
Application Decision

by Richard Holland

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

Decision date: 14 October 2016

Application Ref: COM 790

Walterstone Common, Herefordshire

Register Unit No: CL146

Commons Registration Authority: Herefordshire Council

- The application, dated 18 April 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 Lambe Corner Solicitors for Mr Richard Lloyd, Lodge Farm, Walterstone, Hereford HR2 0DT
 - The works are to lay a 22.042m long vehicular access track covering an area 80.8 square metres from the highway to Lodge Farm. They comprise a porous macadam asphalt highway apron area, cobble speed bump and gravel access drive with central grass strip.
-

Decision

1. Consent is granted for the works in accordance with the application dated 18 April 2016 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision; and
 - ii. the works shall not take place unless the development for which planning permission was granted on 12 January 2015 [Application No. P143066/F] is begun.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. From the submitted evidence it seems that some of the works may already have taken place. However, as the extent of these works is unclear I am treating the application as seeking prospective consent.
4. Planning permission for the works was granted by Herefordshire Council on 28 September 2015 (Application No. 152429).
5. I have had regard to Defra's Common Land consents policy¹ 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.
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representation of objection made by the Open Spaces Society (OSS).

¹ Common Land Consents policy (Defra November 2015)

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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land, the interests of the neighbourhood, and the protection of public rights of access

9. The proposal is to provide a hard surfaced vehicular access track across a roadside verge from the highway, known as the Vineyard, to Lodge Farm farmhouse. Vehicular access from the highway to the farmhouse is currently through the farmyard via an access track lying to the south of the proposed track. This route will no longer be available if the planning permission for the conversion of a barn to two residential units at Lodge Farm (Application No. P143066/F) is implemented. The application before me is intended to provide an alternative access to the farmhouse.
10. The land is owned by the Trustees of Walterstone Village Hall, who were consulted about the application through the Walterstone Village Hall Committee. The Trustees have not commented on the application although the applicant has said that a previous hard surfaced access track, which the proposals are intended to replace, was constructed following discussions with representatives of the Trustees. So, while there is nothing to indicate that the Trustees support the application, there is no evidence before me to suggest that their interests as land owners will be harmed by the works.
11. There are a number of registered rights to graze small numbers of sheep, cattle, ponies, chickens, geese, ducks and turkeys over the common. There are also some rights of estovers. The applicant has said that the exercising of these rights is limited to three rights holders grazing sheep during the summer months. There is no evidence to suggest that such grazing includes allowing animals to freely access roadside areas of the common such as the application site. However, should they be allowed to do so, the proposals will only remove 80.8 square metres of potentially available grazing land from the 4.05 hectare common. I am therefore satisfied that the impact of the works on the interests of persons having grazing rights over the land will be negligible.
12. 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 roadside verge narrows to the north of the application site and is at its widest to the south where it ends at the farm access way. It appears to have little recreational value other than for general access. I do not consider that the proposed works will prevent local people, or indeed the wider public, from continuing to walk on the common in the way that they may be used to. I conclude that the works will not harm the interests of the neighbourhood or the protection of public rights of access.

Nature conservation

13. There is no evidence before me that leads me to think the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

14. The applicant has apparently used the route of the track the subject of this application for many years to access parts of Lodge Farm. Walterstone Common has no special designated landscape

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.

value. OSS is nevertheless concerned that the use of asphalt in the track will have an urbanising effect on the common. I consider that the works are likely to have such an effect to a certain extent. Furthermore, the presence of two hard surfaced tracks within such a short distance of each other will cause some visual harm to the common. However, only the splayed highway apron of the application track is surfaced with asphalt (apparently a requirement of the Highway Authority); the remainder of the track consists of a cobble speed bump and a gravelled two-wheel drive with a central grass strip. Neither the splayed apron nor the drive is edged; this will allow grass and existing vegetation to encroach the edges and so soften the appearance of the track. Given this, and the fact that the hard surfacing has prevented further unsightly rutting of the common, I conclude that the impact of the works on the landscape will not be so unacceptable that consent should be refused for this reason alone.

Archaeological remains and features of historic interest

15. There is no evidence before me of any archaeological features within the application site or nearby. I am content, therefore, that the works are unlikely to harm any such remains or features.

Other matters

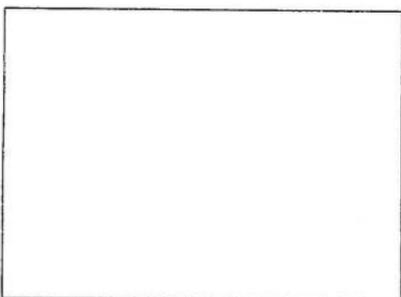
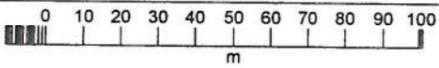
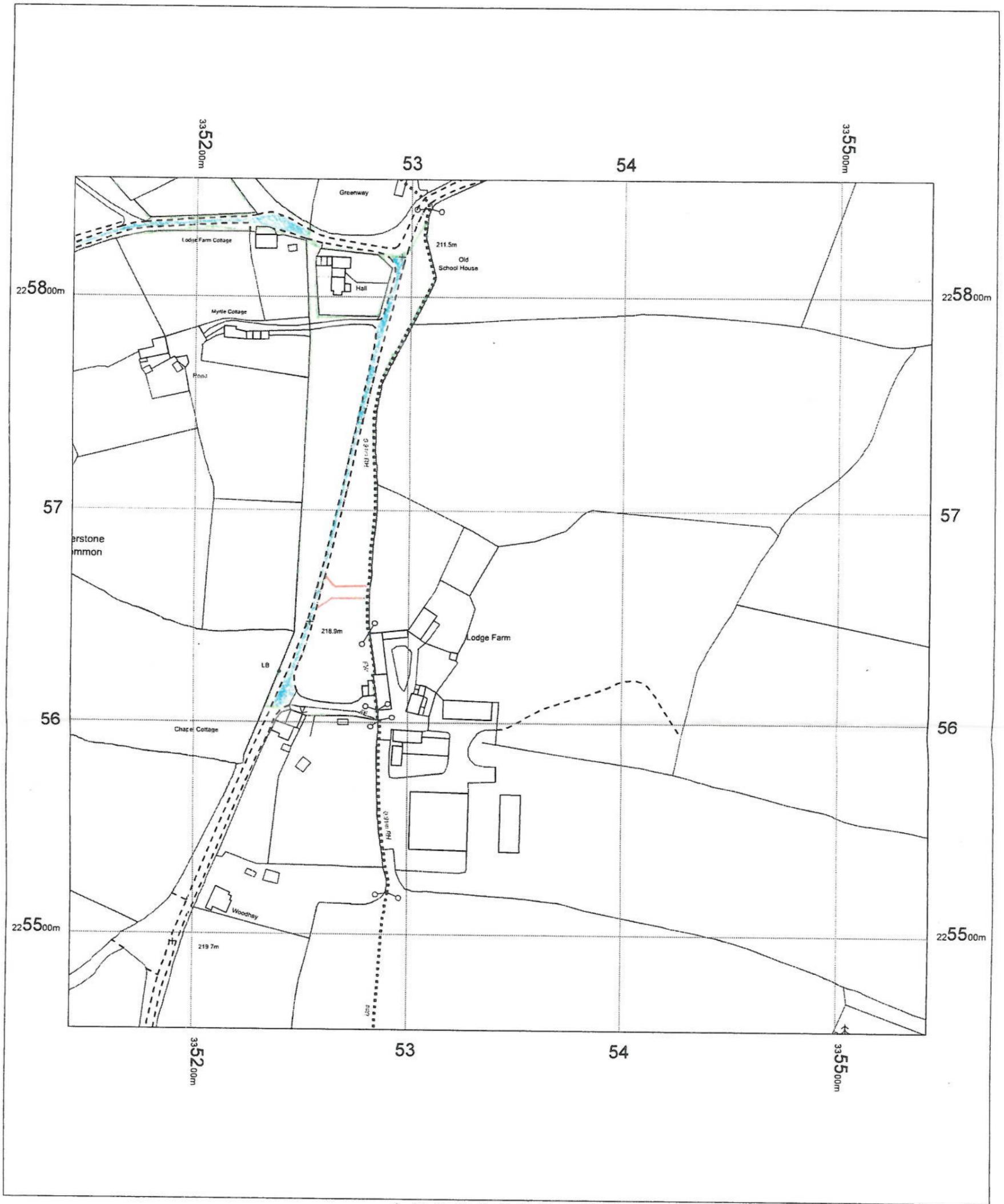
16. Defra's policy advises that *'where it is proposed to construct or improve a vehicular way across a common... such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in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

17. The works are clearly only needed if the planning permission for the barn conversion is implemented. Therefore, the granting of consent for the works will be conditional upon the implementation of the planning permission.

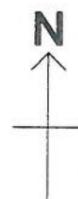
Conclusion

18. I conclude that the works will not unacceptably harm the interests set out in paragraph 8 above. There will be some visual harm to the landscape but not to such a degree that consent should be refused for this reason alone. Consent is therefore granted for the works subject to the conditions at paragraph 1 above.

Richard Holland



OS MasterMap 1250/2500/10000 scale
 26 February 2016, ID: CM-00506135
www.centremapslive.co.uk
 1:2500 scale print at A4, Centre: 335342 E, 225655 N
 ©Crown Copyright Ordnance Survey. Licence no.
 100019980



FOR A BETTER POINT OF VIEW