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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: 1 December 2022** |
| **Application Ref: COM/3295516**  **Marlborough Common, Wiltshire**  Register Unit No: CL62  Commons Registration Authority: Wiltshire County Council   * The application, dated 10 March 2022, 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 Marlborough Town Council. * The works comprise i) the creation of a levelled and grass-seeded rugby/football training area of 120m x 80m to be cordoned off by wooden posts and rope for a period of up to 6 weeks; and ii) the planting of approximately 65m of hedgerow. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 10 March 2022 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; and
3. the posts and rope shall be removed within 6 weeks from the completion of the works.
4. For the purposes of identification only, the location of the proposed works is shown 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 OSS.
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 application land is owned by the applicant, Marlborough Town Council, and it follows that the the proposed works are in its interests.

1. The common land register records no rights of common over the common so there are no rights holders to be affected by the proposals.
2. The applicant advises that Marlborough Rugby Football Club (the rugby club) and Marlborough Golf Club (the golf club) are leaseholders with rights of access over the application land. Whilst neither have commented about the application I consider that the training area proposals are likely to be in the interests of the rugby club.

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

1. The works are proposed to increase the area available for training use by Marlborough Rugby and Marlborough Youth Football Clubs (the clubs). Two sports pitches run end to end just inside the common land boundary along the northern side of Frees Avenue (the highway). Levelling and grass-seeding the application land will add a third pitch-sized sports area and will replace an area of semi-natural grassland. The proposed hedgerow will run between the grass-seeded area and the highway as a road safety measure.
2. The clubs are run by volunteers on a not-for-profit basis to promote sporting participation in the local community. Both clubs wish to expand participation in women’s’ rugby, girls’ football, touch rugby and walking rugby but there is a shortage of playing areas in Marlborough and MYFC participants have to train at Burbage, Great Bedwyn, Pewsey and Hungerford. The applicant says travelling long distances to train reduces participation due to family commitments, cost and access to transport. The proposals will provide a local alternative.
3. 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 and is closely linked with interests of public access. NE advises that due to the vegetation type and ground levels the application land is currently unsuitable for formal sporting activities and is used for informal activities such as walking and dog walking. OSS describes the site as an area of quiet contemplation which could provide some of the dwindling opportunities for informal recreation such as children’s play, picnicking, etc.
4. The application land sits between the golf club to the north and the existing sports pitches to the east. The applicant says that the use of the site as a training area will be limited to Saturday and Sunday mornings during September to May (which the applicant suggests represents 5% of annual daylight hours); I assume the applicant means September to April inclusive as they go on to say that the site will not be used for training during the summer months of May, June, July and August. The site will not be marked out as a pitch so there will be no visual deterrent to informal neighbourhood use when it is not in training use. I am satisfied that use of the site as a training area during the mornings of September to April inclusive is consistent with the existing use of this part of the common for sports and that informal activities such as children’s play and picnicking on the land will be able to continue at all other times.
5. The works will take approximately one week but the training area will need a year for the seeded grass to establish before it can be used for training purposes. However, general public access will be less damaging to the surface and the posts and ropes will be removed after 6 weeks to allow such access, which can be secured by attaching a suitable condition to the consent.
6. The proposed hedgerow will restrict direct public access from the highway onto the application land; indeed, its intended purpose is to separate the proposed training area from the road for safety reasons. However, the aerial photograph submitted with the application shows a broken line of vegetation each side of the proposed hedgerow so the public will continue to be able to access the common from the highway through these gaps.
7. Whilst the proposed works will change the way the application land is managed and accessed, I conclude that public access will not be seriously harmed. I further conclude that, on balance, the works are in the interests of the neighbourhood as they will benefit local people wishing to participate in sports in an area of the common where such use is well established.

***The public interest***

*Nature conservation*

1. The common lies within the North Wessex Downs Area of Outstanding Natural Beauty (the AONB). However, the common is not subject to any statutory designation for nature conservation and whilst areas of semi-natural grassland exist, the majority of the common consists of amenity grassland or planted wooded areas, which NE expects to have very low levels of biodiversity.
2. The applicant commissioned an ecology report which has not been submitted in support of the application but has apparently been made available to NE. According to NE, the report notes that the application land is one of the most floristically rich areas of the common. NE also notes that the report contains a number of recommended wildlife enhancements aimed primarily at improving the botanical diversity of the common to mitigate the impact of the proposed works. However, the lack of information in the report regarding animal species leaves NE unable to confirm that the mitigation measures will be of any net benefit to the common in terms of its overall biodiversity.
3. I consider that whilst the overall benefit to the biodiversity of the common from intended mitigation measures is unclear, the application land is not considered to be of any specific nature conservation importance. I further consider that any harm to nature conservation interests caused by the removal of an area of grassland is likely to be balanced to a large extent by the creation of a new hedgerow. I conclude that nature conservation interests will be maintained by the proposals.

*Conservation of the landscape*

1. Although the proposed training area may be a somewhat less attractive feature than the semi-natural grassland it will replace, it will not be unduly prominent especially as it will follow the line of two existing sports pitches alongside the highway.
2. NE raised concerns that the proposed hedgerow will restrict views across the common from the highway and I accept that this will be so. However, the hedgerow will also restrict views of the training area and may grow to be an attractive feature in its own right.
3. The AONB Board’s Landscaping and Planning Officer was consulted about the proposals but did not comment. Whilst the proposed training area and hedgerow will be new features in the landscape I am satisfied that they will not seriously harm landscape interests and that the natural beauty of the AONB will be conserved.

*Archaeological remains and features of historic interest*

1. There is no evidence before me to suggest that these interests will be harmed by the proposed works.

**Conclusion**

1. I conclude that the proposed works will enhance the recreational value of the common to the local community as an area for local people to play team sports without seriously harming the other interests set out in paragraph 5 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

Plan referred to in paragraph 2
