



Application Decision

by **Richard Holland**

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

Decision date: 4 August 2017

Application Ref: COM/3173263
WEEDONHILL GREEN, BUCKINGHAMSHIRE

Register Unit No: CL 35

Commons Registration Authority: Buckinghamshire County Council

- The application, dated 5 April 2017, 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 Susan Alaway.
 - The works comprise: the construction of a new access to Hyde Cottage covering approximately 20.81 square metres in area and of 7.250 metres in length.
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Decision

1. Consent is granted for the works in accordance with the application dated 5 April 2017 and the plans 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 coloured purple 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 (OSS), The Chilterns Conservation Board, Natural England (NE), Estates Team at Chiltern District Council and the Commons Registration Authority at Buckinghamshire County Council.
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 (Defra November 2015)

- 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 landowner, Chiltern District Council confirms that it is prepared to grant an easement allowing the applicant to cross the common. There are no rights registered over the common. I am satisfied that the proposed works will not harm the interests of those occupying or having rights over the land.

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

- 8. The proposed works are needed to implement a planning permission (CH/2016/0090/FA) for the subdivision of the Hyde Cottage plot and the erection of a new dwelling. This new dwelling will be served by the existing access currently used by the occupants of Hyde Cottage. The section 38 application therefore seeks consent for the formation of a new access to serve Hyde Cottage which, according to the applicant, is required to ensure adequate off street parking is provided and to minimise danger, obstruction and inconvenience to users of the highway and occupants of the new house.
- 9. There is no evidence that the application site is well used by local people for recreation and certainly no members of the public have objected to the application. The proposed driveway is unlikely to be heavily used by the occupants of Hyde Cottage and I do not consider that it will prevent local people or the wider public from walking on the common in the way that they are used to.
- 10. In conclusion, I am satisfied that the proposed works will not interfere with public access or adversely impact on the interests of the neighbourhood.

Nature Conservation interests

- 11. NE comments that it does not see the works as having a detrimental effect on either landscape, access or the biodiversity of the common as a whole. I am satisfied that there is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

- 12. The common forms part of the Chilterns Area of Outstanding Natural Beauty (AONB). The Chilterns Conservation Board recommends the use of sympathetic materials such as grasscrete or terram and the retention of the existing hedge, where possible, to reduce the visual impact. Chiltern District Council also comments that the proposed works should be constructed of natural materials such as hoggin (not blocked pavements). The applicant confirms that the access will be constructed with materials which are in sympathy with the surroundings and in keeping with adjoining properties; the top surface will be gravel or shingle.
- 13. The OSS considers that the many driveways over this common should be discounted when determining whether to give consent. The applicant in response argues that it is incorrect to disregard the situation on the ground; the common is already crossed by many

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.

accessways and there is a separate vehicular and pedestrian access for every house fronting onto Weedon Hill.

14. It is a condition of the planning permission that the materials used for the access are approved by the District Council to ensure that the development's visual impact is acceptable. I consider that, when seen in the context of the many other driveways crossing the common which serve properties along Weedon Hill, the formation of the application driveway with loose surface materials that are both natural and in keeping with the area will not have an unduly harmful or urbanising impact on the appearance of the common and will conserve the natural beauty of the AONB.

Archaeological remains and features of historic interests

15. There is no evidence before me to suggest that the works would harm any archaeological remains or features of historic interest; HE does not object to the application.

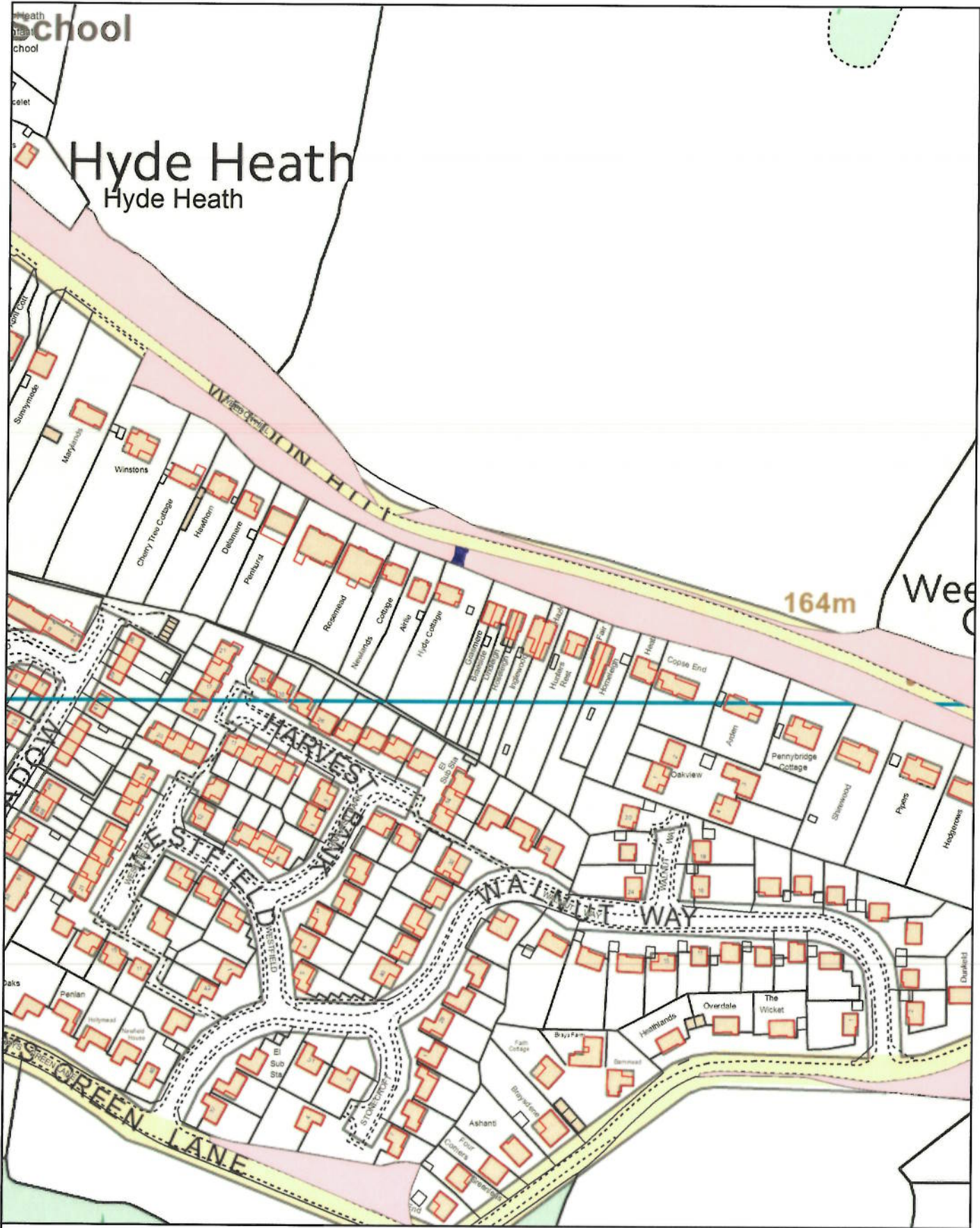
Other relevant matters

16. I note that the OSS is concerned that the access will conflict with Defra's policy guidance. The policy guidance on vehicular ways states that "*Where it is proposed to construct or improve a vehicular way across a common....consent will be required under section 38 if the works involve the 'laying of concrete, tarmacadam, coated roadstone or similar material' (other than for the purposes of repair of the same material). 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. However, by its very nature, paving will have an impact on the enjoyment of the common, by reducing the area available for recreation and grazing, by causing harm to habitat, perhaps by affecting drainage, and by introducing an urbanising feature into what will normally be an essentially open and natural setting. The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common. Where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable*". As the proposed driveway will be surfaced with loose material I consider that the works will not conflict with the policy guidance.

Conclusion

17. I conclude that the works will not harm the interests set out in paragraph 6 above and are not inconsistent with Defra's policy guidance. OSS considers that the works are not needed because the occupants of Hyde Cottage can share the existing access with those of the new dwelling. However, as I have concluded that the new access will not cause any serious harm I give this objection little weight. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland



Common Land

— PARISH BOUNDARY



1:2,500

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