

# Application Decision

Site visit made on 26 June 2017

**by Heidi Cruickshank BSc MSc MIPROW**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 18/07/2017

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**Application Ref: COM3164135**  
**St Breward Common, Cornwall**

Register Unit No. CL195

Registration Authority Cornwall Council

- The application, dated 24 November 2016, is made under Section 38 of the Commons Act 2006 for consent to construct works on common land.
  - The application is made by Mr D Wilson.
  - The works comprise the provision of a new access of 1.5 metres x 3.0 metres, comprised of hard-core with tarmac finish.
  - The proposed works would cover an area of approximately 4.5 square metres.
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## Decision

1. The application is refused.

## Preliminary matters

2. There is no existing physical or legal access over the common land at this point nor, at this stage, any agreed grant of any right of access by the landowner to the applicant.
3. This application deals only with the proposed works and is not an application to establish a right of way over the land.

## Procedural matters

4. I carried out a site inspection of the relevant land accompanied by the applicant on 26 June 2017.

## The Land

5. St Breward Common ("the common") is recorded under the Commons Registration Act 1965 in the Register of Common Land. The common comprises numerous parcels of land, including roadside verges, to the north-east of St Breward. The area subject to the application is situated in the hamlet of Churchtown. The common as a whole has an area of approximately 86 acres.
6. The works relate to access to paddocks belonging to the property Cuckoos Call. Three paddocks are shown on the application map as belonging to the property but the easternmost is not relevant to the application, having separate access via a stable yard. For simplicity, I shall refer to the relevant paddocks, which are separated by a brook, as the eastern and western paddocks. The western paddock has a boundary fence relating to a separately owned piece of land to the south-west, so there is no direct road boundary relating to the western paddock.

7. The applicant indicates that the application area is 'near' the Bodmin Moor Area of Outstanding Natural Beauty ("AONB"). I am satisfied from Magic.gov.uk that the boundary to the AONB at this point is the road and, therefore, the application area and the paddocks are within the AONB.
8. The paddocks are not registered common land but the verge on which the works are proposed is part of the common. There is no existing access to the paddocks at this point from the road running between St Breward and Churchtown.

### **Main Issues**

9. Section 38 of the Commons Act 2006 ("the 2006 Act") provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access to or over the land, including new solid surfaces, such as for an access road.
10. I am required by section 39 of the 2006 Act to have regard to the following in determining the 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; and
  - d. any other matter considered to be relevant.
11. Section 39(2) of the 2006 Act provides that the public interest includes the public interest in:
  - a. nature conservation;
  - b. the conservation of the landscape;
  - c. the protection of public rights of access to any area of land; and
  - d. the protection of archaeological remains and features of historic interest.

### **Reasons**

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

##### *The landowners*

12. I am satisfied that the alteration to a small area of common land would not be against the landowners interests. The granting of a legal right of access remains a separate matter.

##### *Registered rights of common*

13. The applicant has referred to the common rights associated with Cuckoos Call, which were claimed under Regulation 44 of the Commons Registration (England) Regulations 2008. This was a "...right to graze 1 head of cattle or 1 pony or 5 sheep over the whole of the land comprised in this register unit and over Register Unit Nos. CL113 and CL763 as set out in those register units." The applicant indicates that the rights are exercised. Having made this application, he is clearly content to lose such rights on this particular area of common.

14. There are 56 registered commoners with a right to graze cattle, ponies or sheep over the whole of the common, 37 of whom also have a right to cut and take turf and peat. I consider that the rights "*...over the whole of the land comprised in this register unit...*" include the land subject to this application. The landowner objects to the application on the basis that it would impact upon the Commoners' right to graze the land and, therefore, it appears that at least some of those entitled to make use of the land are actively using the common, or some parts thereof.
15. At the time of my visit I saw no indication that the area in general, including the roadside verges, was being used for grazing at present. Despite the objection of the landowner I note that none of the Commoners have objected to the proposed works on the basis of loss of grazing, or potential grazing, land or any other rights of common.
16. There may be some adverse effect upon those with rights of common, to whose interests the 2006 Act requires me to have particular regard, due to some loss of potential grazing land and for the cutting of turf or peat. However, I consider the loss of 4.5 m<sup>2</sup> from approximately 86 acres of common land to be insignificant.

#### *Conclusions*

17. Given the small area that would be affected by the proposed works I find the impact on the interests of those occupying or having rights over the land to be insignificant.

#### ***The interests of the neighbourhood***

18. The consents process is intended to ensure that the policies of the Secretary of State are met. Any works should maintain or improve the condition of the common or, exceptionally, confer some wider public benefit.
19. I do not consider that the proposed works would maintain or improve the condition of the common, as they would remove the current natural aspect in that area. However, as the affected area is quite small there would be no significant negative impact and so the overall situation is neutral.

#### ***The public interest***

##### *Public Access*

20. The Countryside and Rights of Way Act 2000 ("the 2000 Act") introduced a right of access to land shown as registered common land. However, the 2000 Act provides that "excepted land", which includes that within 20 metres of a dwelling, is not treated as access land. Given the proximity of a house on the opposite side of the road, I consider that the application land is excepted land, to which there is no public right of access under the 2000 Act.
21. However, given that this area of common land is also the verge of a public highway, I consider that the public are likely to have a right to walk there. As the proposed works would not block such use I am satisfied that there would be no negative impact on public access.

### *Nature Conservation*

22. No specific nature conservation matters have been raised, although there would be a loss of a small area of roadside verge, which I noted had a good variety of plant species. As this is a small area I am satisfied that there would be no significant effect on nature conservation.

### *Landscape*

23. The land is within the AONB and, in general, I consider urbanisation, such as the use of tarmac, to be undesirable. Nevertheless, I accept that the affected area of common land would be quite small and is within the built up area of the hamlet.
24. The works would result in the removal of part of a stone wall, which is typical of this area. This would be a small alteration and I am satisfied that a field gate in this location, should it be required for stock control purposes, or a gap if this were not necessary, would not be out of place in the setting of the hamlet and surrounding farmed land.

### *Protection of archaeological remains and features of historic interest*

25. There is no indication that any such features are directly affected by the proposed works.

### *Conclusions*

26. The policies of the Secretary of State seek to safeguard commons for current and future generations to use and enjoy; ensure that the special qualities of common land are properly protected; and, improve the contribution of common land to enhancing biodiversity and conserving wildlife. Although I do not consider there to be any positive impact arising from the works, I am satisfied that the proposed works are so small as not to have a significant negative impact.

### ***Other matters considered to be relevant***

27. The agent for the landowner referred to a planning application associated with the paddocks. The application indicated that "*The local planning dept. have advised me to obtain this permission from you*". There was also mention of '*Natural England*', '*Highways*' and '*Environment*' having no objection, which may relate to planning issues, however, no copies of the comments were submitted and so I have been unable to give these weight.
28. It was confirmed that a planning appeal had been made and was unsuccessful; the application relates purely to the issues in relation to access to the paddocks situated generally to the north of Cuckoo's Call.
29. The current access to the eastern paddock is on the eastern side, via a yard with buildings currently used for stabling and storage. A public footpath runs from the road and is fenced from the eastern paddock on the eastern boundary. The applicant says that in the summertime the footpath is very busy and so cannot be used for access for implements and safe passage for the horses into the eastern paddock.
30. In relation to the western paddock it is argued that the works would provide the best access for farm implements to carry out works here. There are two

potential access points between the paddocks. One is sited approximately halfway along the paddock boundaries where there is a former 'gate' arrangement and a gap in the opposite boundary hedge, north-west of the brook. The applicant says that the ground here is too wet to use for the access required. In relation to the point at which access would be intended, to the north-east of the landownership boundary fence in the western paddock, there is a gap in the hedge-line as well as a plank over the brook, allowing access on foot.

31. Having looked at the public access in the area I do not consider that the idea of taking implements and leading horses along the length of the public road, open not only to walkers but to all other vehicles and animals, would provide any improvement in access in comparison to crossing straight over the footpath into the eastern paddock. I consider that this would create a less safe situation for road users and those leading animals to and from the paddocks than is the case with the existing access.
32. Whilst it is clear from the trodden path that the footpath is well-used, I do not consider that the time needed to cross a footpath with either animals or implements would be such that it would cause any significant problem to users of either the footpath or the land. I noted that the grass in the eastern paddock had been topped and so access was clearly possible at the relevant time this year.
33. In relation to the access over the brook into the western paddock I consider it would be more difficult to manoeuvre farm implements from the road, over the proposed area of works, and then make a further turn onto a bridge over the brook than to make a straight access over the brook directly from the eastern paddock at this point. The fencing in the eastern corner of the eastern paddock would require alteration in either event.
34. I am not satisfied that it has been shown that the proposed works on the common would achieve the aim of easier or safer access to either paddock.

### **Conclusions**

35. The proposed works would result in negligible loss of land in relation to the existing rights of common and would not adversely affect the public interest. However, I am not satisfied that the proposal results in significantly easier or safer access to the paddocks than currently exists, or can be created without any impact on the common land.
36. For these reasons, I consider that it is not expedient to give consent to the proposed works. Accordingly, in exercise of the powers conferred by section 39 of the 2006 Act, and of all other enabling powers, consent is not given to this application.

*Heidi Cruickshank*

**Inspector**