
Application Decision

by Richard Holland

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

Decision date: 9 November 2018

Application Ref: COM/3209014

Whiteshill Common, Hambrook, South Gloucestershire

Register Unit No: CL272

Commons Registration Authority: South Gloucestershire Council

- The application, dated 15 August 2018, 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 Winterbourne Parish Council.
 - The works comprise four sections of approximately 18 inches (0.45 metres) high bunding totalling approximately 230 metres in length.
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Decision

1. Consent is granted for the works in accordance with the application dated 15 August 2018 and the plan submitted with it.
2. For the purposes of identification only the location of the works is shown red on the attached plan.

Preliminary Matters

3. The application is retrospective as the works have been mainly completed.
4. 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.
5. This application has been determined solely on the basis of written evidence. I have taken account of the representation made by Historic England (HE), which does not object to the works.
6. 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 (Defra November 2015)

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

7. Pursuant to Commons Commissioner Decision 260/U/50 of 20 January 1983 the common land register records that in the absence of any evidence as to the ownership of the land it is subject to protection under s9 of the Commons Registration Act 1965 (now under s45 of the Commons Act 2006). In the absence of any known owner, I am satisfied that the works do not harm the interests of those occupying the land.
8. The common land register records one right to graze 40 cattle over the whole of the register unit. The applicant has said that the right is not exercised. The register also records that one person claims a right of access over the common from his property to the road. The applicant has said that this right is regularly exercised and that the bunding will not interfere with the access. Nobody with rights over the common has objected to the application and I am satisfied that the works do not harm the interests of those having rights over the land.

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

9. The interests of the neighbourhood test relates to whether the works affect the way the common land is used by local people and is closely linked with the interests of public rights of access. Whiteshill Common is split into two parts. The larger of the two is the northern part, which is roughly triangular, is surrounded by highway and is used by a local sports club as a cricket pitch. Bunding has been constructed on all three sides of the common but does not extend around the whole boundary. The purpose of the bunding is to deter unauthorised vehicular access over the common and so prevent damage to the surface and unlawful encampment. Vehicular access via the non-bunded sections is prevented by a combination of wooden bollards, removable locking bollards, a number of large boulders and steep access from the highway in one corner.
10. I consider the bunding to be in the interests of the neighbourhood as it protects the common from damage caused by vehicular access and deters illegal encampment. However, in preventing vehicular encroachment the bunding must also have a detrimental impact on public access to some degree. I consider it likely that some members of the public find it difficult to cross 18-inch high bunding to access the common; wheelchair and pushchair users may find it impossible. However, there are long sections of the common boundary that have not been bunded and access onto the common at these points is unaffected by the works. I conclude that public access onto the common is not significantly impeded by the bunding.

Nature conservation / archaeological remains and features of historic interest and conservation of the landscape

11. There is no evidence before me that leads me to think the works have harmed any statutorily protected sites, other nature conservation interests or any archaeological remains or features of historic interest. Whiteshill Common has no special landscape designation. Photographs taken and submitted by the applicant during the application process show that grass and other vegetation is growing on the bunding in many places. I consider that in time the bunding is likely to be fully covered by vegetation and this will help it blend in with the rest of the common. I conclude that in the long term the bunding will have little, if any, detrimental impact on the landscape.

Conclusion

12. I conclude that the works do not significantly harm any of the interests set out in paragraph 6 above; indeed, they are in the interests of the neighbourhood by helping to protect the common from the harmful effects of unauthorised vehicular access and encampment. Consent should therefore be granted.

Richard Holland

