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# Application Decision

by **Richard Holland**

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

Decision date: 17 October 2018

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## Application Ref: COM 3202300 Broadmoor Common, Woolhope, Herefordshire

Register Unit No: CL85

Commons Registration Authority: Herefordshire Council.

- The application, dated 28 April 2018, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Mr Steven Horne.
  - The works at Broadmoor Chapel comprise:
    - (i) resurfacing with concrete of a 3 metre long section of track forming a junction with the highway; and
    - (ii) installation of a pre-manufactured below ground micro domestic sewage plant.
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## Decision

1. Consent is granted for the works in accordance with the application dated 28 April 2018, as amended, and accompanying plan, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision; and
  - ii. the common shall be restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works is shown on the attached plan.

## Preliminary Matters

3. The application originally included proposals to form an unsealed stone surface to an existing track extending approximately 75 metres from the highway to Broadmoor Chapel. The applicant subsequently withdrew this part of the application as the unsealed surface would be formed of a loose material, which, on the basis of published Planning Inspectorate guidance<sup>1</sup>, he considered not to need section 38 consent.
4. The application makes reference to previous section 38 consent granted for similar works at the site<sup>2</sup>. The applicant has confirmed that this consent, which lapsed on 15 August 2017, was never implemented and only minor preparatory weed clearance work was carried out.
5. I have had regard to Defra's Common Land consents policy<sup>3</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.

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<sup>1</sup> Common Land Guidance Sheet 4: Resurfacing works 05/2018

<sup>2</sup> Application Decision reference COM 586 of 15 August 2014.

<sup>3</sup> Common Land Consents policy (Defra November 2015)

6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by the Open Spaces Society (OSS).
8. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
  - ii. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - iii. the interests of the neighbourhood;
  - iv. the public interest;<sup>4</sup> and
  - v. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

9. The common land is owned by Herefordshire Council (the Council), which has given planning permission for the change of use of the redundant Broadmoor Chapel to a dwelling<sup>5</sup>. The Chapel itself is outside the common land boundary. The applicant has said that the proposed works are a pre-requisite of the planning permission and that the Council Ecologist has given approval for the positioning of the sewage plant. The Council has confirmed that consent for the works will be incorporated into an easement agreement to be entered into with the applicant. On this basis I conclude that the works will not harm the interests of those occupying the land.
10. The common land register records seven rights to graze cattle, sheep and horses over the common. The applicant has said that none of the rights are exercised. No rights holders commented on the application. There is no evidence before me to suggest that the works will harm the interests of those having rights of common over the land.

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

11. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with the interests of public access. The common land register map shows that the track is flanked on both sides by land that does not form part of the common land unit so the common land to be affected by the works is limited to the track itself. The concrete resurfacing and upgrading of the track entrance from the highway to the Chapel is intended to improve road safety when vehicles enter and leave the highway. The sewage plant will be located some 75 metres away towards the northern end of the track.
12. I consider that concreting a small area of the track will cause only a very short term impediment to local use of the common land and public access. Once the concrete is set it will be possible to walk over the area in the same way that it is now. I am satisfied that the topography at the Broadmoor Chapel site requires the below ground sewage plant to be installed within the common land boundary. Whilst the sewage plant will leave three above ground access covers, the applicant has confirmed that they will be flush to the ground and will therefore impede access only negligibly. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

### ***Nature conservation and conservation of the landscape***

13. The site lies within the Broadmoor Common Local Nature Reserve. Natural England was consulted about the application but did not comment and no concerns have been raised from any party about the impact of the works on nature conservation. The planning permission is conditional upon

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<sup>4</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.

<sup>5</sup> Planning Permission of 7 August 2017: Application No: 171668.

implementation of an ecological compensation, mitigation and working methods scheme to ensure that all species are protected and habitats enhanced. I am satisfied that subject to adherence to this planning permission condition the works will not harm nature conservation interests.

14. The site lies within the Wye Valley Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. Photographs submitted by the applicant with the application show that other local properties have concrete vehicular access points onto the highway so the track resurfacing will not look out of place in the surrounding environment. The three flush-to-ground access covers will be the only visible features of the sewage plant and the land will be fully reinstated on completion of the works, which can be ensured by attaching a suitable condition to the consent. Given the scale and location of the works I consider that the visual impact on the landscape will be limited and I am satisfied that the natural beauty of the AONB will be conserved.

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

15. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest. Indeed, the works form part of the plans to convert the disused chapel to a dwelling, which will restore and preserve a historically interesting building.

### **Other relevant matters**

16. OSS contends that the land is subject to a scheme of management made by the former Ledbury Rural District Council (now Herefordshire Council) and confirmed by the Board of Agriculture on 1 August 1901. The OSS says that, under the scheme, the resurfacing works are incapable of consent under section 38 but that the Council, in whom the scheme is vested, may give consent. However, where a common is subject to a scheme of management applicants should satisfy themselves that Secretary of State consent is needed for the works. In this case an application for consent has been made and it has been decided on its merits.
17. 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... 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 proposed concrete resurfacing works are consistent with Defra's policy objectives.
18. Defra's policy guidance also advises that *"works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses..... consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit"*. The application works will not confer a public benefit as such since they serve only a single property. However, the works will allow for the preservation and use of a historically interesting building as a dwelling and their impact on the common and its users will be insignificant. It would not therefore be in the public interest to withhold consent.

### **Conclusion**

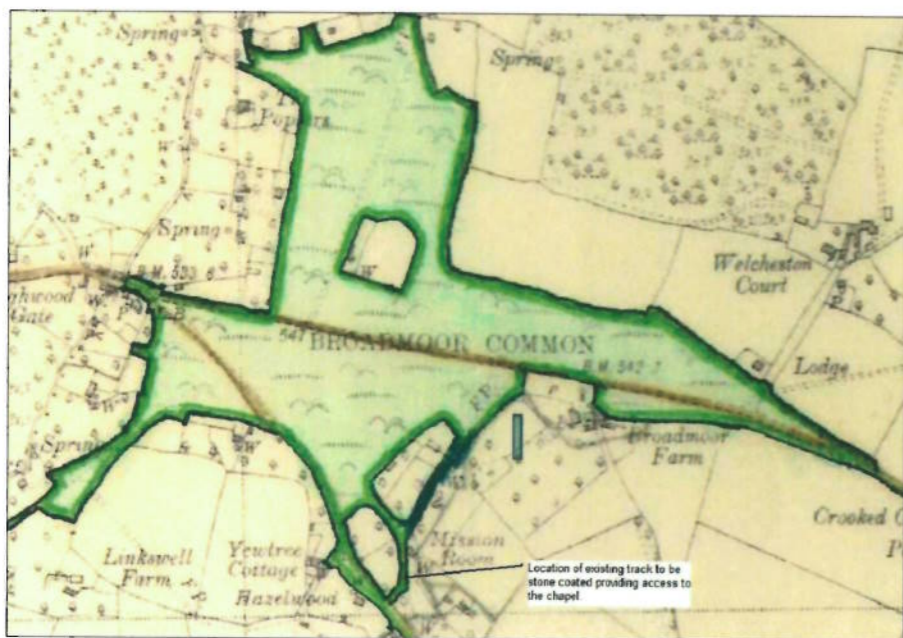
19. I conclude that the proposed works will not significantly harm the interests set out in paragraph 8 above will allow for the preservation and continued beneficial use of a historically interesting building. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

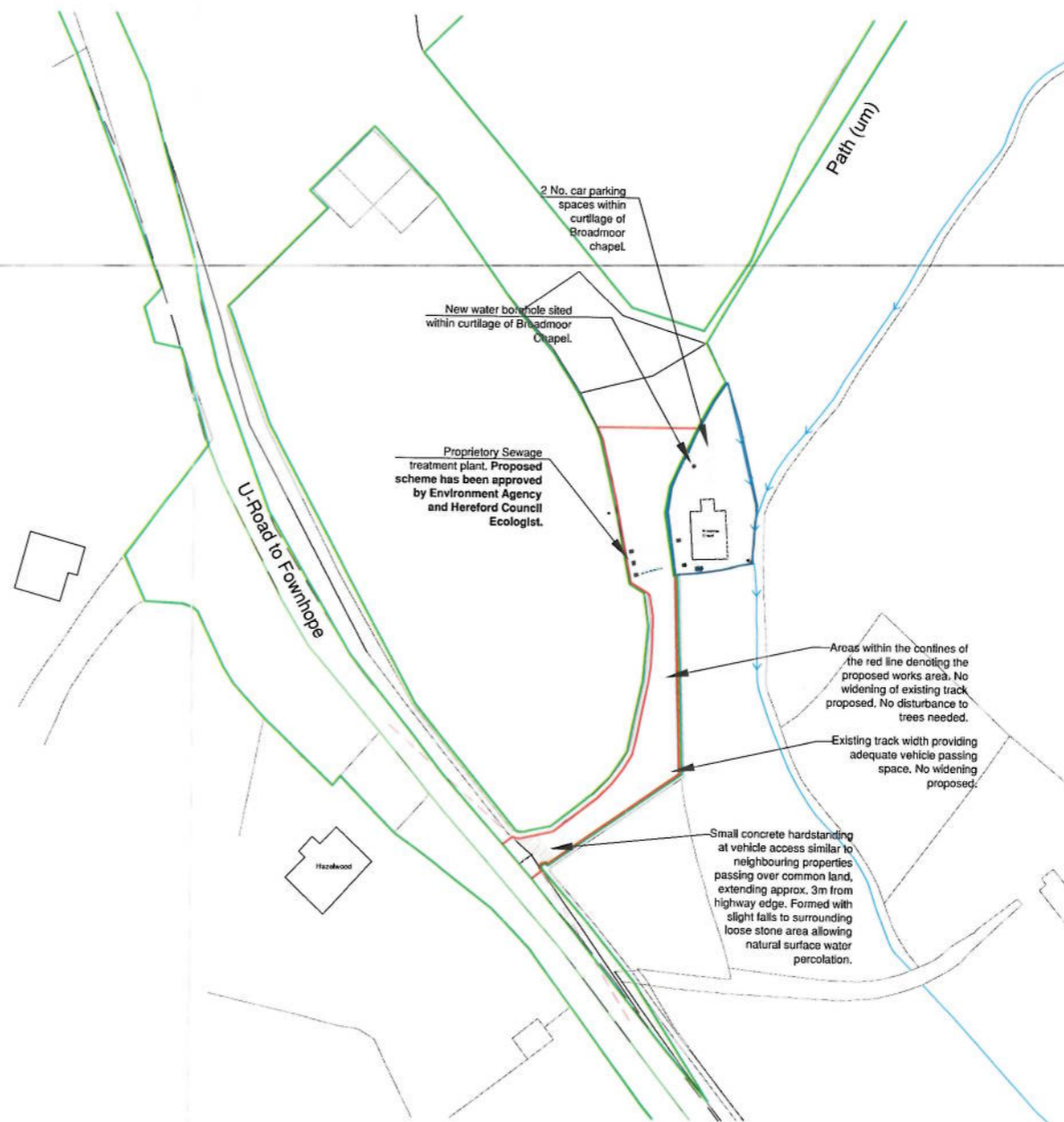


**BROADMOOR COMMON LOCATION PLAN**  
Scale 1:1250 @ A1

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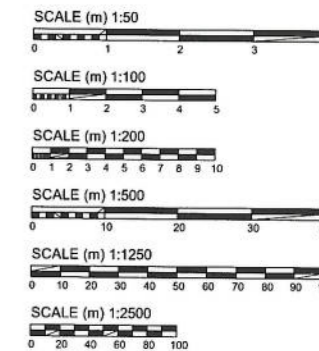


**COMMONS REGISTER MAP EXTRACT**  
REGISTER UNIT NUMBER CL 85  
NTS 1:500 @ A1



**BROADMOOR COMMON LOCATION PLAN ENLARGED**  
Scale 1:500 @ A1

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KEY	
	Denoting extent of site of proposed works.
	Denoting Broadmoor Chapel curtilage.
	Denoting boundary of registered common land - Broadmoor common.

Rev	Date	Amendment

Client: Mr Horne

Project title: Broadmoor common - Woolhope

Drawing title: Location Plan - S38 Application

Scale: 1:1250/500@A1	Date: April 2018	Drawn by: -
Drawing number: 3068-303	Revised: -	Checked by: -

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