
Application Decision

by **Richard Holland**

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

Decision date: 19 February 2018

Application Ref: COM/3189564

Bringsty Common, Near Bromyard, Herefordshire

Register Unit No: CL14

Commons Registration Authority: Herefordshire County Council

- The application, dated 17 November 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 Jonathan Gros for Mrs Susan Long, Sunnyside Cottage, Bringsty Common WR6 5UP.
- The works comprise a permeable type 1 stone surfaced vehicular access way covering 36 square metres (4 metres wide x 9 metres long).

Decision

1. Consent is granted for the works in accordance with the application dated 17 November 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 works is shown hatched red on the attached plan.

Preliminary Matters

3. 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.
4. This application has been determined solely on the basis of written evidence. I have taken account of the representation made by the Open Spaces Society (OSS), which raised no objections to the proposed works.
5. 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.

¹ Common Land Consents policy (Defra November 2015)

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.

Reasons

The interests of those occupying or having rights over the land

6. The common land unit is owned by Herefordshire County Council, which was consulted but has not commented on the application. The common land register records numerous rights of grazing, turbury, estovers, pannage and common in the soil. The applicant has advised that commoners have decreased the use of their rights over the last two decades and that he has not been able to trace anyone that still exercises their rights. It may nevertheless be that rights exist over the area of land subject to the application and that the rights holders may wish to exercise them at some future point. However, I consider it unlikely that the extent of the proposed works will impact significantly on the exercising of any such rights. I am satisfied that the works are unlikely to harm the interests of those having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it).

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

7. The plan submitted by the applicant shows that the application site is trackside verge at the edge of the common along a vehicular route from Hainscroft to the A44 highway. The works are proposed to allow access from the track across the verge to a field used by the applicant. The field is currently accessed via the rear of the property 'Midden' which separates the applicant's property from the field. Midden is for sale and this access arrangement will cease once it is sold.
8. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people and is closely linked with public rights of access. The verge appears to have little recreational value other than for general access. In any case, the proposed access way will introduce no impediment to access as local people and the wider public will be able to walk across it and continue to use this part of the common as they may do now as the number of vehicle movements along the access is likely to be low.

Nature conservation and archaeological remains and features of historic interest

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

Conservation of the landscape

10. Although proposed for a rural area where there are few buildings, the access way will be close to access ways serving Midden and Sunnyside Cottage (approximately 35 metres and 50 metres away respectively) and so will not be an alien feature in the landscape. It will take up only a small area of land and the proposed stone/gravel surface has been chosen so that it will match that of the track. I am satisfied that the proposed access way will not have a significant impact on the landscape.

Other matters

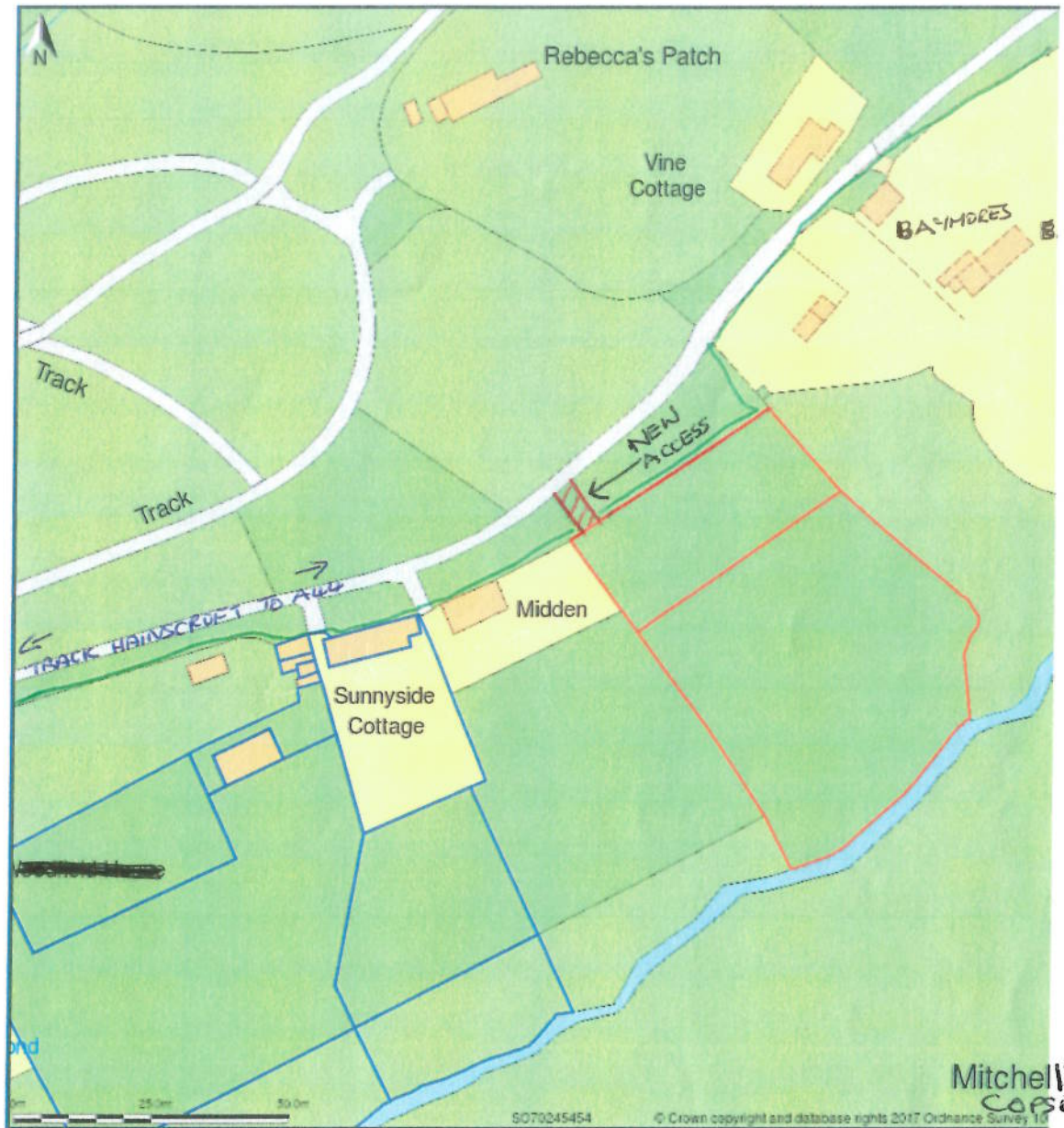
11. Defra's policy advises that '*...where it is proposed to construct or improve a vehicular way across a common... such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not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

Conclusion

12. I conclude that the works will not harm the interests set out in paragraph 5 above and that consent should therefore be granted.

Richard Holland

Sunnyside Cottage, Access off Track From Hainscroft To A44, Bringsty Common. Here FERRISHAM
WR6 5UP



Site Plan shows area bounded by: 370141.02, 254442.97 370341.02, 254642.97 (at a scale of 1:1250), OSGridRef: SO70245454. The representation of a road, track or path is a way. The representation of features as lines is no evidence of a property boundary.

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- EDGE OF BRINGSTY COMMON (BOUNDARY)
- ACCESS TRACK INTO FIELD.