
Application Decision

by **Richard Holland**

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

Decision date: 22 August 2018

Application Ref: COM/3191795

Wheeler End Common, Buckinghamshire

Register Unit No: CL 77

Commons Registration Authority: Buckinghamshire County Council

- The application, dated 13 December 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 the South Track Residents Group.
 - The works comprise the formation of a total of 270 m x 1.5 m x 600mm ditches and banks to the side of the southern track and adjacent to Bullocks Farm Lane.
 - Installation of a 4 m wide by 1.2 m high gate across the track 150 m east of Bolter End Lane and 2 (1.4 m x 600 mm) removable timber posts.
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Decision

1. Consent is granted for the works in accordance with the application dated 13 December 2017 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. within one month from the completion of the works a sign shall be permanently erected in a prominent position at each end of the south track and a sign shall also be fixed permanently to the gate. The signs shall read "*This track is on common land and may be accessed by the public on foot or horseback*".
2. For the purposes of identification only the location of the ditches and banks are shown as a red line and the gate is shown as two black triangles on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy Guidance¹ in determining this application, 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.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by Colin Chapman, Geoffrey Hanson, Natural England (NE) and the Open Spaces Society (OSS).
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

¹ Common Land Consents Policy Guidance (Defra November 2015)

- 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

7. The landowner has been consulted about the application and has not objected. The applicant confirms that there are a number of rights of pasture registered on the common but the rights are not exercised. However a commoner, with a right to graze cattle over the common under supervision, is concerned that further ditches pose a danger to grazing cattle and will make herding them more difficult. The applicant is of the view that the works will not prevent, hinder or restrict any rights of common. Any future grazing is likely to require fencing/supervision due to the dangers posed by roads surrounding the common. Adequate room to herd livestock will be provided through the provision of a 3 m grass surfaced mower access within the banks and ditches. Another track on the common – the 'north track' – already has ditches and banks along both sides and the application works will be to the same specification and appearance.
8. In conclusion, I note that there is agreement that rights have not been exercised on the common for at least 30 years. However, if rights were to be exercised, I agree that, for safety reasons, fencing would need to be erected and so I do not consider that further ditches would pose any increased danger to grazing cattle. I am satisfied that the mower access is sufficient to allow herding. I conclude that the works will not harm the interests of the landowner or those having rights over the common.

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

9. 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. The protection of public rights of access relates to access on foot and (where relevant) horseback.
10. The applicant explains that the works are required to curtail 'unauthorised' vehicular use of the 'south track' and prevent vehicles driving onto the grass and damaging the common. The track is described by the applicant as a private road maintained by local residents. The track has degraded due to increased use, resulting in vehicles driving onto the verge to avoid potholes in the track. The area is also at risk from joyriders. The track needs to be repaired but as this is at local residents' expense a locked gate will be placed across it to prevent damage and avoid an increase in the volume of traffic upon repair. Residents needing vehicular access will be given a code to enable them to open the gate and access their properties. The gate will be located away from the entrance of the common and will be a 'standard horse friendly vehicle barrier' which allows pedestrian and horse access.
11. Although there is agreement that the track has not been maintained, the objectors question the need for the works. In response to objections that the works will prevent access to the common and give the impression that it is not accessible to all, the applicant explains that access will be maintained through the provision of a mower access, a 1 m pedestrian access gap beside the gate, and footpaths left at intervals in the banks and ditches. Removable posts with a coded lock will be used to prevent unauthorised use of the mower access. The OSS does not object to the works as the gate is of a style that will not prevent access by walkers or riders.

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.

12. I am satisfied that sufficient provision has been made to ensure that access is maintained for pedestrians and horse riders but that a notice should be placed at each end of the south track and on the gate making clear that the public have the right to access the common; this can be secured by way of a condition attached to any consent. I conclude that the works will not prevent local people from using the common in the way that they are used to and will not adversely impact on the interests of the neighbourhood or the protection of public rights of access.

Nature conservation and Conservation of the landscape

13. The common is located in the Chilterns Area of Outstanding Beauty (AONB). The applicant confirms that the works are acceptable to the Chilterns Conservation Board and, upon advice from the board, will encourage the ditches and banks to grass over. The banks and ditches are considered less visually intrusive to fixed wooden posts which are the only other viable alternative to the works. The ditches and banks will be of a similar appearance to north track. NE confirms that it has no issue with the works.
14. I am of the view that the ditches and banks are likely to help protect the landscape and reduce damage to the common by preventing vehicles, either accidentally or deliberately, encroaching on the grass. I am satisfied that any visual impact will be mitigated by allowing the banks and ditches to grass over and the visual impact of the gate will not be significant given that it is a relatively small feature on the common. I conclude that the works will not harm nature conservation interests and will help conserve the landscape.

Archaeological remains and features of historic interest

15. There is no evidence before me to indicate that the works will harm archaeological remains or features of historic interest.

Other matters

16. Those objecting raise concerns that the works will make it difficult for deliveries to be made to local properties and result in increased journey times and traffic along other roads and tracks. There is also concern that the works will increase response times in an emergency. In response, the applicant explains that delivery drivers and others have become accustomed to using other routes due to the condition of the track and confirms that postal and emergency services have been consulted about the application and do not raise any concerns.
17. There is some dispute about the designation of tracks and rights of vehicular access on the common. Local residents are also concerned that the addition of a gate on the track will inconvenience them, for example by the need to frequently open and close it.
18. However, as these matters are not about the impact of the works on the common or how it is used I do not consider that they can form part of my considerations. I am therefore unable to give these arguments any weight.

Conclusion

18. I am satisfied that the works do not harm any of the interests set out in paragraph 6 above. Consent is therefore granted subject to the conditions set out at paragraph 1.

Richard Holland

Wheeler

