
Application Decision

by **Richard Holland**

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

Decision date: 17 September 2019

Application Ref: COM/3234313

Norland Moor, Calderdale

Register Unit No: CL 220

Commons Registration Authority: Calderdale Metropolitan Borough Council

- The application, dated 19 July 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 the Calderdale Metropolitan Borough Council.
 - The works comprise 310 m² of Yorkshire stone mill flags along the route of existing permissive pathways.
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Decision

1. Consent is granted for the works in accordance with the application dated 19 July 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 shown as red lines 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 representations made by the Open Spaces Society (OSS) and Natural England (NE).
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

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.

- d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

7. The applicant is the landowner. The applicant confirms that rights of grazing on the common are not exercised. I am satisfied that the proposed 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 works are needed to repair damaged sections of pathway leading to Ladstone Rock, a well-known and popular local feature on the common. The applicant explains that sensitive important habitat on the common is being eroded/damaged and the path widened by those wishing to avoid areas of the path made muddy by heavy rainfall. The creation of a single, stable and permanent surface will improve visitor access. NE and OSS do not object to the application and consider the works of benefit to public access.
9. I accept that the works are needed to existing sections of pathway and note that the route is well-used by those visiting the common for recreation and access. I am satisfied that the works will improve the common for use by local people. I conclude that the works will benefit the interests of the neighbourhood and protect public rights of access.

Nature conservation and conservation of the landscape

10. The works are intended to help prevent further erosion, allowing the surrounding moorland vegetation to recover. The applicant explains that the stones will 'float' on the damaged peat and are already weathered, are sympathetic to the colour of local exposed bed rock/quarried stones and will blend into the natural environment.
11. I note that NE comments that it can see no reason why the works should not result in a positive outcome for biodiversity and landscape. I consider that the works will help protect the common by repairing the route and preventing further damage and is in keeping with the surrounding area. I conclude that the works will help protect nature conservation interests and will conserve the landscape by reducing and preventing further damage to the common.

Archaeological remains and features of historic interest

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

Conclusion

13. I conclude that the works will benefit public rights of access, landscape and nature conservation interests and will not harm the other interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

