
Application Decision

by **Richard Holland**

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

Decision date: 16 October 2020

Application Ref: COM/3248450

Land in Portland Urban District (Gooseberry Field), Portland, Dorset

Register Unit No: CL72

Commons Registration Authority: Dorset County Council

- The application, dated 15 February 2020, 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 Niall Laming.
 - The works comprise a twin track Portland stone pavior vehicular driveway of approximately 42 metres in length, each track being 0.6 metres wide with a 0.6 metres strip of grass in between, to serve 106 Weston Road, Portland.
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Decision

1. Consent is granted for the works in accordance with the application dated 15 February 2020, as amended, and the amended application 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 in red on the attached plan, Drawing 564/14b.

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. The application, as originally made, was for a gravel topped vehicular driveway and a row of stones. It was accompanied by a Declaration of Exempt Works² for the row of stones and the applicant subsequently removed the stones from the application. In making the application the applicant observed that consent might not be required for a loose surface such as gravel, as set out in published Common Land Guidance³, but subsequently confirmed that he wished the application to go forward to avoid any risk of carrying out works that need might need consent.
5. Notwithstanding the above, the applicant then amended the application to replace the proposed gravel surface with twin track stone paviors in response to representations made about the proposed works. All those to have made representations, as listed below, were consulted about the amendments and I have taken their comments into consideration in determining the application. I

¹ Common Land Consents policy (Defra November 2015)

² The Works on Common land (Exemptions) (England) Order 2007 (Statutory Instrument 2007 No. 2587) defines a number of classes of restricted works for which section 38 consent is not required.

³ Common Land Guidance Sheet 4: car parks, access roads, tracks and footpaths.

am satisfied that no party who may have wished to make representations about the application has been prejudiced by its amendment.

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), Portland Court Leet (PCL), Portland Town Council (PTC), the Open Spaces Society (OSS), Mrs Claire Bool, Miss M Broom, Ms Carol De Haan, Ms Gill Essom, Mr Colin Stone, Ms Joan Stevenson and Ms Mary Cole.
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;⁴ 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 Crown Estate, which was consulted about the application but has not commented. The common land register records 39 grazing rights along with rights of turbury; piscary; estovers; rights to quarry, dig and remove stone; and rights to gather dry fuel, clots or cow dung. The applicant advises that none of the rights are exercised. I am satisfied that the works are unlikely to harm the interests of those having rights in relation to, or occupying, the land.

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

9. 106 Weston Road, to the south of the common, has lain derelict for decades and a new dwelling is proposed to be built there. Historically, vehicular access to it from the highway was from the east via an unsurfaced track across the common. The applicant advises that the track is effectively obsolete as a grass verge and footpath now separate and block it from the highway. He seeks alternative, surfaced, vehicular access to the site across the common from the north by extending an existing driveway serving 100 and 102 Weston Road. No party has disputed his claimed right to drive over the land. In return the applicant will 'extinguish' use of the existing track, although in practice for the reason given above, it is not actually in vehicular use so I give this little weight.
10. 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 public rights of access. Photographs submitted by the applicant show that the common is unfenced along the eastern and northern boundaries and is fully accessible on foot from those sides. The proposed driveway will run north to south just inside the fenced western boundary, leaving most of the common unaffected. There will be little impediment to access over the affected area as the paviers will be flush to the ground.
11. I conclude that the proposed driveway will have a negligible impact on the interests of the neighbourhood and public rights of access as local people and the wider public will continue to be able to walk over the affected land as they do now.

Nature conservation and archaeological remains and features of historic interest.

12. Mrs Bool disputes the applicant's assertion that the application land is not in or near a Special Area of Conservation (SAC) as she believes it is within a Conservation Area (CA). However, it seems that Mrs Bool is referring to a CA as designated under the planning system rather than a SAC which is a statutory nature conservation designation under the European Commission's Habitats Directive;

⁴Section 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.

this is entirely separate from planning Conservation Area status. I deal below with the impact of the proposed works on the common's appearance. There is no evidence before me to suggest that the works will affect a nature conservation designated area or will harm nature conservation interests.

13. Mrs Bool also suggests that there may have been an early Saxon settlement on Gooseberry Field and that a full archaeological survey should be conducted before the works are carried out. HE advises that the proposals are unlikely to impact on the significance of the Conservation Area or any other designated heritage assets. I am satisfied that archaeological remains and features of historic interest are unlikely to be affected by the proposed works.

Conservation of the landscape

14. PTC and others object to the works as they will lead to a loss of green space and be visually harmful. Whilst there will be a loss of green space, it will be limited to the footprint of the twin tracks which amounts to approximately 50 square metres out of a total Gooseberry Field area of 4030 square metres (less than 1.5% of the common). The paviers will be of natural grey coloured Portland stone, which will be in keeping with the surrounding area, and their visual impact will be further lessened as they will be flush with the ground. I am satisfied that the visual impact of the works on the landscape will not be unacceptable; indeed, they will prevent unsightly damage to the grass surface caused by vehicular movements.

Other matters

15. Several parties raise concerns about highway safety. In particular, Mr Stone is concerned that the roads leading to the proposed driveway (Isle Road and Weston Road) are very narrow single car width roads and that the angle of the corner to and from the driveway will not be practical and will lead to unsafe actions. However, the proposals are merely to extend an existing driveway already serving two properties. The application proposes no changes to the driveway's junction with the highway so, whilst I appreciate these concerns, they are not a matter for consideration in determining the application. I note that, according to the applicant, the Highway Authority has not objected to the works.
16. In deciding the application, I have considered whether an alternative means of vehicular access to the 106 Weston Road site is available that does not involve carrying out restricted works on common land. Several parties suggest that the proposals are unnecessary as alternative routes from the highway onto the site are already available. The suggested alternative routes are via the existing track from the east (as referred to in paragraph 10 above), via a garage near the south east corner of the common and via Barleycrates Lane, which runs along the southern boundary of the site.
17. The applicant has no legal right of access onto Barleycrates Lane, which is a narrow, unmade bridle path. Dorset Council has apparently advised the applicant that it is not suitable for an increase in vehicles. The other two alternatives involve crossing common land. The track from the east is unsurfaced and I consider that resumption of vehicular use over it would result in unsightly damage to the grass surface. Access through the garage would involve a much shorter route over common land but I accept the applicant's contention that this would not give a route to the large barn and outbuildings in the north of the site. Moreover, and like the eastern track, this route would involve crossing a footpath.
18. Defra's policy advises that '*...The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common. 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 consider that that the suggested alternative routes are impractical, that the proposed works offer a reasonable and practical solution to the applicant gaining vehicular access to the site and that the proposals are consistent with Defra's policy.

Conclusion

19. I conclude that the works will not seriously harm the interests set out in paragraph 7 above and will protect the landscape from unsightly damage caused by vehicular use over unprotected grass. Consent for the works should therefore be granted subject to the conditions set out in paragraph 1.

Richard Holland

