

Application Decision

by **Richard Holland**

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

Decision date: 12 February 2019

Application Ref: COM/3212629**Land Adjacent Cheney Hill/Heacham Common, Norfolk**

Register Unit No: CL 127

Commons Registration Authority: Norfolk County Council

- The application, dated 13 September 2018, is made under Section 38 of the Commons Act (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Miss L Hutchinson.
 - The works comprise (i) removal of one of five birch trees located on the 'heater island'; (ii) removal of the current 'heater island' gravel access arrangement (two separate access roads) equating to 68 m² and (iii) construction of a single vehicular entrance perpendicular to 'Cheney Hill' of 45 m² made up of gravel and tarmac surfacing.
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Decision

1. Consent is granted for the works in accordance with the application dated 13 September 2018 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;
 - ii. within one month from the from the completion of the works the Silver Birch shall either be replanted south of the access road, broadly in line with 4 other trees located on the common, or a new mature Silver Birch shall be planted at this location; and
 - iii. the common shall be reinstated within one month from the completion of the works.
2. For the purposes of identification only the location of the proposed works are outlined in red 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 Historic England (HE) and Heacham Parish Council (the Parish Council).

¹ Common Land Consents Policy (Defra November 2015)

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;
 - 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 common has no registered owner. The Parish Council has submitted a Commons Commissioner's decision showing that the land is subject to protection under section 9 of the Commons Registration Act 1965 by the local authority, which in this case is the Parish Council.
8. The applicant has explained that the works will reduce the area currently used for access from 68 m² to 45 m². An area of 23 m² of common will be restored to grass/vegetation and, subject to Highway Authority agreement, the silver birch tree located on the application site which will be affected by the works will either be relocated south of the access road, broadly in line with 4 other trees located on the common, or a new 5-7 m tall mature silver birch tree will be planted at this location.
9. There are no rights registered over the common and so this matter is not at issue. I do not consider that works will adversely impact on the management of the common, given that they will result in the reduction of the area of land currently used for access. I conclude that the works will not harm the interests in this case.

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

10. 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 applicant explains that the current 'heater island' arrangement, which entails two separate accesses, will be made into a single vehicular access serving 6 residential properties. The current access arrangement allows only oblique views to those exiting the site by vehicle onto the road 'Cheney Hill'. The works form part of a development of two dwellings which has been granted planning permission (18/00369/F) and are intended to improve visibility and remove the existing oblique views. The applicant has considered an alternative to the works but felt that this was not adequate as it would locate the access further south, placing the access nearer to the brow of Cheney hill and opposite an access to a new development of 69 new dwellings.
11. The Parish Council is of the view that the main entrance (to the right of the heater island) has been safe and adequate for a number of years and has supplied images of the existing access entrance to show visibility. In response, the applicant explains that the current access and visibility onto Cheney Hill is considered inadequate by the Highway Authority (Norfolk County Council). The applicant adds that the images submitted by the Parish Council are based on a person standing on the footpath and has provided their own photographs, based on an individual exiting onto Cheney Hill within a vehicle, to demonstrate that visibility is inadequate at all three vehicular access points and increased levels of perpendicular visibility are achievable, in both directions, from the centre of the proposed access road.

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.

12. The applicant has supplied a letter from the Highway Authority commenting on the planning application, confirming that the works will address the substandard access and visibility arrangements. The new access and the closure of all other accesses to the site are a condition of the planning permission. I accept that the works are needed to improve visibility and the safety of those using the current access. Access to the common will be maintained and I am satisfied that the works will not prevent local people or the public from using the common in the way that they are used to. I conclude that the proposed works will not harm the interests of the neighbourhood or the protection of public rights of access.

Nature conservation and conservation of the landscape

13. The new access will be constructed of gravel and tarmac and have a somewhat urbanising effect. However, I am satisfied that the overall reduction in hard surfacing and the relocation or replacement of the birch tree on the common will mitigate the visual impact of the works such that their visual impact will not be unacceptable. I am satisfied that there is no evidence before me to indicate that the proposed works will harm nature conservation interests and the mitigation measures, secured by conditions to the consent, will help conserve the landscape.

Archaeological remains and features of historic interests

14. HE does not object to the application. The applicant confirms that the Archaeology and Historic Environment Team at Norfolk County Council has been consulted about the application; it too has not objected. The Parish Council is of the view that the works will further erode and damage the common that is of local historic significance, although it has not explained what that significance is. In the absence of any evidence to the contrary, I conclude that the works will not harm any archaeological remains or features of historic interest.

Other matters

15. I note that the Parish Council raise the matter of a new junction to nearby housing development. I consider the new junction and the reasons for approval by the highways authority a separate matter to the application before me. The matter has therefore not formed part of my determination.

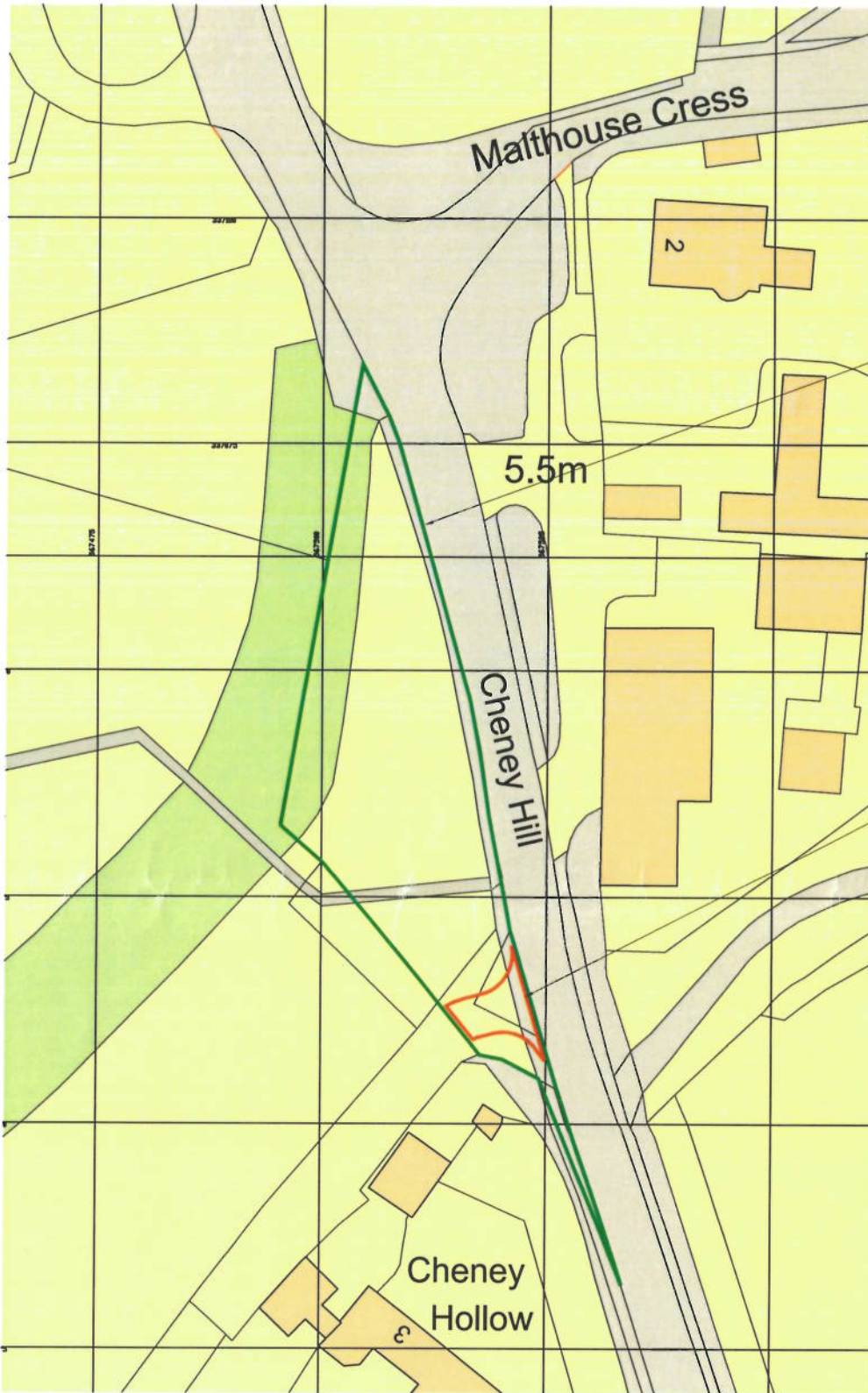
16. The Parish Council also asserts that the silver birch was planted to signify that the land is common. However, an entry in the commons register is the only lawful mechanism by which land can be defined as common.

Conclusion

17. Defra's Common Land Consents Policy 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, tarmac, 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*". I consider that the works accord with the guidance.' I am satisfied that the works accord with the policy guidance.

18. I conclude that the works will not harm the interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



Green line denotes the boundary of the common land, CL No: CL127. Area approx. 1060 sq metres.

Red line denotes extent of works proposed within common land. Area approx. 45 square metres.

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Location Plan Scale 1:500



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IMPORTANT INFORMATION

THIS DRAWING HAS BEEN PREPARED TO SUPPORT A SECTION 38 APPLICATION ONLY.

Revision:	Date:
Project: Land Adjacent Cheney Hill Heacham Norfolk PE31 7BX	Russen & Turner 17 High Street King's Lynn Norfolk PE30 1BP Phone: 01553 748256
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Drawing Title:
Location showing proposed works to Common Land (CL Ref: 127)

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