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# Application Decision

by **Richard Holland**

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

Decision date: 29 October 2019

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**Application Ref: COM 3232299**  
**Clee Liberty Common, Shropshire**

Register Unit No: CL 4

Commons Registration Authority: Shropshire Council.

- The application, dated 25 July 2019, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Mr Martin Banbury.
  - The works comprise reinforcement of six sections of vehicular access track (twin 50cm tyre tracks), totalling 201m, with unsealed non-reactive stone chippings.
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## Decision

1. Consent is granted for the works in accordance with the application dated 25 July 2019 and accompanying plan, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision; and
  - ii. the common shall be restored within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown on the attached plans.

## Preliminary Matters

3. The application as originally made and advertised was to reinforce ('to stone') twin tyre tracks along the whole length of the 500m vehicular access track ('the track'). In response to representations of objection, the applicant amended the application to limit the works to six sections of the track only, totalling 201m. I am satisfied that the amendment has not prejudiced any person wishing to make a representation about the application.
4. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations from Clee St Margaret Parish Council (the Parish Council), Historic England (HE), the Open Spaces Society (OSS), Mike and Barbara Hardingham, Marian Law and Margaret Peake.

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

8. The land is owned by the Parish Council, which supports the application and submitted it on behalf of the applicant.
9. The common land register records extensive grazing rights and a small number of rights of turbury over the common. The applicant has said that three rights holders actively exercise their grazing rights but that the track is not used for moving livestock. All three were consulted, as were the non-active rights holders and the Clee St Margaret Commoners Association. None of the active rights holders have commented on the application and there is no evidence to suggest that the works will interfere with the exercising of their rights. Mr and Mrs Hardingham, who are non-active rights holders, support the application. I am satisfied that the works will not harm the interests of those having rights of common over the land.
10. The applicant has a right of vehicular access over the common to his property, The Sands, by way of an easement granted by the Parish Council. The occupiers of five other properties claim similar rights and were consulted by the applicant. None have objected to the application. I am satisfied that the works will not harm the interests of those having vehicular access rights over the land.

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

11. The area of common land affected by the works is an existing unsurfaced track forming the last 500m of the applicant's access to The Sands from the highway. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with public rights of access on foot.
12. Mrs Peake advised that the works are over a public footpath that she has used since 1979 and which is also much used by ramblers, orienteers, church groups, runners, scouts and other organisations (walkers). The applicant has confirmed that the public footpath coincides with the route to The Sands and, whilst he contends that it is not particularly well used compared to other nearby paths, the works will inevitably impact on this use.
13. The purpose of the works is to improve the track for vehicular use by reinforcing the desired wheel track positions with stone chippings where necessary so that vehicles do not have to drive directly over grass and mud. The works are proposed for sections of the track that are particularly prone to muddying and it follows that the stoned areas could also be used by walkers looking to avoid the mud.

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<sup>2</sup>Section 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.

14. There will be some short-term impediment to public access on foot during the works. However, the applicant has committed to carrying out the works manually, with no heavy machinery present to block the route. This will minimise the impact on walkers using the track during the works. Full access will be restored once the works have been carried out and walkers will benefit from the improvements made to the track surface. I conclude that whilst the works are proposed for the private benefit of the applicant, they will also benefit the interests of the neighbourhood and public rights of access.

### ***Nature conservation***

15. Natural England advised that it had no comments to make about the application. There is no evidence before me to suggest that the works will impact on any designated sites or harm any other nature conservation interests.

### ***Conservation of the landscape***

16. The common lies within the Shropshire Hills Area of Outstanding Natural Beauty (AONB). Whilst the AONB Partnership has not commented directly on the application, it is clear from its email to the applicant of 23 August 2019 that it supports limited stoning of the track.

17. Both OSS and Mrs Law objected to the application as originally made (to stone along the whole length of the track) due to concerns about the visual impact of such extensive works. Following a subsequent site meeting with the applicant and the amended application, OSS and Mrs Law withdrew their objections.

18. Photographs submitted in support of the application show unsightly damage to the land caused by vehicles trying to find the clearest path through muddy sections of the track. Stoning twin tyre track positions at these locations will establish a clear central path and allow muddy areas at the edges to recover. Grass will be allowed to grow through the tracks to give a more natural appearance. I consider that the proposed works are needed to prevent further visual harm caused by vehicles spreading mud across the track area. The works will also improve the appearance of the track and help to conserve the natural beauty of the AONB.

### ***Archaeological remains and features of historic interest***

19. HE advised that it has no objections in principle to the works. There is no evidence to suggest that any necessary digging, which will be carried out manually with a spade rather than by mechanical digger, will harm any archaeological remains or features of historic interest.

### ***Other matters***

20. Mrs Peake raised several other matters; namely, the section 38 application decision reference COM690 of 5 January 2016, a possible new alternative vehicular route to The Sands and the validity of the applicant's easement. I give no weight to these matters for the reasons set out below.

21. The COM690 application, which was refused, sought consent to improve a track in much the same way as the current application over a route which includes a section of the same track leading to The Sands. However, there are significant differences between the two applications, particularly the scale of the works, and each application must be decided on its own merits.

22. Mrs Peake suggests that creating a new track to The Sands would avoid having to carry out works on the public footpath. The application before me includes no such proposals and only the works applied for can be considered.
23. Mrs Peake also questions the validity of the applicant's vehicular access easement agreement with the Parish Council. Whether the applicant has a right of vehicular access over the land is a separate matter and not one for consideration in deciding this application to carry out restricted works on common land.

### **Conclusion**

24. I conclude that the proposed works will not harm the interests set out in paragraph 7 above. Indeed, improving the track for vehicular use in the way proposed will also improve public access over the land on foot and improve the landscape within the AONB. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

Stone Wheeltracks  
Green Shutters  
to Tisbury

End of Proposed  
Stone Wheeltracks  
at SO 577 840

Start of Proposed  
Stone Wheeltracks  
at SO 571 838

