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| **Application Decision** |
| Hearing held on 5 September 2023Site visit made on 5 September 2023 |
| **by Paul Freer BA (Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 December 2023** |
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| **Application Ref: COM/3307244****Sneedhams Green, Matson, Gloucestershire** |
| Register Unit: CL252 |
| Registration Authority: Gloucestershire County Council |
| * The application, dated 15 September 2022, is made under Section 38 of the Commons Act (the 2006 Act) for consent to carry out restrictedworks on common land.
* The application is made by Mr Alan Morgan of the Trustees of the GW Hughes Will Trust.
* The application is for works consisting of the insertion of 3 access routes.

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**Decision**

1. Consent is refused.

**Preliminary matters**

1. I carried out the site visit in the company of the applicant and his representatives, as well as objectors to the proposal that included representatives of the Open Spaces Society (OSS) and Mr Herbert.
2. Following advertisement of the applications, a total of 5 representations were received, including a letter of support on behalf of the Trustees of the GW Hughes Will Trust.
3. The applications have been determined on the basis of the written evidence, the oral evidence heard at the Hearing and my own observations of the site and surroundings.

**Main Issues**

1. I am required by Section 39(1) of the 2006 Act to have regard to the following in determining this application:

(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, including 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

 (d) any other matter considered to be relevant.

1. In considering these tests, regard should be given to the Department for Environment, Food and Rural Affairs Common Land Consents Policy of November 2015 (“the Consents Policy”) which has been published for the guidance of both the Planning Inspectorate and applicants.

***The application***

1. In June 2022, the applicant submitted an application for planning permission (City Council Ref: 22/00519/FUL) for a residential development for 190 dwellings and associated works in relation to land east of Winnycroft Lane (also known as ‘Snow Capel’). Shortly before the Hearing, the City Council resolved to grant planning permission for that development subject to the applicant entering into a Section 106 Agreement. This application made under Section 38 of the 2006 Act is for three new access routes to provide vehicular and pedestrian access to the residential development proposed under reference 22/00519/FUL. The application relates to a thin strip of the common on the east side of Winnycroft Lane.

**Reasons**

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

1. The land is not occupied but Mr JG Herbert has the right to graze 12 ewes and their lambs over the whole of the land comprised in the register. At the Hearing, Mr Herbert confirmed that he exercises that right “all the time”. I noted at my site visit that the pedestrian access at the northern end of the proposed development and the vehicular access at the southern end of the proposed development both utilise former access points to the adjoining land to the east (the site for the proposed residential development). As such, the ground there is either hard surface or is compacted with only fragmented grass cover. It therefore provides either no or at best relatively poor surface for the grazing of animals.
2. However, the same cannot be said for the central vehicular access. That land has never formed an access to the adjoining land and is well grassed, offering good potential for grazing for animals. The quantum of loss of grazing land resulting from the central access would be relatively small, but it would nonetheless still be a reduction in the amount of land over which Mr Herbert could exercise his right to graze his sheep. No replacement for that lost grazing land has been proposed.
3. Moreover, the access to the residential development would not be fitted with cattle grids. Insofar as the proposed accesses are the works proposed in this application under section 38 of the 2006 Act, I consider that this is a matter that is before me. I fully recognise that Sneedhams Green Common is an entirely unenclosed common, and that there are no existing cattle grids which prevent grazing animals from exiting the common and grazing in the wider estate. This would include the residential development currently under construction on land south of Winnycroft Farm. Indeed, I note that livestock wandering around the area is part of the established character of Matson.
4. However, the above represents the existing situation. The proposed residential development of Snow Capel would directly adjoin part of the common where Mr Herbert exercises his right to graze sheep. It is therefore more likely than not that, once completed and in the absence of cattle grids to the proposed accesses, the sheep grazing on the thin strip of common land to the east of Winnycroft Lane would venture into the residential development. That would place an additional burden on Mr Herbert which, in my view, would not be in his interests.

***The interests of the neighbourhood***

1. I was advised at the Hearing that Matson is one of the more deprived neighbourhoods in the City of Gloucester. Of the 190 dwellings that would be provided by the proposed development at Snow Capel, 75% would be affordable housing. There would also be an area of public open space within the proposed development. Alongside this, the developers for the residential development are seeking to deliver a package of social value measures focussing on training opportunities, working with local schools/colleges and supporting community projects. The pedestrian and vehicular accesses that would cross the common would facilitate that development and are necessary to secure those benefits to the community. I am therefore satisfied that the works proposed in the application are a positive benefit, albeit indirectly, to the interest of the neighbourhood.

***The public interest***

*The conservation of the landscape*

1. The landscape in this locality is a semi-natural landscape largely comprised of open grass and fields. This landscape adds to the amenity value of the area overall. The proposed works comprise three new accesses crossing the common, each of which would have a hard surface and would be permanent. Notwithstanding the relatively small area of land involved, the introduction of these urbanising features would be harmful to this semi-natural landscape. That harm would have a significant and lasting impact.

*Nature conservation*

1. Natural England does not anticipate any benefits to nature conservation arising from the proposed works, but neither does it identify any harms that would result.

*The protection of archaeological remains and features of historic interest*

1. Historic England have not commented on the application. There is no indication that any archaeological remains or features of historic interest on the common land would be lost or damaged as a result of the proposed works.
2. There is a Scheduled Monument to the east of Winnycroft Lane that, due to the presence of an intervening hedgerow, is not readily appreciated from the common land. The residential development proposed (City Council ref: 22/00519/FUL) would include a reduction in the density of that hedgerow, which in turn would provide a stronger visual connection between the Scheduled Monument and the common land. Moreover, the proposed residential development would provide walking routes around the Scheduled Monument as well as interpretation panels to identify the Scheduled Monument, illustrate its history and explain the connection between the Scheduled Monument and the historic settlement at Sneedhams Green. The proposed residential development would therefore result in a better understanding and appreciation of the significance of the Scheduled Monument. Insofar as the works proposed in this application are necessary to facilitate the residential development and thereby secure the above improvements, those are benefits that arise indirectly from those works.

*The protection of public rights of access to any area of land*

1. There would be no amendment to or diversion of the existing public footpath where it traverses the common land at its northern boundary. Access to the wider network of public footpaths would not be affected by the proposed works. I am satisfied that the proposed works would not adversely affect public rights of access to any area of land.
2. The proposed residential development would include a pedestrian path along the eastern side of the hedge that borders the common land. This would provide a more pleasant and safer alternative to walking along the common land itself where it adjoins Winnycroft Lane and is another benefit that would arise from the proposed residential development.

**Other matters considered to be relevant**

1. The works are required to provide access for the residential development for which the City Council recently resolved to grant planning permission (City Council ref:22/00519/FUL). The proposed residential development would boost local housing supply in the area, and in particular would provide affordable housing. It would also provide an area of public open space and would result in a better understanding and appreciation of the significance of the Scheduled Monument. The development would confer economic, social, and environmental public benefits which attract significant weight in favour of allowing the proposal. This is a matter which I have considered in the overall balance.
2. However, paragraph 4.3 of the Consents Policy states that the Secretary of State will wish to know what alternatives have been considered to the application proposal. The applicant does not claim that an application under section 16(1) of the 2006 Act to deregister the common land and register an alternative parcel of land was not an option available, on the basis that he does not own the land that is the subject of this application (the owners of the common being Gloucester City Council).
3. Instead, the applicant takes the view that an application under section 16 of the 2006 Act would result in the creation of four separate ‘islands’ of common land to the east of Winnycroft Lane that would fragment the common and not be in accordance with the Consents Policy. But that ignores the fact that, in practical terms, this would be precisely the effect of constructing the three accesses proposed in this section 38 application. The significant difference being that, by pursuing the section 38 application in isolation, there would be no replacement land whereas there is a possibility (and I put no higher than that) that adequate replacement land could be provided were a section 16 application submitted in parallel.
4. I have not been informed of any attempts by the applicant to acquire the land which would be taken up by the proposed accesses. There is, therefore, no evidence to show that a concerted effort was made to engage with the owner of the land with the clear objective of pursuing a section 16 application. It is reasonable to anticipate that this alternative had been properly considered before being rejected, and the onus lies within the applicant to produce that evidence.
5. Moreover, the landowners have not objected to this application. Indeed, based on the significant benefits that would be gained through the residential development for which the City Council has resolved to grant planning permission, there is a reasonable expectation that the landowners might be willing to engage with the applicant in submitting a section 16 application in order to secure those benefits.
6. Based on the information before me, I have concerns that the applicant’s choice to pursue a section 38 application in this case was more closely associated with expediency than adherence to the Consents Policy. As such, discounting a section 16 application was in my view, somewhat premature.

**Overall balance and conclusion**

1. Paragraph 3.2 of the Consents Policy seeks the outcome that works take place on common land only where 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. I have found that the works proposed in this case would not maintain or improve the condition of the common. In particular, the physical works to create three access routes on this section of common land would have a noticeable urbanising impact that would result in permanent, albeit localised harm to the landscape. As such, they would have a significant and lasting impact. Moreover, the creation of the vehicular accesses would facilitate an increase in the number of vehicular movements across the common. This would not be consistent with its status. The proposed works would therefore conflict with the outcomes set out in paragraph 3.2 of the Consents Policy. This counts heavily against the proposal.
2. Paragraph 1.3 of the Consents Policy expects adherence to the policy but does allow for departures from it as appropriate based on the merits of the case. I have considered whether the wider public benefits arising from the proposal would justify a departure from the Consents Policy in this case. I acknowledge that delivering the benefits inherent in the planning permission for the residential development of Snow Capel are predicated upon achieving suitable access to the site, and there are no obvious alternative routes brought to my attention that would be less harmful to the common. This factor weighs in favour of the proposal.
3. Nevertheless, paragraph 3.2 of the Consents Policy is clear as to wider public benefits. Effectively, works having a permanent impact must confer a wider public benefit and that impact must not be significant. Hence, permanent works on a common which require section 38 consent are to be avoided if possible unless their effect is to maintain or improve the condition of the common.
4. The applicant is disqualified from applying under section 16(1) of the 2006 Act as he does not own the common land upon which the works are proposed. However, this of itself is insufficient to convince me that the fundamental safeguards set out in the Consents Policy should be overridden, as these are circumstances that could arise with some frequency. To do otherwise would be to the cumulative detriment of the overall stock of common land and would too easily circumvent the objectives of the Consents Policy.
5. Moreover, it appears to me that there is sufficient space on land in the ownership of the applicant to provide adequate replacement land as part of the residential development of Snow Capel. The applicant has not provided a convincing explanation as to why a section 16 application could not be made in collaboration with the owner of the land. I am therefore not satisfied that this alternative approach has been adequately explored. This also counts heavily against the proposal.
6. In weighing the overall balance, I conclude that the applicant has not demonstrated that the public benefits that would undoubtably arise (albeit indirectly) from the proposed works would outweigh the permanent harm to the common that would be caused by those works. I am therefore not persuaded that consent should be granted at this time.

Paul Freer

INSPECTOR

**APPEARNCES**

**For the applicants:**

Mr Alan Morgan Trustees of the GW Hughes Will Trust

Mr David Hughes Trustees of the GW Hughes Will Trust

Mr Jake Rigby Bromford

Mr Ben Read Black Box Planning

Mr David Marley Black Box Planning

**In support of the application:**

Mrs Vanessa Worrell Youth Support officer

**In objection to the application:**

Mr Chas Townley Open Spaces Society

Mr Jason Herbert Commoner

**Appendix 1**

**Not to scale**

