
Application Decision

by **Richard Holland**

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

Decision date: **1 August 2019**

Application Ref: **COM/3231032**

Mellis Common, Suffolk

Register Unit No: CL162

Commons Registration Authority: Suffolk County Council

- The application, dated 9 June 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 Mr Malcolm Rice and Mrs Karen Rice, Breccles, Rectory Road, Mellis IP23 8DZ.
 - The works comprise the laying of approximately 66m² of asphalt to widen an existing vehicular access point to the Breccles site and to create a new vehicular passing place.
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Decision

1. Consent is granted for the works in accordance with the application dated 9 June 2019 and the submitted plan subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision; and
 - ii. the land shall be fully reinstated within one month of completion of the works.
2. For the purposes of identification only the location of the works is shown shaded grey on the attached plan.

Preliminary Matters

3. Planning permission for residential development at the Breccles site (erection of a replacement dwelling following the demolition of Breccles and erection of a further four dwellings) was granted by Mid Suffolk District Council on 29 May 2018 (Application DC/17/05926).
4. The application as originally made was to lay asphalt over approximately 150m² of the common. However, the accompanying application plan indicated that the works applied for were parallel to, but entirely outside of, the common land boundary. The applicant has since amended the application, and submitted a revised plan, which seeks consent to lay approximately 66m² of tarmac on the common. These amendments provide clarity and I am satisfied that they have not prejudiced any person wishing to make a representation about the application.
5. 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.

¹ Common Land Consents policy (Defra November 2015)

6. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Historic England (HE), Suffolk County Council Archaeology Service (SCCAS) and the Open Spaces Society (OSS).
7. 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

8. The common land is owned by Suffolk Wildlife Trust (SWT), which was consulted about the application but did not comment. The common land register records various rights to graze cattle and horses over the whole of the common land unit, although the applicant has advised that only one rights holder exercises such rights. The single active rights holder was consulted about the application but did not comment. The area of common affected by the works is narrow roadside grassed verge along Rectory Road (the road) and is also designated highway land. I consider it unlikely that rights holders would wish to graze cattle or horses over this part of the common and there is no evidence of such use. I am satisfied that the works will 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

9. 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 the interests of public rights of access. The affected grass verge appears to have little recreational value other than for general access and dog walking. I consider that widening the access point will impact negligibly on such use as it will be small-scale and it will be possible to walk over the access point just as before.
10. The new dwellings are presumably expected to lead to increased vehicular use of this part of the road as the passing place is required as a condition of the planning permission to enable safe and suitable access in the interests of highway safety. Whilst the passing place will also be small-scale and easily walked over, it will effectively change the land from roadside verge into part of the road itself. Nevertheless, it will remain registered common land and rights to walk over it will continue. Furthermore, in the absence of a formal passing place at this location vehicles may be forced to encroach onto the verge in order to pass; this is likely to cause unsightly damage to the verge. I conclude that creating a formal vehicle passing place by surfacing an area of the verge with asphalt is preferable and will not unacceptably harm the interests of the neighbourhood and public rights of access.
11. The application includes proposals to erect temporary safety/security fencing during the course of the works. The applicant has since confirmed that the fencing will not encroach onto the common land and consent for it is therefore not required.

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.

Nature conservation

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

Conservation of the landscape

13. The common land has no special designated landscape value and the roadside area concerned is visually unremarkable. Whilst the proposed asphalt will initially stand out, it will in time blend in with the existing road surface and I do not consider that it will cause unacceptable visual harm.

Archaeological remains and features of historic interest

14. HE advised that it had no objection in principle to the proposed works on heritage grounds. SCCAS advised that it had no objection to the proposals and that no archaeological mitigation was required. I am content, therefore, that the works are unlikely to harm any such remains or features.

Other matters

15. OSS contends that an application under S16, and not S38, of the 2006 Act to deregister and exchange common land should have been made as this would allow for the provision of replacement land to offset the loss of green space to asphalt. However, granting consent for the works will not lead to a reduction in the stock of common land - the application land will remain registered common. Whilst it may be that a S16 application could have been made, the applicant applied under S38 and common land legislation does not preclude the granting of consent for the proposed works under the provisions of S38. There is no sound reason for declining to determine the application which has been decided on its merits.

16. 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...* I am satisfied that the proposals are consistent with Defra's policy objectives in this regard.

17. The works will help facilitate the provision of 4 new dwellings, which I consider to be in the wider public interest and which has added weight to my decision.

Conclusion

18. I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above and that the passing point is in the interests of highway safety. The works will also help facilitate the provision of new housing. Consent is therefore granted for the works subject to the condition at paragraph 1 above.




Richard Holland



DM06 passing place to Suffolk County Councils requirements.

DM01 vehicular access to Suffolk County Councils requirements.

LEGEND:

-  Common Land Boundary
-  Existing vehicular access and buildings onsite
-  Assumed area of encroachment on to common land for widened vehicular access and vehicular passing bay. Total Approximate Area - 66m²

