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| **Application Decision** |
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| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 2 August 2022** |
| **Application Ref: COM/3290193****Back Lane and Caveridge Lane, South Chailey, East Sussex**Register Unit No: CL11Commons Registration Authority: East Sussex County Council* The application, dated 31 December 2021, 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 Ms Bethan Carver.
* The works comprise creation of a new tarmac surfaced cross-over of approximately 10 square metres (2m x 5m) from the existing highway over the common land to Foxglove Cottage, Green Lane, South Chailey.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 31 December 2021 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than 3 years from the date of this decision;
3. the tarmac surface shall be of a buff or grey colour; and
4. the land shall be fully reinstated within one month from the completion of the works.
5. For the purposes of identification only, the location of the proposed works is shown in red on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) 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.
2. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) and Chailey Parish Council. (CPC).
3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
4. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
5. the interests of the neighbourhood;
6. the public interest. (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); and
7. any other matter considered to be relevant.

**Reasons**

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

1. The register of common land records that by virtue of a Commons Commissioner decision dated 27 March 1973 under reference 37/U/59 the whole of the land comprised in this register unit is subject to protection under Section 9 of the Commons Registration Act 1965. The Commons Commissioner’s decision records that in the absence of any evidence he was not satisfied that any person is the owner of the land.
2. CPC advised in its representation of 25 January 2022 that it owns the land and that it intended to register the ownership within the next few weeks. No subsequent representations were made by CPC and there is no evidence before me to suggest that it owns the land.
3. The common land register records one right of estovers of underwood over the common. The rights holder was consulted about the application but did not comment.
4. I am satisfied that the works are unlikely to harm the interests of those occupying or having rights over the land.

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

1. The applicant wishes to create a new parking area for two additional family cars at Foxglove Cottage, which can only be accessed from Green Lane by crossing a narrow strip of roadside verge forming part of the common. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access.
2. The common land register records that the land comprised in the register unit is regulated by a scheme under the Commons Act 1899 made by the Chailey Rural District Council and approved by the Board of Agriculture and Fisheries on 8 September 1915. NE advises that the scheme enables the inhabitants of the district and neighbourhood to have a right of free access to every part of the common and a privilege of playing games and of enjoying other forms of recreation.
3. Green Lane serves two way traffic but is narrow. The applicant has submitted photographs to show that vehicles can only pass each other at the location of the proposed cross-over outside Foxglove Cottage if they go off-road onto the verge. The applicant advises that pedestrians therefore tend to use the wider verge on other side of the road or walk along the road itself if it is clear of traffic and I am satisfied that this is likely to be the case.
4. I consider that the application land is not suited to the playing of games and recreation and its use is likely to be limited to general access and dog walking. Local people and the public alike will continue to be able to walk over the verge once the cross-over is in place should they so wish. I conclude that the works will have a negligible impact on the interests of the neighbourhood and public rights of access.

***The public interest***

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

1. NE advises that a small area of semi natural grassland will be lost following resurfacing with tarmac but this will not be significant in terms of the common’s overall biodiversity. Regular vehicular encroachment onto the application land already leaves it unlikely to be able to support any significant biodiversity and I am satisfied that the works will not harm nature conservation interests.
2. The common has no special landscape designation. At NE’s request the applicant has agreed to use a light natural looking finish to avoid harsh contrast with surrounding hard surfaces, which can be secured by attaching a suitable condition to the consent. The applicant’s photographs show that the application land is unsightly due to damage from vehicle encroachment. The proposed works will cover the damaged area and will in that regard improve its appearance. As the area is very small I am satisfied that any harm to the wider landscape from the proposed new hard surfacing will be negligible.
3. There is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

**Other matters**

1. CPC raised concerns that the cross-over may facilitate further housing development, to which it would object. However, this matter is not relevant to my consideration of the application.

**Conclusion**

1. The Defra’s policy states that *“where it is proposed to construct or improve a vehicular way across a common, consent will be required under section 38 if the works involve the ‘laying of concrete, tarmacadam, coated roadstone or similar material’ (other than for the purposes of repair of the same material). 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”.* It also states that *“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. Where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable.”* I am satisfied that the works accord with the Defra policy.
2. I conclude that the proposed works will not significantly harm the interests set out in paragraph 5 above and they may be aesthetically preferable. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

