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| **Application Decision** |
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| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 December 2023** |
| **Application Ref: COM/3302826****Bromyard Downs, Herefordshire**Register Unit No: CL15Commons Registration Authority: The County of Herefordshire District Council (the Council)* The application dated 8 July 2022, as amended, 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 National Trust.
* The works comprise creation of a new 10m long access driveway covering 25 square metres (measurements are approximate) from the B4203 highway over the common land to Spring Cottage, Norton, Bromyard HR7 4PJ. The driveway will incorporate two 600mm wide black tarmac wheel tracks with grassed area between and a road junction bellmouth.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 8 July 2022, as amended, 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 land shall be fully reinstated within one month from the completion of the works.
4. For the purposes of identification only, the location of the proposed works is shown bordered 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. National Trust owns Spring Cottage but does not own the adjacent common land over which the works are proposed. It is therefore correct that the application is made under the 2006 Act.
3. The application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS).
4. The application, as originally made, proposed a ‘stone and dust’ surface for the twin tracks and the submitted application plan additionally referred to a concrete pipe culvert ditch crossing. The applicant subsequently amended the application to propose tarmac wheel tracks. The applicant also amended the application plan to refer to the track surface change and to remove the reference to the culvert works. I am satisfied that no party with an interest in commenting on the application has been prejudiced by the amendments.
5. Planning permission for the creation of a new vehicular access from the highway into the garden of Spring Cottage, with provision of a parking and turning area within the garden, was granted by the Council on 20 January 2023 (Application No: 222183).
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
7. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
8. the interests of the neighbourhood;
9. 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
10. any other matter considered to be relevant.

**Reasons**

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

1. The Council, in its capacity as landowner, was consulted by the applicant but did not comment.

1. The common land register records extensive grazing rights and rights of estovers and turbary over the common. The applicant advises that whilst rights are exercised, they are not aware of any being exercised over the application land, which is highway verge beside a busy road. The Bromyard Downs Common Association was consulted about the application but did not comment.
2. There is no evidence before me to suggest that the proposed works will harm the interests of those occupying or having rights over the land.

***The interests of the neighbourhood and 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. The works are proposed to provide vehicular access from the highway to Spring Cottage. The occupant currently has to park in a nearby layby on the B4203, which is busy with fast flowing traffic at that point. The occupant seeks a safer and more secure parking area within the curtilage of the cottage, which requires crossing the roadside verge.
2. NE advises that Bromyard Downs is subject to a Scheme of Regulation made under the Commons Act 1899 (the Scheme) which, subject to a set of byelaws and regulations, 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 enjoying recreation. OSS advises that the Scheme was made by Bromyard District Council on 2 August 1951 and was confirmed by the Minister of Agriculture and Fisheries on 1 October 1951.
3. I consider that as the application land is roadside verge, recreation 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 land once the driveway is in place and 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 and conservation of the landscape*

1. NE advises that the site is not subject to any statutory designations for nature conservation and, from the information available, does not anticipate that the works will have any significant adverse effects on the common’s overall biodiversity. The planning permission is conditional to new hedgerow planting, hedgerow enhancement and installation of habitat boxes. I consider that the implementation of these measures will lessen any minor adverse biodiversity effects there may be.
2. The common is not subject to any formal landscape designation. The proposed driveway will nevertheless have some visual impact as it will interrupt the line of the grassed verge. However, I consider that the tarmac will blend in somewhat with the road surface over time and that the grass strip between the tracks will soften the impact to a certain extent, which will diminish the visual impact in the long term.
3. I am satisfied that the above interests will not be seriously harmed by the works.

*Archaeological remains and features of historic interest*

1. Historic England was consulted about the application but did not comment. There is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

**Other matters**

1. OSS suggests that the authority in which the Scheme is vested (now the Council) has powers to set out, construct and maintain or authorise the construction and maintenance of such new paths and roads on the common as appear to the Council to be necessary or expedient. Consequently, no consent can be given under the 2006 Act for such works as authorised.
2. Government published guidance (Common Land Guidance Sheet 2c: Works and schemes of management) advises that prospective applicants should satisfy themselves that, under the terms of any scheme, consent under the 2006 Act is needed for the proposed works and that if they are in any doubt they should seek their own legal advice. An application for consent has been made and has been decided on its own merits.

**Conclusion**

1. The Defra 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”.* The policy 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.”*
2. I conclude that the proposed works will cause little or no harm to the interests set out in paragraph 8 above and are consistent with the Defra policy. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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