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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: 23 May 2024** |
| **Application Ref: COM/3326284**  **Roadside Waste in the village of Hudswell, North Yorkshire**  Register Unit No: CL56  Commons Registration Authority: North Yorkshire County Council.   * The application dated 17 July 2023 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 Addisons Surveyors LLP for Mrs Camilla Braithwaite. * The works comprise creation of a new 12m² tarmac driveway and dropped kerb to provide access to a development plot opposite the George & Dragon public house, Hudswell Lane, Hudswell DL11 6BL. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 17 July 2023 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.

REASON: To provide certainty to users of the common land.

1. Use of the existing metal agricultural gate for vehicular access into and out of the development plot from Hudswell Lane shall be discontinued for as long as the consented works are in place.

REASON: To ensure that there is only one means of vehicular access into and out of the development plot over the common land.

1. The land shall be fully reinstated within one month from the completion of the works.

REASON: To retain access to the public across the common land.

1. For the purposes of identification only, the location of the proposed works is shown shaded 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. The application has been determined solely on the basis of written evidence.
3. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS).
4. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
5. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
6. the interests of the neighbourhood;
7. 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
8. any other matter considered to be relevant.

**Reasons**

1. The common comprises several areas of roadside verge. Most of it is on the southern side of Hudswell Lane, as is the development plot. The applicant advises that planning permission is sought for a new house at the plot and that the driveway is necessary to provide vehicular access from Hudswell Lane that will meet the required highways standards.

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

1. Pursuant to Commons Commissioner Decision 268/U/71 of 29 November 1974 following a hearing into the question of the ownership of the land, the Commons Commissioner was not satisfied that any person was the owner of CL56 and it remains subject to protection by the local authority, including at Parish Council level, under s9 of the Commons Registration Act 1965 (now under s45 of the 2006 Act).
2. The application form gives the owner of the land as Hudswell & District Parish Council (HDPC), which has confirmed it is agreeable to the proposal to cross the common, subject to planning permission compliance. However, I am satisfied that the agreement does not proport to be landowner permission and that HDPC is acting only as protector of the common.
3. North Yorkshire Commons Registration Authority confirms that there are no registered rights of common over the common.
4. 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.
2. 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***

1. As well as the public interest in the protection of public rights of access, I must also have regard to the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

*Nature conservation*

1. The common is not subject to any statutory designations for nature conservation. NE advises that Lower Swaledale Woods and Grasslands Site of Special Scientific Interest (SSSI) is approximately 185m to the north but does not anticipate that the works will have any likely significant effects on it.
2. I am satisfied that nature conservation interests will not be harmed by the works.

*Conservation of the landscape*

1. The common is not subject to any formal landscape designation. There are other nearby driveways serving properties along Hudswell Lane so a new driveway will not be out of place in the landscape. The driveway will nevertheless have some visual impact as it will further interrupt the line of the grassed verge. However, I consider that the tarmac surface will blend in somewhat with the road surface over time, which will diminish the visual impact in the long term.
2. I am satisfied that the works will not impact significantly on landscape interests.

*Archaeological remains and features of historic interest*

1. Historic England and North Yorkshire Council’s Archaeology Department were 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 points to there being a stone wall fronting the plot, through which there is an existing unsurfaced means of vehicular access into it from Hudswell Lane via an agricultural metal gate. The gate is centrally positioned, whereas the applicant seeks to access the plot only at the eastern end. The applicant advises that the intention is to ‘wall up’ the gate if the new driveway is consented.
2. The OSS concern is that should consent be given for the new driveway and the gate is left in place, there would be nothing to stop use of both means of access, for example, for an in-and-out drive. The applicant has not contested an OSS request for a condition to be attached to any consent requiring use of the gate to be discontinued and I consider such a condition to be appropriate to ensure that, as intended, there is only one vehicular access point into and out of the plot over the common land.

**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**

**Application plan referred to in Paragraph 2
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