



Application Decision

by **Richard Holland**

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

Decision date: **14 November 2018**

Application Ref: COM/3205547

Freasley Common, Dordon, Warwickshire

Register Unit No: CL18

Commons Registration Authority: Warwickshire County Council

- The application, dated 19 June 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 Miss Andrea Ingram.
 - The works comprise the resurfacing with a bound all-weather surface of approximately 50 square metres of an existing access track.
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Decision

1. Consent is granted for the works in accordance with the application dated 19 June 2018 and the plan submitted with it subject to the condition that the works shall begin no later than 3 years from the date of this decision.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. After leaving the public highway the access track branches in two; the southern track serves a barn for which planning permission for change of use to a dwelling and training facility was granted by North Warwickshire Borough Council on 31 May 2018 (Application PAP/2018/0106). A condition of the planning permission requires that the works the subject of this section 38 application are carried out.
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 representations made by Mr Peter Shakespeare, who supports the application, the Open Spaces Society (OSS), which does not object to the application, and Dordon Parish Council.
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 (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 land is owned by Dordon Parish Council (the parish council) which objects to the application. The parish council's concerns encompass wider issues than physical resurfacing of part of an existing access track and I consider these under "*Other matters*" below. The common land register records eight rights to graze one adult beast over the whole of the land comprised in the register. The applicant has said that none of the rights are exercised. Furthermore, the land subject of the application is a hard surface abutting the highway and as such is incapable of being grazed. I am satisfied that the works will not harm the interests of those having rights in relation to the land.

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

8. The southern access track extends beyond its junction with the public highway for approximately 35 metres into the common land. It then crosses the common land boundary and continues across land owned by the applicant towards the barn development area. The planning permission requires resurfacing of part of the access track with an all-weather surface in the interests of safety on the public highway and to prevent/minimise the spread of extraneous material onto the public highway by the wheels of vehicles using the development site. The applicant intends to use loose material for the remaining 35 metre length of the track within the common but these works do not form part of the application. The applicant says that the track is long-standing and the parish council does not dispute this.
9. 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 land subject of the application is hard-surfaced and will remain so once the works have been completed. I consider that the works will have a negligible impact on 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 new surface as they may do now. The only impact will be short-term interruption to access whilst the works are carried out.

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

10. There is no evidence to suggest that the works will harm any statutorily protected sites or other nature conservation interests or that there are any archaeological remains or features of historic interest at the site. The land has no particular landscape designation. The application land is already a hard surfaced access track from the highway and the applicant has said the material used for resurfacing will be in keeping with the highway and other surfaced entrances nearby. I am satisfied that the works will not have a significant impact on the landscape.

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.

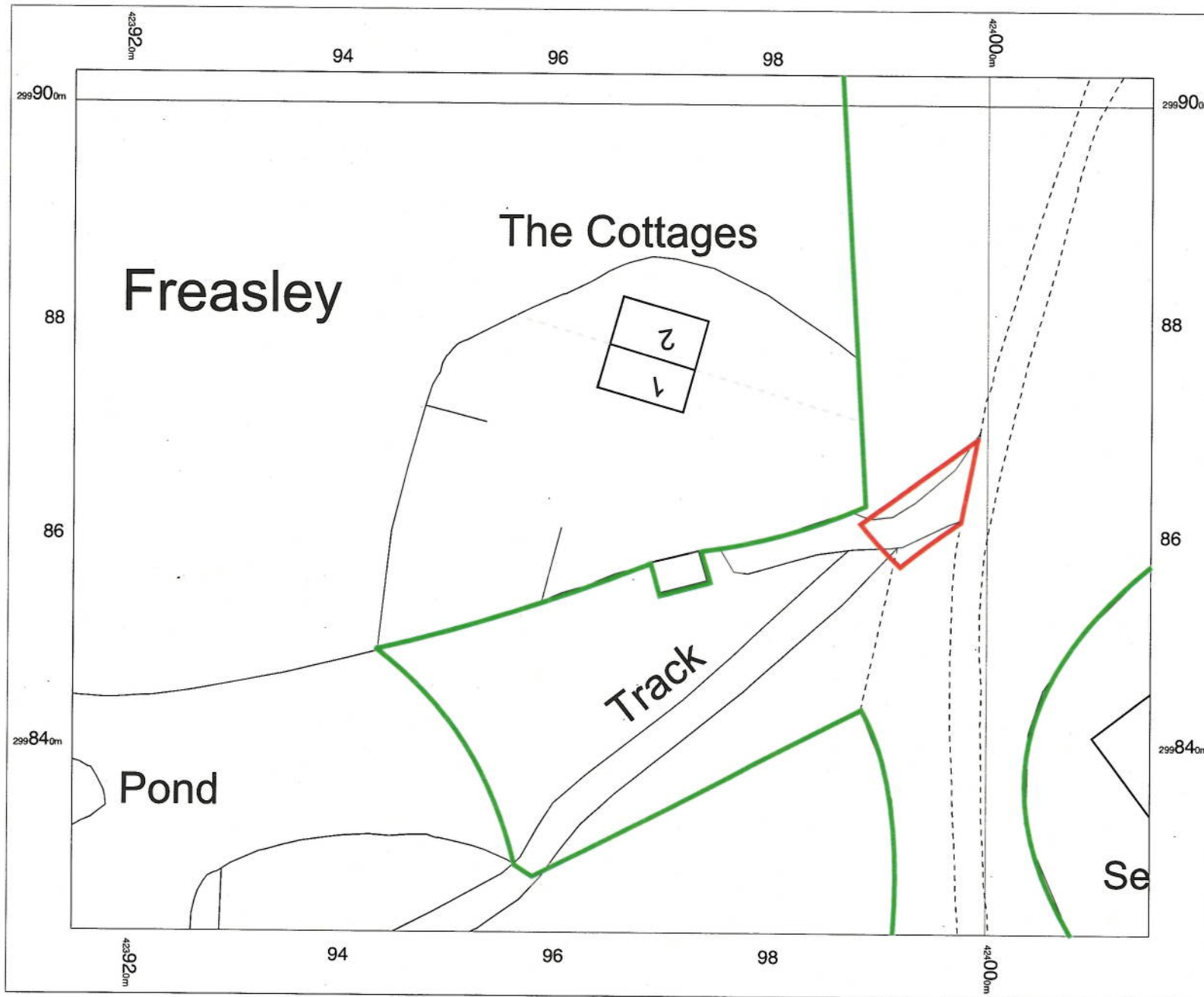
Other matters

11. The parish council objects to the application and considers that the applicant has no legal vehicular right of way across the land. However, the application does not seek a legal right of way and, in any case, whether the applicant has a legal right of way over the application site is not something for me to consider when determining this application. Section 38 consent does not override any other separate consents that may be required and applicants should satisfy themselves that all necessary consents are obtained before works are carried out.
12. The parish council contends that granting consent will facilitate a development (the barn conversion and training facility) that will change the nature of the use of the access from agricultural and thus harm the character of the common. However, the way in which the access is to be used is not a relevant factor in my consideration of the application; rather, it is the physical impact of the works on the interests set out in paragraph 6 above. The parish council also raises wider issues relating to the grant of planning permission but, again, these are not matters for me to consider.
13. The parish council contends that access to the barn conversion and training facility could be from roads to the west and north west which would not involve crossing common land or parish council owned land. However, as I have said, the application is not to create a new access across common land so I give little weight to this point.
14. 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... The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common'*. I am satisfied that the works proposed are consistent with Defra's policy objectives.

Conclusion

15. I conclude that the proposed re-surfacing will not harm the interests set out in paragraph 6 above and will allow safer vehicular access from the highway to and from the development site. Consent for the works should therefore be granted.

Richard Holland



Bound Material OS Map
A Ingram
Rev 1



OS MasterMap 1250/2500/10000
scale
Monday, June 25, 2018, ID:
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