



Application Decision

by Richard Holland

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

Decision date: 3 April 2019

Application Ref: COM/3220552

Vinney Green, South Gloucestershire

Register Unit No: CL 65

Commons Registration Authority: South Gloucestershire Council

- The application, dated 9 January 2019, 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 South Gloucestershire Council.
 - The works comprise a new tarmacadam vehicular track with tarmacadam footpath on 168 m².
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Decision

1. Consent is granted for the works in accordance with the application dated 9 January 2019 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is hatched in 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.
5. I have taken account of the representation made by the Open Spaces Society (OSS).
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 owner of the common, Emersons Green Town Council, has been consulted about the application and has not objected to the proposed works. There are no rights registered over the common. I am satisfied that the works will not harm the interests of those occupying the common and the interests of those having rights over the land is not at issue.

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

- 8. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. The applicant explains that the works are needed to create a safe vehicular access to and from a proposed housing development. The common also forms part of a main walking route to Mangotsfield Primary School; a new footpath will provide safer access to the school as pedestrians currently have to walk in the road. An existing single track on the common cannot be used to access the proposed development as it forms the only access route to Vinney Green Secure Unit and constant emergency access to and from the unit is required. The track is unable to accommodate the level of residential traffic expected to be generated by the proposed development and cannot be widened due the presence of trees protected by Tree Preservation Orders (TPOs). The OSS comments that the works will resolve issues with an adjacent derelict site (which I take to mean the proposed housing development site) and will be beneficial as a route to school.
- 9. Apart from general access, the application site would seem to have little recreational value. I accept that the works are needed to provide a safe access route for pedestrians and a safe vehicular route to and from the proposed housing development. Although it is not clear how much traffic will use the access, it is unlikely to be so great as to significantly interfere with the way local people currently use the common. I am satisfied that public rights of access over the common will be maintained and the new footpath will facilitate access. I conclude that the works will not adversely impact on the interests of the neighbourhood or public rights of access.

Nature conservation

- 10. There is no evidence before me to indicate that the works will impact on nature conservation interests.

Conservation of the landscape

The applicant explains that the location of the access has been chosen to limit the area of common needed and minimise its impact on the natural environment by avoiding trees protected by TPOs. I consider that although the works will introduce a further urbanising feature on the common, the route has been chosen to avoid

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.

harm to trees protected by TPOs and the slight visual impact is outweighed by the benefits to users of the common from having a new footpath and by helping to facilitate the provision of new housing.

Archaeological remains and features of historic interest

11. There is no evidence before me to indicate that the works will harm any archaeological remains or features of historic interest.

Conclusion

12. Defra's policy guidance advises 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.*" I am satisfied that the proposed works accord with the policy guidance.
13. I conclude that the works will not harm most of the interests set out in paragraph 6 above. The limited visual impact on the landscape is outweighed by improved pedestrian access and the benefit to the wider public interest through helping to facilitate the provision of new housing. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

Vinney Green Common Land - Application

Common = Green, Proposed Access = Red, Pond Fence = hatched black

Compiled on 07/11/2018

Scale 1: 1,250

CE&CR Department
PO Box 300
Property Services
Civic Centre
High Street
Bristol
BS15 0DS



Please note: this plan is an indication only of Council ownership.
Definitive boundaries should be obtained from the relevant Deed Packet