Planning Inspectorate logo

|  |
| --- |
| **Application Decision** |
|  |
| **by J Burston BSc(Hons) MA MRTPI AIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 June 2023** |

|  |
| --- |
| **Application Ref: COM/3311541**  **Brockeridge Common, Twyning**  Register Unit No: CL265  Commons Registration Authority (CRA): Gloucestershire County Council |
| * The application, dated 17 November 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 Ms M Coffey. * The works comprise excavation and use of stone sub-base for new access drive: 1. 6m from junction with highway to be tarmacadam; and 2. Remaining to be finished with local stone gravel top dressing. Total area 175m2. |
|  |

Decision

1. Consent is granted for the proposed works in accordance with the application dated 17 November 2022, subject to the following conditions:
2. The works shall begin no later than 3 years from the date of this decision.

REASON: To provide certainty to users of Brockeridge Common.

1. Tree and root protection area fencing shall only be installed to protect the Grey Alder and Hybrid Black Popular trees (referenced as T14 and T15 on plan reference 20102.502) adjacent to the proposed access drive.

REASON: To retain access for Commoners, public and livestock across Brockeridge Common and to preserve biodiversity and landscape character.

1. Any temporary fencing shall be removed within one month of completion of the works.

REASON: To retain access for Commoners, public and livestock across Brockeridge Common.

1. For identification purposes, a copy of the application plan is attached at Annex A of this decision.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy, dated November 2015, 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
2. This application has been determined solely on the basis of written evidence and an unaccompanied site visit undertaken on 30 May 2023.
3. The application also proposes temporary fencing (Heras style or similar) to provide tree protection along the access track during construction works. The proposed fencing will be some 2m in height and 165m in length.
4. The application has been submitted following the grant of planning permission reference 14/01081/OUT, dated 16 June 2015, for two dwellinghouses.
5. I have taken account of all the representations made and have taken them in to account in reaching my decision on this application.

**Main Issues**

1. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:
2. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
3. the interests of the neighbourhood;
4. 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
5. any other matter considered to be relevant.
6. In general terms Section 38 of the 2006 Act prohibits the carrying out of certain restricted works on common land without the appropriate consent. Restricted works are defined as including the re-surfacing of land which may consist of “the laying of concrete, tarmacadam, coated roadstone or similar material on the land”.

Reasons

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

1. The area of common land over which the application is situated is owned by Mr A Butterfield and Ms L James, who were consulted but have not commented on the application. There are a number of registered grazing rights for horses, cows and sheep recorded over the land as outlined on the Register. All registered Commoners were consulted by the Applicant and a response of “*no objection…as there has been a form of access albeit grass to this area for a number of years…”* was received from the Secretary of the Twyning Pasture Holders.
2. Nonetheless, I accept the comments made by the Open Spaces Society (OSS) that the temporary fencing could restrict grazing rights and the movement of livestock over the common. The Applicant states that the temporary fencing, on both sides of the proposed access track, is required to protect trees (and their roots) during construction operations, as required by condition 1 of the planning permission referred to in Paragraph 6 above. However, the condition requires measures for tree protection rather than any prescribed arrangement.
3. The Applicant’s drawing for tree protection (reference 20102.502) highlights the trees which are suitable for retention, and this includes two trees adjacent to the access track, namely a hybrid black poplar (T14) and a grey alder (T15). Neither of these trees are subject of a Tree Preservation Order. The surrounding woodland copse close to the track, appears to include young, self-seeded trees, such as maple and ash, which are not individually identified for protection but have some group benefits as a landscape feature.
4. Whilst I accept that it might be convenient to fence the entire track, I have no substantive evidence to state that this is necessary for tree protection. Accordingly, given that access across the common could be restricted for approximately 18 months I consider that the extent of fencing is unacceptable and that mesh panels, or similar, around the ‘Category B’ trees adjacent to the access track would be a practical solution to protect these trees and retain access to the common. To secure this arrangement a condition could be used on any consent granted.
5. Accordingly, subject to the imposition of relevant conditions, there is no evidence before me to indicate that the works will harm the interests of those occupying or having rights over the land.

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

1. 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. In general terms works should only be permitted if they maintain or improve the condition of the Common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact.
3. There is no evidence that the application site is well used by local people for recreation, and I saw no evidence of such usage at my site visit. Furthermore, no members of the public have objected to the application. The proposed access way is unlikely to be heavily used by the occupants of the proposed property and I do not consider that it will prevent local people or the wider public from walking on the common in the way that they are used to in the longer term.
4. However, as discussed above the proposed temporary fencing, along each side of the access track, would restrict access over this part of the Common. I have found that the extent of this fencing would be unnecessary. Accordingly, a suitable condition should be imposed to secure fencing only to protect the relevant trees.
5. In conclusion, I am satisfied that the proposed works, subject to a suitable condition, will not interfere with public access or adversely impact on the interests of the neighbourhood.

***Nature Conservation***

1. Natural England has said it does not see the works as having a detrimental impact on the biodiversity of the common as a whole. There is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests.

***Landscape***

1. The OSS is concerned that the introduction of a new track in an area where there are already a number of other such tracks would further urbanise the common. The works for which consent is sought will have an impact on the landscape on this section of the Common. Nevertheless, the widening of the existing access and surfacing it with tarmac would not create a wholly incongruous or strident feature when considered alongside existing accesses over the common.
2. Additionally, being adjacent to an existing public road and that no other ancillary works are proposed, such as street furniture, the overall effect would be limited. Moreover, the formation of the access track with materials that are both natural and in keeping with the area will assist in minimising any urbanising impact on the landscape of the common as a whole.
3. I conclude that the impact of the works on the landscape will not be so unacceptable that consent should be refused for this reason alone.

***Archaeological Remains and Features of Historic Interest***

1. There is no evidence to suggest that the development has an adverse effect on any archaeological remains or features of historic interest; Historic England have not raised any objections to this application.

***Other matters***

1. I note that the OSS has commented that the new track will not comprise a sealed surface (except in the vicinity of the road junction) and therefore does not require consent. Common Land Guidance Sheet 4 sets out that “*Consent is not needed for the resurfacing of a common with loose material (e.g. gravel, shingle, crushed stone) so long as it does not impede or prevent public access or does not interfere with rights over the common, e.g. commoners’ rights to graze livestock. Consent is needed for the resurfacing of a common with a hard surface (e.g. concrete, tarmacadam, coated roadstone)*.” In this case the Applicant proposes a self binding gravel surface, which forms a compacted surface which stays firm underfoot compared to traditional loose gravel. As such I find that this surfacing material would require common land consent.
2. OSS also considers that the works are not needed because the occupants of the proposed new dwellings can share the existing access to Yew Tree House. However, as I have concluded that the new access will not cause any significant harm I give this objection little weight.

**Conclusion**

1. I conclude that the works will not unacceptably harm the interests set out in paragraph 8 above. There will be some visual harm to the landscape but not to such a degree that consent should be refused. Consent is therefore granted for the works subject to the conditions set out at paragraph 1 above.

J Burston

INSPECTOR

**ANNEX A**

**COM/3311541 Application Plan**

