
Application Decision

by Richard Holland

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

Decision date: 5 June 2019

Application Ref: COM/3216980

Land in the parish of Normanton-on-Trent (Hanginghill Lane), Nottinghamshire

Register Unit No: CL74

Commons Registration Authority: Nottinghamshire County Council

- The application, dated 1 December 2018, 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 Andrew Winfrow.
 - The works comprise 1m high open iron railings enclosing 15 square metres of common land. A 10-year consent is sought.
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Decision

1. Consent is refused.

Preliminary Matters

2. This application is retrospective.
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 representations made by Natural England (NE), the Open Spaces Society (OSS), Helena Bulut, Mark & Anne Chambers, Judith Corker and Allen Gardener.
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.

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

7. The Commons Commissioner found in 1985 that no person was the owner of the land and that it remained subject to local authority protection under section 9 of the Commons Registration Act 1965 (now under section 45 of the Commons Act 2006). In its letter to the applicant of 7 November 2018 Nottinghamshire County Council (NCC) advised that it would not object to an application for retrospective consent for the railings provided that the applicant gave a specific date (within a reasonable timeframe) for its permanent removal and that various items placed within the railings (garden furniture, ornaments, etc.) were removed immediately. NCC did not subsequently comment on the application made but I am satisfied that it does not object in principle.
8. In completing the application form the applicant gives Normanton Parish Council (Normanton on Trent with Marnham Parish Council – “NPC”) as the owner of the land. NPC was consulted by the applicant about the application but it did not comment other than to advise that it had been made aware of the application. NPC made no reference to ownership of the land and no evidence as to ownership has been submitted by any party to have commented on the application. In the absence of evidence to the contrary, I am satisfied that NPC owns the land. The applicant does not appear to have any rights over the land.
9. The land forms part of Hanginghill Lane (the Lane) and is both common land and highway. The railings effectively bring the land they enclose within the curtilage of the applicant’s property at 1 Skegby Manor Cottage; I make no comment on the lawfulness of this action. The applicant says the railings have been erected to prevent his granddaughter from running from the property on to the Lane and being struck by passing vehicles. Photographs submitted by the applicant show a door to the property that, in the absence of the railings, would open directly onto the Lane. The railings were erected following a near miss involving another child.
10. There are grazing rights registered in the name of NPC, which the applicant has said are not exercised. NPC has not claimed otherwise. I am satisfied that the works do not harm the interests of those occupying or having rights 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 affect the way the common land is used by local people. Mrs Corker and Mr Gardener raised concerns that the Lane is used by local farmers as the only access to their fields and that by narrowing it the railings impede access. Ms Bulut and Mr & Mrs Chambers also raised concerns about reduced access along the Lane due to the presence of the railings. The applicant has denied that the local farmer’s access is affected. Photographs submitted by Mr & Mrs Chambers show that the railings do not narrow the Lane to such an extent that vehicular access is seriously impeded. No interested parties identifying themselves as local farmers have objected to the application. Nevertheless, the railings clearly prevent the public from accessing part of the common and are against the interests of the neighbourhood.

Nature conservation

12. NE advised that there is no biodiversity impact. There is no evidence before me that leads me to think that the railings harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

13. I consider from the photographs submitted by the applicant and by Mr & Mrs Chambers that the railings, which are ornate rather than utilitarian, do not look out of place against the backdrop of the house.

Archaeological remains and features of historic interest

14. There is no evidence before me to suggest that any such remains or features have been harmed by the railings.

Conclusion

15. It is Government policy that the special qualities of common land, including its open and unenclosed nature, are properly protected. Although the application land amounts to only a very small proportion of the common, the railings enclose it and prevent public access; the application therefore conflicts with this policy. Whilst I understand the applicant's wish to protect his granddaughter from collisions with vehicles passing his property this does not outweigh the unacceptable harm that the railings cause to the interests of public access and of the neighbourhood. I consider that alternative measures that do not involve the enclosure of common land could be taken, such as keeping doors facing the Lane locked when children are in the house. Consent is therefore refused for the works.

Richard Holland