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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: 2 May 2025** |
| **Application Ref: COM/3358698****Piltdown Common, East Sussex**Register Unit No: CL30Commons Registration Authority: East Sussex County Council (ESCC).* The application dated 6 January 2025 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 KLW Ltd for Ray Fawehimi.
* The works comprise (all measurements are approximate):
1. a new ‘no dig’ geogrid vehicular access (4.8m wide x 15m long) filled with gravel aggregate with bellmouth to the highway;
2. narrowing and remodelling the existing vehicular access (45m to the west of the new access) to 1.5m to form a new path for pedestrian and cycle use, including resurfacing with asphalt, timber edging; and topsoiling/grass mix seeding of the disturbed ground.
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**Decision**

1. Consent is granted *in part* for the works described in the application dated 6 January 2025 and the plans submitted with it, subject to the following conditions:
2. The access described at i. above shall be no wider than 3.7m, except for the bellmouth, which should accord with the relevant technical requirements.

REASON: To ensure that no more of the common land is used for a driveway than is necessary.

1. The existing access described at ii. above shall be entirely removed and the land reinstated to grass using the proposed topsoiling/grass seed mix.

REASON: To maintain a single point of surfaced access to the applicant’s property over the common land.

1. 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. 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 the common land.

1. For the purposes of identification only, the locations of the proposed works are shown in red on the attached plan. The proposed new access is at the eastern location.

**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 Wealden District Council (WDC) for “Proposed vehicular access and driveway to serve dwelling and adjoining agricultural land, with existing access remodelled to provide access for pedestrians/cyclists only” (Decision WD/2024/0075/F of 31 May 2024).
3. The application has been determined solely on the basis of written evidence. I have taken account of representations made by WDC, ESCC County Archaeologist, Natural England (NE) 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. Vehicular access from the A272 to the applicant’s property and agricultural land is via a track across a roadside strip of the common. The proposed works will move the access approximately 45m to the east. The applicant advises that this will provide much better visibility when egressing and exiting the A272 and is in the interests of highway safety. The existing access is proposed to remain but to be remodelled and narrowed for pedestrian and cyclist use and for taking refuse bins to the established roadside collection point at a layby where the access meets the highway.

1. The new access is proposed to be wide enough to accommodate the width of two vehicles. The applicant explains that this is to allow vehicles of all sizes to turn, thus avoiding the possibility of vehicles reversing onto the highway. It is also to avoid the possibility of vehicles wishing to enter the applicant’s property having to wait on the highway as other vehicles use the driveway to leave it.

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

1. The applicant claims to own the land the subject of the application and there is no evidence to suggest otherwise. It follows that the proposed works are in the landowner’s interests.
2. The common land register for unit CL30 records extensive and varied rights of common including pasture and herbage for sheep, cattle and horses; piscary/fishing in ponds; estovers; turbary; pannage; and brakes and litter. The applicant notes that almost all the rights holders recorded in the register have rights that relate only to other areas of the common and this does appear to be the case. The applicant also notes that the application land is effectively cut off from the wider common by residential properties to the east and west and that the roadside nature of the application land makes it unsuitable for grazing. The applicant advises that in his many years at the property he has not witnessed the exercising of any rights of common over the application land.
3. I am satisfied that the proposed works are unlikely to harm the interests of those 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. The application land is a strip of roadside common land verge, which photographs submitted by the applicant show to be roughly vegetated. I consider that any recreational use of it is likely to be limited to general access and that the proposed works would not prevent local people and the public alike from walking over the land, as they currently can.
2. I conclude that the works will have a negligible impact on the above interests.

***The public interest***

*Nature conservation*

1. NE advises that the application land is not subject to any statutory designations for nature conservation and that, based on the plans submitted, the works will not have any likely adverse impacts on statutorily protected nature conservation sites. I am satisfied that nature conservation interests are unlikely to be harmed by the proposed works.

*Conservation of the landscape*

1. There is no evidence to suggest that the application land is subject to any formal landscape designation to which the Protected Landscapes duty applies.
2. The applicant advises that careful siting of the new access will ensure that nearby mature oak trees will be preserved. Photographs submitted show that it will cross the verge at a point between trees, leaving adequate space on either side for them to be left undisturbed. The applicant contends that the use of a grid filled with gravel aggregate will minimise the visual impact of the access surface and I consider that such a surface is likely to be less visually intrusive than one of tarmac or concrete.
3. The applicant advises that the existing access is in poor condition and is unsightly, which is shown to be so in submitted photographs. It is proposed to be narrowed and a length on each side will be returned to grass, which will lessen its visual impact. The proposed resurfacing is also likely to give it a tidier appearance.
4. The works proposed in relation to the existing access will improve its visual impact and will in part redress the visual impact of the new one. Whilst there will be some additional impact on the landscape I am satisfied that overall the scale of the proposed works and the materials to be used will not seriously harm landscape interests.

*Archaeological remains and features of historic interest*

1. ESCC County Archaeologist advises that, based on the information supplied, no significant archaeological remains are likely to be affected by the proposals. I am satisfied that the works are unlikely to harm the above interests.

**Other relevant matters**

1. The Defra policy states that *“where it is proposed to construct or improve a vehicular way across a common* […] *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 consider that the proposed works are not entirely in line with the Defra policy. The works as proposed would leave two separate surfaced means of access across common land into the applicant’s property when there is currently just the one. Furthermore, the area of common proposed to be surfaced will be larger than the current surfaced area so it is not simply a case of moving the existing means of access to a more suitable location.
3. In seeking more suitable vehicular access into his property the applicant is not proposing to fully re-instate the current access to grass. OSS contends that there is no need for a separate surfaced access for pedestrian and cycle use as the repositioned access could serve this purpose. Furthermore, OSS also contends that the bellmouth of the repositioned access could be used as a stopping point for refuse trucks. Indeed, as the driveway will be positioned where there is greater highway visibility it would be in the interests of highway safety to do so. I am minded to agree, and I do not consider that the proposals constitute the only practical means of achieving access to the applicant’s property.
4. Both OSS and NE highlight that the application is for an access wide enough for two vehicles. Whilst the applicant has advised that analysis of their own plans shows the actual width will be 4.5m rather than 4.8m, the principle of a two vehicle width access remains. The applicant points out that the planning permission requires it for the reasons set out in paragraph 8 above. However, the access is for the private use of the applicant and, although it is for both domestic and agricultural vehicle use, I consider the likelihood of two vehicles needing to use it at the same time to be low. Furthermore, I am not satisfied that the ability to use the driveway as a turning circle justifies the surfacing of a larger area of common land than is necessary for simply egressing and exiting the highway.
5. Notwithstanding the above, the applicant contends that due to the distance of his property from the highway an access of at least 3.7m width would be required to accommodate the necessary fire service vehicles in the event of an emergency. I accept that this weighs in favour of consenting to an access that is slightly wider than a purely domestic driveway may be. I also recognise that agricultural vehicles may be wider than domestic vehicles and may need a wider access. On this basis I consider it reasonable to consent to a new 3.7m wide access.

**Conclusion**

1. I conclude that moving the vehicular access is in the interests of highway safety and that the works will only negligibly harm, or are unlikely to harm, the interests set out in paragraph 6 above.
2. However, I also conclude that the scope of the works proposed exceeds what is required as a practical means of access to the applicant’s property over common land both in terms of the number of access points and the width of the new access. Consent is therefore granted *in part* for the proposed works subject to the conditions set out in paragraph 1.

**Harry Wood**

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