**

|  |
| --- |
| **Application Decision** |
|  |
| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 November 2024** |
| **Application Ref: COM/3347651**  **Clapham Common, Clapham Cum Newby, North Yorkshire**  Register Unit No: CL209  Commons Registration Authority: North Yorkshire Council.   * The application dated 4 July 2024 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 M L Planning Consultancy Limited for Helen Croft. * The works comprise (all measurements are approximate):  1. removal of a section of dry stone wall to create a 3.6m wide timber gated vehicular access into an agricultural field; and 2. surfacing of 4m of grass verge between the gate and Keasden Road with two 460mm wide limestone gravel wheeltracks. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 4 July 2024 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 Clapham Common.

1. Any common land impacted by the works shall be fully reinstated within one month from the completion of the works (note that this does not apply to any physical changes or permanent features introduced as part of the works for which consent is granted).

REASON: To retain access for the public over Clapham Common.

1. For the purposes of identification only, the location of the proposed works is shown as a red square 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. Planning permission has been granted by North Yorkshire Council for creation of new field access at land adjacent to Brock-a-bank, Keasden, Clapham LA2 8EY (Decision ZA24/25650/FUL of 23 January 2024).
3. The application has been determined solely on the basis of written evidence. I have taken account of representations made by Natural England (NE), Historic England (HE), North Yorkshire Council Principal Archaeologist (NYCPA) and 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 applicant explains that there is currently no vehicular access into the agricultural field to the south of their property, Brock-a-bank. The proposal will create such an access from the adjacent Keasden Road and allow the effective management of the land and livestock.

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

1. The land is owned by the Ingleborough Estate (IE), which was consulted about the application but did not comment. The applicant advises that IE has agreed a deed of easement giving the right to pass over the land and to carry out the proposed works.
2. The common land register for register unit CL209 records extensive grazing rights and some rights of turbary and estovers. The applicant advises that 26 of the recorded 28 rights holders were consulted about the application. The remaining two could not be contacted as the register records incomplete addresses for them. The Planning Inspectorate received no representations from any rights holders in response to the published application notice. The applicant advises that five of the consulted rights holders responded directly and that none of them raised any objections.
3. 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 on foot.

1. The application land is a strip of roadside common land verge over which vehicular access is sought into the agricultural field beyond. OSS submitted a photograph showing what appears to be a nearby blocked up vehicular access point into the field from Keasden Road. The applicant confirms that the access was blocked up following advice from IE that it was not lawful, hence the proposal to create a new lawful access point.
2. The photograph shows that the verge is narrow and roughly vegetated. I consider that any recreational use of it is likely to be limited to general access and that local people and the public alike will continue to be able to walk over the land once gravel wheeltracks are in place. The proposed gate will be no more of an impediment to access over the verge than the section of dry stone wall it will replace.
3. I conclude that the works will have a negligible impact on the above interests.

***The public interest***

*Nature conservation*

1. The common is not subject to any statutory designations for nature conservation. NE advises that, from the information available, it does not anticipate that the works will have any likely significant effects on the overall biodiversity of the common and I am satisfied that nature conservation interests are unlikely to be harmed by the works.

*Conservation of the landscape*

1. The application land lies within the Forest of Bowland National Landscape (FOBNL). The FOBNL Conservation Board was consulted about the application but did not comment.
2. The applicant advises that the proposed timber gate is of standard design and in is keeping with the character and appearance of the area. The two gravel wheeltracks will be comprised of limestone and will together cover 3.54m².
3. I am satisfied that the small scale of the works and the natural material to be used will ensure that the natural beauty of the National Landscape will be conserved.

*Archaeological remains and features of historic interest*

1. HE advises that the proposed works will not impact on any heritage assets. NYCPA confirms that, having checked the Historic Environment Record, there are no recorded archaeological sites in the area and that the proposed works are unlikely to have an impact on archaeological remains.

1. I am satisfied that the works are unlikely to harm the above interests.

**Other matters**

1. The Defra policy says the Secretary of State will wish to know what alternatives have been considered to the application proposal. The application plan shows a side road off Keasden Road running between Brock-a-bank and the agricultural field. Vehicular access into the field from the side road would not cross common land and would not require section 38 consent. The applicant confirms that the side road is not in their ownership, they have no right to access the field from it and it has not been possible to agree an easement with the owner, hence the application to cross common land.
2. I am satisfied that gaining access from the side road is not a viable alternative to the proposed works.
3. OSS contends that consent under section 38 is not needed for the resurfacing of land where the material consist only of limestone gravel as such consent is required for the laying of concrete, tarmacadam, coated roadstone or similar material.
4. It is for the person carrying out the works to be satisfied as to whether consent is needed. In this case an application has been made and has been considered on its merits.

**Conclusion**

1. I conclude that the works will only negligibly harm, or are unlikely to harm, the interests set out in paragraph 6 above and that the giving of consent may be considered for the works applied for. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

**Plan referred to in paragraph 2.
**