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# Application Decision

Site Visit held on 13 February 2018

**by Helen Slade MA FIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

**Decision date: 23 March 2018**

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**Application Ref: COM/3178884**  
**Brisley Green, Brisley, Dereham**

Register Unit No: CL68

Commons Registration Authority: Norfolk County Council

- The application, dated 7 July 2017, 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 Miss Amelia Nicholson of The Bell, The Green, Brisley, Dereham, NR20 5DW.
  - The works comprise:
    - The creation of gravel car parking around the edge of a triangular piece of land in front of the public house, adjacent to the existing access track;
    - The area of surfacing to be 260 square metres.
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## Decision

1. Consent is granted subject to the following condition:

- a) Within three months from the date of this consent a line of 200mm by 200mm wooden bollards, set so as to be 600 mm in height above the ground and situated 1200mm apart delineating the boundary between the car parking areas and the adjoining grassed areas of the common, shall be erected. The bollards shall be erected on both sides of the access track, both where the widening has taken place and also where the original boundary is unchanged, along the lines indicated in dark green on the modified application plan attached.

## Preliminary Matters

2. Following advertisement of the proposal, representations were received from The Open Spaces Society, Natural England and Historic England, all of which I have taken account.
3. I carried out an accompanied site visit on 13 February 2018 in the company of Mr Marcus Seaman on behalf of the applicant.
4. This application has been determined on the basis of the written evidence, the comments submitted by the parties, and my own observation of the site. Following the site visit I consulted the applicant, the owner of the Common, and the other parties consulted on the original application, to seek views on the possibility of attaching a condition requiring the erection of protective bollards to any consent. I have taken the responses to that consultation into account in reaching my decision.

## **Description of the site**

5. The site lies in the village of Brisley, which lies just to the east of the B1146 road about 11 kms north of Dereham. Although described as 'Brisley Green' it is in fact registered as common land and not as a village green. The Commons Register ('CR') shows that at the time of registration in 1968 the landowner was Reverend Robert George Everard Dodson, of The Rectory, Gressenhall, near Dereham, but the application indicates that the common is now owned by Brisley Parish Council ('the Parish Council').
6. The CR gives the total area of the common at the time of registration as being 58.374 hectares or thereabouts but five small areas have subsequently been deregistered because the land was found to be private ground belonging to some cottages. I have not been made aware of any relevant protective environmental or landscape designations.
7. The site lies at the eastern end of the village and is positioned on the edge of the registered common land, adjacent to a building known as The Bell, a public house and restaurant which is currently undergoing development to include holiday accommodation. The public house is accessed by a gravel track which forms a triangular feature in front of the property, the central area being of grass. The land occupied by the public house itself, and which is owned by the applicant and her partner, Mr Seaman, does not form part of the common, but the track and the surrounding grass are registered as part of the common. It is therefore necessary to cross part of the registered common to access the public house. The village cricket pitch and pavilion lies on the opposite side of the road from the public house (on part of the registered common) and can be seen from it.

## **The Application**

8. The application is retrospective. The applicant and her partner bought the property in September 2015 and have been in the process of renovating it since then. The building, described by the applicant as a traditional 17<sup>th</sup> century public house, re-opened in February 2017 having been considerably enlarged to ensure that the business was viable. The applicant states that the original area designated for parking was always inadequate, even prior to the renovations, and customers have always parked alongside the track and on the adjoining grass. It was apparently agreed with the Parish Council at the time of the relevant planning application that this situation should be allowed to continue. Owing to the enlargement of the building, parking elsewhere on the land owned by the applicant as part of the business was not possible, apart from some limited parking which is to be provided in connection with the holiday accommodation.<sup>1</sup> The planning permission was granted by Breckland District Council.
9. The business has proved to be more successful than at first anticipated. The number of visitors has resulted in cars being parked not only on the track but also on the adjoining grass, causing considerable damage which was exacerbated during extended periods of wet weather.
10. The Parish Council comment that, after attempts to lay matting on the grass failed to improve the quagmire caused by parking on the grass, the applicant

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<sup>1</sup> Under construction at the time of my site visit

and her partner took the decision to 'illegally' extend the previously agreed parking area by laying hard-core; a situation that the Parish Council could not condone, nor legally agree to. The Parish Council, are sympathetic to the situation that the owners of The Bell now find themselves in, but state that they eventually insisted that the owners make an application under Section 38 of the 2006 Act since it was, on balance, impractical for the newly surfaced area to be returned to its original state. Retaining the surfacing was considered by the Parish Council to be in the best interests of safety, and it would benefit The Bell, now viewed as a valuable asset to Brisley Community.

11. The Grazing Rights Committee concurred with the decision made by the Parish Council that an application for the consent for the works carried out should be made by the owners of The Bell. All parties listed as having common rights were consulted by the owners.
12. Natural England has responded to the application by suggesting that it would be more appropriate to consider an application under Section 16 of the 2006 Act for the deregistration and exchange of common land. I must consider the application as made, against the relevant criteria. Should consent be not granted, it would be open to the applicants to make another application under Section 16, if appropriate.

### **Main Issues**

13. 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.
14. Section 39(3) provides that consent may be given under Section 38(1) in relation to all or part of the proposed works, and subject to such modifications and conditions relating to the proposed works as are thought to be fit.
15. In determining this application, I have had regard to the latest edition of Defra's Common Land Consents Policy<sup>3</sup> ('the 2015 Policy') 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.

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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.

<sup>3</sup> Common Land Consents Policy (Defra November 2015)

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## **Reasons**

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

16. No objections have been made by any party benefitting from rights of common on, over or across the land. The Parish Council, as owner of the common, has agreed to support the application.

### ***The interests of the neighbourhood***

17. The 2015 Policy indicates that issues to be considered in this context include whether or not the proposal will offer a positive benefit to the neighbourhood, whether or not the works would result in the loss of existing use, and whether or not there would be an interference with the future use and enjoyment of the common, whether by commoners, the public or others.

#### *Positive benefit to the neighbourhood*

18. The applicant provides details of the alleged benefits to the local community of the existence of the public house and the Parish Council endorse the view that the facility is now considered to be an asset to the community. The proposed works would provide better access and avoid damage to the surrounding area of common land, improving the appearance of the site. The additional car parking facilities would also improve the situation for people wishing to access the common for recreational purposes.
19. These would be positive benefits to the neighbourhood, both in terms of the common itself and the local community.

#### *Loss of existing use or interference with future use*

20. There is no evidence that any of the rights holders exercise their rights over the particular area of the common affected by the application. The proposal will not interfere with any existing use. It may reduce very slightly the area available for possible grazing in the future, but it will not diminish the overall area of the registered common. The loss of any potential grazing is insignificant in this context.
21. The works applied for will not impede access by the public who would be free to use the application area in the same manner as at present. However, see paragraphs 34 to 40 below in relation to conditioned works.

### ***The public interest***

#### *Nature conservation*

22. There are no benefits to nature conservation from this proposal. However, the applicant points out that the two ponds which lie on the common land adjacent to the application site and the public house have been significantly improved by her and Mr Seaman. They have taken advice from Breckland District Council ecological department, and the local Wildlife Trust to ensure that all works carried out by them have been to the benefit of the ponds and their wildlife. They have also provided bat boxes for the local bat population.
23. The proposed works may slightly reduce the area of grassland on the common, but this area is already subject to management for amenity purposes and not

for the purposes of nature conservation. I consider that there are no adverse implications in respect of nature conservation in respect of this application.

#### *Conservation of the landscape*

24. Natural England comments that the proposal offers no improvement to the landscape. The applicant has indicated that the intention is that the proposal will avoid damage to the remaining common land surrounding the application site by providing a clearly demarcated area for car parking. The indiscriminate parking which has occurred in the past, and over which she has no control (not being the owner of the common) has caused significant damage to the grass.
25. It was apparent from my site visit that, regardless of the work already carried out to surface the intended parking area, there is still a tendency for drivers to encroach onto the grass. Mr Seaman indicated the logs that he has laid lengthwise on the ground to try to prevent this from happening. It is as a result of this that I consulted on a potential condition to be attached to the permission, and which I address below at paragraph 34 onwards.
26. I accept that the application is intended to protect the immediate landscape of the common in this location, but consider that further measures may be needed to ensure it is successful in this regard. In terms of appearance, the track itself would look little different from how it was prior to the proposed works being carried out; merely being a little wider. Any landscape benefit would arise from the absence of damage to the adjacent grassed areas.

#### *Public Access*

27. Public access to the application site would not be prevented by the proposed works, which will be accessible in the same manner as previously.

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

28. No archaeological features have been brought to my attention, and Historic England had no comments to make.

#### *Overall Assessment*

29. The 2006 Act, together with earlier legislation, enables government to safeguard commons for current and future generations to use and enjoy; to ensure that the special qualities of common land, including its open and unenclosed nature are properly protected; and to improve the contribution of common land to enhancing biodiversity and conserving wildlife. The consent process, in respect of applications under Section 38 of the 2006 Act, seeks to ensure that any use of common land is consistent with its registered status, and that works take place on common land only when they maintain or improve the condition of the common, or where they confer some wider public benefit, and are either temporary in duration, or have no significant or lasting impact.
30. The application in this case would not, on the face of it, appear to be maintaining or improving the condition of the common. However, I agree with the applicants and the Parish Council that the proposal would help to protect the rest of the common when faced with the reality of the use of the land for parking. It is unfortunate that the works were carried out in advance of

seeking consent, but it has provided the opportunity to assess the impact of them.

31. There is no suggestion that the parking would be restricted to customers of The Bell, and thus it would be of some wider public benefit in allowing visitors to the common to park their cars safely if necessary. Since the land has already been subject to parking, the proposals would have no detrimental impact in this respect, but would be likely to make it easier to regulate such activity. The ability to park would facilitate not only use of the services provided at The Bell (from which it is possible to see the village cricket ground), but also enable the public to access the common for recreational purposes. The latter is entirely consistent with its registered status.
32. Any detrimental impact on the landscape, public access or nature conservation caused by the proposed works would be insignificant. The Parish Council considers that the public house has become a valuable part of the local community, and facilitating its use would thus provide a positive benefit to the neighbourhood. I accept that the position of The Bell, overlooking the cricket pitch and providing refreshment for people who may be using the common for recreation, is likely to be seen by the public as an enhancement to the common and consistent with the image presented by its name of 'Brisley Green'.
33. However, I am concerned that without some further physical barrier, the car parking would still tend to encroach onto the surrounding grass and cause damage which has already proved to be unacceptable. It was in this context that I sought views on means to prevent such encroachment.

### ***Erection of protective bollards***

34. I consider that it would be desirable to delineate the boundary of the parking area in such a way as to prevent the encroachment by vehicles onto the surrounding grass. I therefore sought the views of all the relevant parties on the erection of suitable bollards around the edge of the surfaced area, positioned in such a way as to permit access for the public on foot, but preventing access by vehicles. It would be necessary for any such bollards to allow access for persons of all abilities (including those in pushchairs and using wheelchairs) and for them to be sufficiently visible to avoid accidents. Such structures are frequently utilised in places such as country parks and other rural areas where vehicular access needs to be restricted without impeding pedestrian or other recreational access.
35. Section 43 of the 2006 Act provides a power to exempt certain works from the need for consent, and The Works on Common Land (Exemptions)(England) Order 2007 sets out types of exempt works in detail. Schedule 1 Paragraph 4 specifically provides exemption for the installation of a row of bollards for precisely the purpose of excluding vehicular access where it would interfere with the use of the land by the public for recreation, the exercise of rights of common or for the purposes of nature conservation. It is therefore clearly envisaged that the erection of bollards is reasonable on common land, in certain circumstances.
36. Section 39(3) of the 2006 Act provides for an application to be modified or for conditions to be applied to any consent. In their response to my consultation regarding the possible erection of bollards, the Open Spaces Society ('the OSS') stated that there was doubt about whether works additional to those

applied for could be required by the Secretary of State, or an inspector on his behalf. The OSS considered that it might be preferable to modify the application or, alternatively, to refuse the application. The applicant could then make another application which might include the suggested bollards.

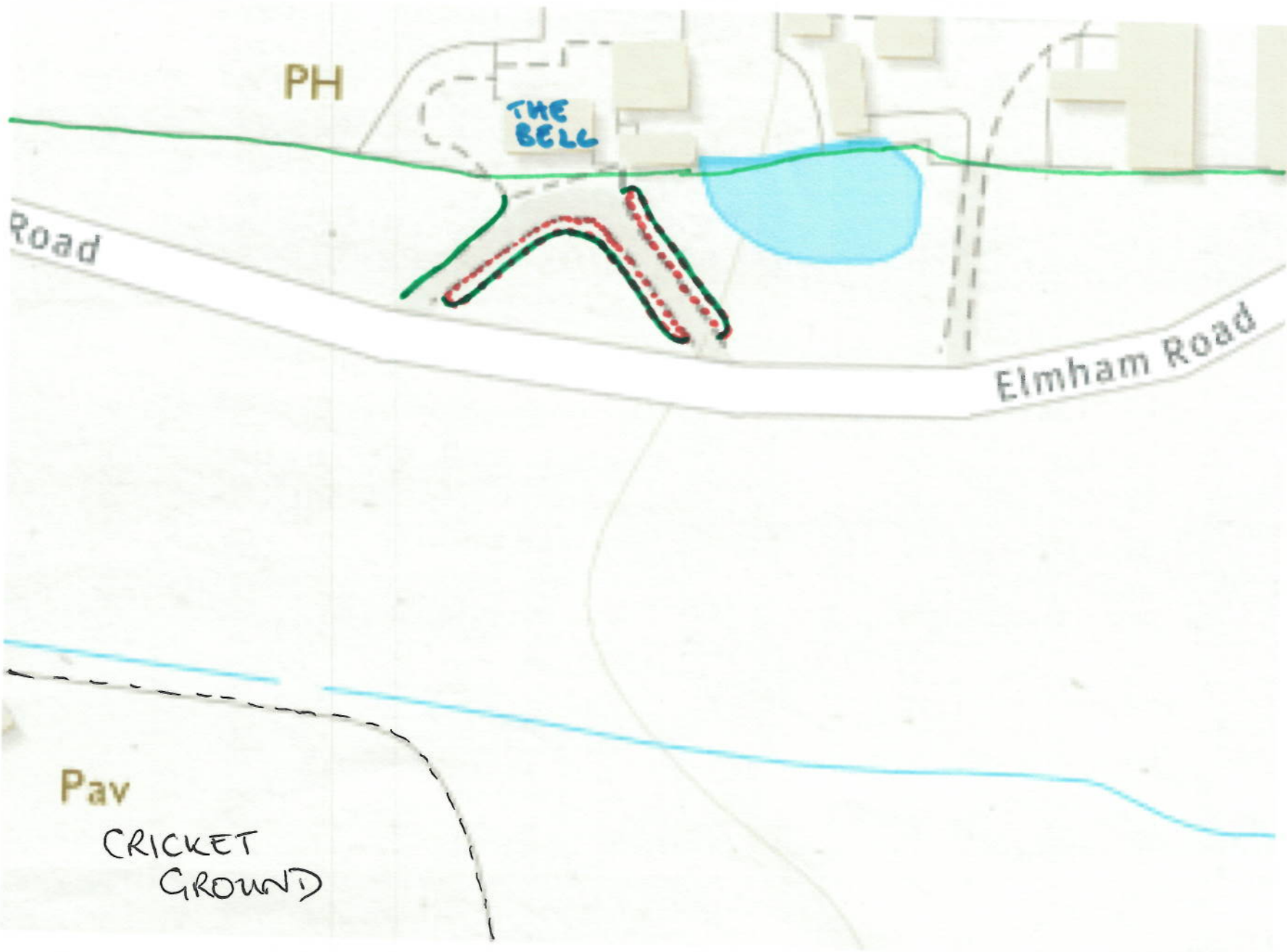
37. I agree that it would be open to me to modify the application to include such measures; but there is no requirement for consented works to be carried out, and thus no certainty that all consented works would in fact, be executed. This situation would also apply to any amended application. An applicant is at liberty to choose not to carry out works which have been consented, but they should not carry out works for which no consent has been given.
38. In the case I am considering, it would be necessary to erect bollards on more than one line, so I do not consider that the exemption provisions adequately cover the situation at The Bell. However, it is open to me to apply a condition to any consent and thus to make the consent lawful only if the conditioned works are undertaken. I am therefore satisfied that it would be appropriate for me to attach a condition to a consent for the works applied for (and already carried out) as this would make any consent unambiguous should enforcement action ever become necessary.
39. I am satisfied that the works applied for do satisfy the criteria that I must apply in relation to applications under Section 38 of the 2006 Act. However, I consider that the erection of bollards would ensure that no further damage to the common will occur and will restrict car parking to the designated area.
40. Bollards erected for the purpose intended would not impede public access to the common land nor would they deny commoners their rights of grazing, if exercised. They would have no adverse impact on nature conservation but would, in fact, assist in preserving vegetation. Whilst bollards would be visible, and therefore have an impact on the landscape, they are clearly a form of structure envisaged as being acceptable on common land since they can be exempt from the need for consent in some circumstances.

### **Conclusion**

41. Having regard to the criteria set out in paragraphs 13 to 15 above<sup>14</sup> above, and all the written representations, I conclude that consent for the works applied for should be granted, subject to a condition that suitable bollards are erected around the designated parking area and alongside the access track to prevent damage to the surrounding area.

*Helen Slade*

**Inspector**



MODIFIED APPLICATION PLAN  
 COM/3178884