
Application Decision

by **Richard Holland**

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

Decision date: 28 October 2020

Application Ref: COM/3249848

Sodbury Commons, including Smarts Green, Kingrove Common and Colts Green, etc.

Register Unit No: CL190

Commons Registration Authority: South Gloucestershire Council

- The application, dated 26 March 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 Andrew Sprackman.
 - The works to widen an access way comprise the demolition of a stone wall and the laying of tarmac over the existing accessway and over an additional 14.97m² of land.
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Decision

1. Consent is granted for the works in accordance with the application dated 26 March 2020 and the plan submitted with it 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.

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. In making the application, the applicant questioned whether the application land is actually registered common land as the common land register specifies that, at the final registration of the land in May 1982, areas of land that were adopted highway were excluded from registration. The applicant considers the application land to be part of the adopted highway referred to in the register. Notwithstanding the register entries about this, and that the applicant has made the application to avoid any risk of carrying out works unlawfully, I am satisfied from the submitted commons register map that the application land lies within the common land boundary and is registered common land.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the landowner, Historic England (HE), Natural England (NE) and the Open Spaces Society (OSS).

¹ 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;² 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 Somerset Trust (the Trust), which objects to the proposed works because the applicant did not consult it before making the application. The applicant concedes that no pre-application landowner consent was sought as it seemed to him to be prudent to first establish whether Section 38 consent would be given. Whilst applicants are encouraged to consult the landowner before making an application, it is not a statutory requirement.
9. In making its objection the Trust has not commented on the merits of the proposed works, nor has it explained in what way they would affect its interests. Therefore, I can give the objection little weight.
10. The Rights section of the register records numerous stinted grazing rights over the common. The applicant states that he does not know the extent to which the rights are exercised, although he considers it likely that rights are exercised over other areas of the common, which extends to about 318 acres.
11. The application land is within a strip of roadside common land verge along the south side of the A432 Badminton Road. Photographs submitted by the applicant show that the application land is mostly made up of a rough-stoned access way from the road to a field gate positioned a few metres from the roadside. The field gate is set within the wall to be demolished. The land beyond the field gate is an agricultural field outside the common land boundary. The remaining application land is a narrow roughly vegetated strip between the wall and a pedestrian footway. Due to its small size, physical make up and closeness to the road I consider it unlikely that the land is used by any rights holders to graze or move their animals and I conclude that the proposed works will have little or no impact on those with grazing rights over the common.

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

12. The works are proposed to provide more convenient vehicular access across the verge into the agricultural field to facilitate farming activity. The applicant says that they will also assist Network Rail, which needs access through the field to railway lines to the south and has previously had to demolish and re-build the wall several times to gain suitable access. Widening the access will avoid the need to do so again and will also allow safer access to and from the field by improving highway visibility splays.
13. 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. The verge would seem to be available to the public for general access on foot such as for dog walking.
14. Tarmacking the existing access way and a small area of land on each side of it may provide a better walking surface and it may be that demolishing the wall will increase very slightly the area of land that can be walked over. Even in the absence of such small benefits, I am satisfied that the

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.

works will not harm 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 application land as before.

Nature conservation and archaeological remains and features of historic interest

15. NE advised that it would not be commenting on the application. HE advised that it had no comments to make other than that the proposals will not impact on any designated heritage assets. There is no evidence before me to suggest that the proposals will harm the above interests.

Conservation of the landscape

16. The application land is a roughly vegetated and stone surfaced section of verge beside a busy road in an area that has no particular landscape designation. Tarmacking the stone surface and an additional area of 14.97m² around it will not be harmful to its appearance and may be a visual improvement. The wall has been demolished and rebuilt several times so is not a longstanding original feature in the landscape and it does not make an important contribution to the landscape. Furthermore, whilst permanently removing it is integral to the widening of the access and forms part of the works applied for, consent is not needed for works that will not create a new impediment to access. I therefore give little weight to the visual implications of the wall's removal and I conclude that the proposed works will not seriously impact on landscape interests.

Other matters

17. OSS is concerned that the applicant will need to negotiate with the Trust, as landowner, an easement for passage over the land. However, this is a matter between the applicant and the Trust and is not for my consideration in determining the application. Consent for works under Section 38 does not grant consent that may be needed under any other legislation, byelaw or agreement, such as the need to obtain planning permission or the landowner's permission. OSS is also concerned about the applicant's lack of pre-application consultation with the Trust. However, although it is good practice to consult interested parties before making an application, an applicant has no duty to do so.

18. 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 works to widen and improve the existing access are consistent with Defra's policy objectives.

Conclusion

19. I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above. Furthermore, by widening the access way and improving visibility splays the works will allow safer movement of vehicles to and from the adjacent field to help facilitate farming activity and to provide a long-term solution to Network Rail's need to access nearby railway lines. Consent for the works should therefore be granted.

Richard Holland

