
Application Decision

by **Richard Holland**

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

Decision date: 21 August 2015

Application Ref: COM 689

Public Watering Place Opposite Tymperon Hall, Cumbria

Register Unit No: CL 356

Commons Registration Authority: Cumbria County Council

- The application, dated 18 March 2015, 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 Thomas Armstrong (Construction) Ltd.
 - The works comprise 90m² of new (tarmac) hard surfaced access highway and associated footpaths to serve a proposed residential development and the installation of drainage pipework/manholes.
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Decision

1. Consent is refused.

Preliminary Matters

2. I have had regard to Defra's Common Land Consents Policy Guidance¹ 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
3. This application has been determined solely on the basis of written evidence.
4. I have taken account of the representations made by the Parish Council of Dacre (Dacre PC), Historic England (EH), Friends of the Lake District (FLD), Principal Development Control Officer at Eden District Council (Eden DC) and the Open Spaces Society (OSS).
5. 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.

¹ Common Land Consents Policy Guidance (Defra July 2009)

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.

Reasons

The interests of those occupying or having rights over the land

6. The common has no registered owner. Dacre PC objects to the application as the local authority with powers over unclaimed land and intends to enter into a management agreement with Eden DC for the site. However, as there are no occupiers of the common and no rights of common registered, I consider that the impact of the proposed works on such rights is not at issue.

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

7. The interests of the neighbourhood test relates to the way in which the works will impact on local people's use of the common. The applicant explains that the common does not seem to have been used or maintained as a waterhole for some time as the hole/ditch is silted-up and overgrown to an extent that it is difficult to access for public use. At present the public are more likely to walk on the road. The applicant says that as the proposed access will be formally adopted and maintained at the public expense by Cumbria County Council the area will still be accessible to the public who will be able to walk safely on the common. The applicant considers that the proposed works will not have a negative impact on public rights of access.
8. The applicant has provided photographic evidence which clearly shows that the site is overgrown, wet and boggy. The site is therefore unlikely to be well used by local people; indeed there is no evidence to suggest that the site is currently used at all. I conclude that the proposed works are not likely to harm the interests of the neighbourhood nor unacceptably restrict public rights of access to the common.

Nature conservation

9. I note that the OSS believes that the site has ecological value as a 'wet meadow' habitat. However, the common is not a statutorily designated site and English Nature has not objected to the application. There is no evidence before me to suggest that the proposed works will harm important nature conservation interests.

Conservation of the landscape

10. The common consists of a 750 m² strip of roadside verge, of which 90 m² will be surfaced with tarmac to create a formalised access/road and associated footpaths. The applicant initially said that no additional measures are planned to mitigate the visual impact of the tarmac surface, but has since said that to protect, maintain and improve the existing common area as a waterhole, some tidying up of the overgrown vegetation, clearing and reinstatement works will be carried out.
11. The applicant argues that a similar formalised access serves a neighbouring development. Eden DC describe Newbiggin as a rural linear village, characterised by similar strips of wide verge running through its length, crossed by a series of vehicular access positions. It considers that a further formalised access, in the absence of any overriding and demonstrable need, would erode the quality and character of the verge areas, which are an intrinsic element of the character and amenity of Newbiggin village.
12. The common has no special landscape value. Nevertheless, the construction of the access road and footpath will cover, proportionally, a large area of the common (around 12%) and will introduce an incongruous and urbanising feature to what is currently a natural, unmanaged and rural environment. The clearing and reinstatement works proposed by the applicant will open up the common to some extent but I do not consider these measures

sufficient to counteract the harmful impact the surfacing works will have on the character of the common and the conservation of the landscape.

Archaeological remains and features of historic interest

13. Dacre PC advise that the site of the proposed works consists of a small area of land adjacent to a spring containing a series of stonework troughs and culverts, one of four historic public watering places in Newbiggin village on common land. The Parish and County records show that these were originally constructed before 1784. The residents of Newbiggin consider these features to be an important part of their heritage. FLD and Dacre PC are involved in a four year project with the village to restore its wells and have begun the process of agreeing a management scheme which will allow for the funding of restoration work at the site of the proposed works. HE confirms that no listed buildings, registered parks and gardens, or scheduled ancient monuments will be affected by the proposals. However, it recommends that before the application is determined the applicant submits further information on the extent and nature of any surviving archaeological remains on the site through the commissioning of an appropriate programme of archaeological assessment and field evaluation.
14. The applicant has advised that during visual investigations undertaken by its drainage engineer no stone troughs or culverts could be seen at the application location. However the applicant has not provided any further information, including any assessments/evaluations, on the extent and nature of any surviving archaeological remains, nor has the applicant confirmed that any archaeological assessments or field evaluations will be undertaken. I consider therefore that there is insufficient information to determine that the proposed works will not unacceptably harm important archaeological remains and features of historic interest.

Other matters

15. The proposed works are required to provide access to a proposed development of affordable housing; the applicant confirms that a planning application has been made for the development. Eden DC considers that the application for consent to carry out works on the common is premature as should the planning application be refused there would be no need to provide a crossing. I accept that the proposed access will help facilitate the provision of affordable housing, subject to the applicant obtaining the necessary planning permission. However, in the absence of any such planning permission, I cannot be sure that this wider public benefit will arise and so I cannot give the matter much weight.
16. FLD, Dacre PC and OSS suggest that an alternative location for the access and associated works should be considered. However I am required to determine the application as made and on its merits.

Conclusion

17. Defra's policy guidance makes clear that commons should be maintained or improved as a result of the works being proposed on them. Having regard to the interests set out in paragraph 5 above I conclude that there is insufficient information to determine that the proposed works will not unacceptably harm archaeological remains and features of historic interest. Furthermore, I do not consider that there is sufficient justification to depart from the policy guidance as there are no factors which outweigh the harm the proposed works will have on the character and appearance of the common. Consent should therefore be refused.

Richard Holland