-2017. In any event, the application must be determined as made and I conclude that the 'like-for-like' resurfacing of the common with tarmac is likely to improve the currently unsightly appearance of the village square.

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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.

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

13. The NYMNPA has asked that a test area of tarmac is removed to see if any historic stone slabs remain underneath which could be reused in the scheme. The applicant confirms that it has made arrangements with the contractors to excavate a small area of the square before the works begin and will liaise with the NYMNPA over the findings. It is not clear how any slabs that might be found would be reused given that the works applied for involve only resurfacing and rebedding of the setts. However, there is no evidence before me which leads me to think that the resurfacing will damage any slabs that might be present and I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

### **Conclusion**

14. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and the wildlife, natural beauty and cultural heritage of the National Park will therefore be conserved. The works will also confer a public benefit by improving the condition of the village square in terms of public safety. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

**Richard Holland**



● ● ● ● COMMON LAND BOUNDARY

● ● ● ● PROPOSED WORKS

LOCATION DETAIL: KILBURN SQUARE  
KILBURN VILLAGE  
YORK

POSTCODE YO61 4AH

GRID REFERENCE

SE 51345 - 79623

EASTING 451345

NORTHING 479623

LATITUDE 54209783

LONGITUDE -1.2142467



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