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# Application Decision

by **Richard Holland**

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

Decision date: **25 September 2017**

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**Application Ref: COM 3173206**

**PILTDOWN AND GRISLING COMMON, EAST SUSSEX**

Register Unit No: CL 30

Commons Registration Authority: East Sussex County Council

- The application, dated 3 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 Mr Martin Batchelor.
  - The works are to lay approximately 50 m<sup>2</sup> of hard surface over a new access to land at Down Street, Piltdown.
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## Decision

1. Consent is granted for the works in accordance with the application dated 3 April 2017 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 access is shown outlined in red.

## Preliminary Matters

3. The applicant has confirmed that a timber gate which was originally included in the works no longer forms part of the application.
4. I have had regard to Defra's Common Land Consents Policy Guidance<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 guidance if it appears appropriate to do so. In such cases the decision will explain why it has departed from the guidance.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representation made by the Open Spaces Society (OSS).
7. 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***

8. The landowner, Mr Creamer has been consulted about the application and has not objected. There are a number of rights registered over the common. The applicant confirms that the rights are not exercised. I am satisfied that the proposed works will not impact adversely on 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 interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The proposed works are required to provide direct access to Eleplants Nursery from the adjacent road Down Street following severance of Eleplants Nursery from the adjacent Malling Farm. While a right of way through the farm was reserved this is apparently unsatisfactory in terms of both general security and bio-security. The works have been granted planning permission (WD/2016/2757/F).
10. There is no indication that this area is well used by local people or those wishing to exercise rights of access. In any case, I do not consider that the proposed works will unduly restrict or interfere with the use of the common by local people or public rights of access as the number of vehicles crossing the access is unlikely to be great. I conclude that the proposed works will not unacceptably harm the interests of the neighbourhood or public rights of access.

### ***Nature Conservation***

11. 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 proposed works are located within the High Weald Area of Outstanding Natural Beauty (AONB). The applicant explains that the proposed works will not impact on the rural character of land and will entail only the removal of a modest area of scrub.
13. Although the works will have a somewhat urbanising effect on the largely rural surrounding area I do not consider that the visual impact will be unduly harmful given that works will be undertaken on a small area of roadside verge alongside the highway. I conclude that the proposed works will conserve the landscape and the natural beauty of the AONB.

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

14. I am satisfied that there is no evidence before me to indicate that the proposed works will harm any archaeological remains and features of historic interest.

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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.

## **Conclusion**

15. Defra's policy guidance 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'*.
16. I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above and are consistent with Defra's policy guidance. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

**Richard Holland**

Eleplants Nursery  
Down Street Piltdown



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Location Plan CD1