
Application Decision

by **Richard Holland**

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

Decision date: 6 February 2018

Application Ref: COM 3188213
The Common, Ashmanhaugh, Norfolk

Register Unit No: CL401

Commons Registration Authority: Norfolk County Council.

- The application, dated 30 October 2017, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Ashmanhaugh Parish Council.
 - The works comprise:
 - (i) re-instatement of a 74m long drainage ditch to the south of the common and installation of a single plank handrail bridge over it;
 - (ii) installation of 6 to 8 stake boundary markers around the common; and
 - (iii) installation of a 25m long row of railway sleepers on a section of the northern side of the common.
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Decision

1. Consent is granted for the works in accordance with the application dated 30 October 2017 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. The application form gives the length of the ditching as 112m but the application plan shows that it extends beyond the common land boundary. The form also states without explanation that the proposed works will enclose 1766m² of land. Finally, the form does not give the proposed length of the line of railway sleepers, although the line is depicted on the plan. The applicant has since confirmed that the extent of the ditching within the common land boundary is 74m, the proposed works will not enclose any common land (the question was originally mis-read) and the line of railway sleepers will be 25m long. I am satisfied that no-one wishing to comment on the application has been significantly prejudiced by how the proposals were described in the application form and plan.
4. I have had regard to Defra's Common Land Consents Policy¹ 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

¹ Common Land Consents Policy (Defra November 2015)

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS) and Historic England (HE), neither of which object to the application.
7. I am required by section 39 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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. The common land register notes that that having held a hearing on 7 December 1978, the Commons Commissioner was not satisfied that any person was the owner of the land and that it remained subject to local authority protection under section 9 of the Commons Registration Act 1965 (now under section 45 of the Commons Act 2006). The register records no rights of common.
9. North Norfolk District Council (NNDC) holds the title of 'Surveyor's Allotment' on the land. The applicant has a licence agreement with NNDC to maintain the common for the community.
10. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood and the protection of public rights of access

11. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access. The common sits between a cricket ground to the south and a private residential road to the north. Its use appears to be for general recreational access.
12. The applicant says the common has been neglected for many years and its ditches have silted up and filled with undergrowth. As a result the common has become waterlogged and impassable. The applicant adds that reinstatement of the ditch, which runs west to east through the common towards its south eastern corner, will allow the land to be drained and the common to be accessible once more. The handrail bridge will provide access over the reinstated ditch.
13. The applicant says the northern part of the common is being eroded by traffic encroaching from the private road. The applicant also says that the common is being encroached by properties on both the northern and southern boundaries but does not explain the nature

²Section 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.

of the encroachment nor in what way it is harmful; in the absence of any detail I give this matter little weight. Installation of marker stakes (the application plan shows four on each boundary) will remind the community where the boundary lies and the railway sleepers will maintain the integrity of the common where erosion is greatest.

14. The proposed works are consistent with the applicant's agreement with NNDC to 'cultivate and maintain the property for the residents of Ashmanhaugh'. OSS considers the works to be of public benefit. I agree that the works are in the interests of the neighbourhood and public access as they will bring the land back into a useable condition. They will also raise awareness of where the common boundaries lie and protect its northern section from continued traffic erosion.

Nature conservation

15. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

16. The drainage works will facilitate the return of the common to its former state rather than create a wholly new landscape. Spoil from the excavation will not create a new feature as it will not be piled up next to the ditch but distributed across the common into suitable depressions.
17. The point of the proposed stake boundary markers is that they will be clearly visible but as there will be no more than eight positioned some distance apart I consider that their visual impact will be minimal. The applicant says the railway sleepers will be level with the grass to allow grass cutting, which suggests they will sit below the main level of the common. This may reduce their visual impact from within the common and from the road. They are still likely to look rather out of place but I consider that this will be outweighed by their benefit in protecting the common from further traffic erosion. The single plank bridge and handrail will cause little or no visual harm.
18. I am satisfied that any detrimental visual impact is unlikely to be significant and will be outweighed by the benefits of the works.

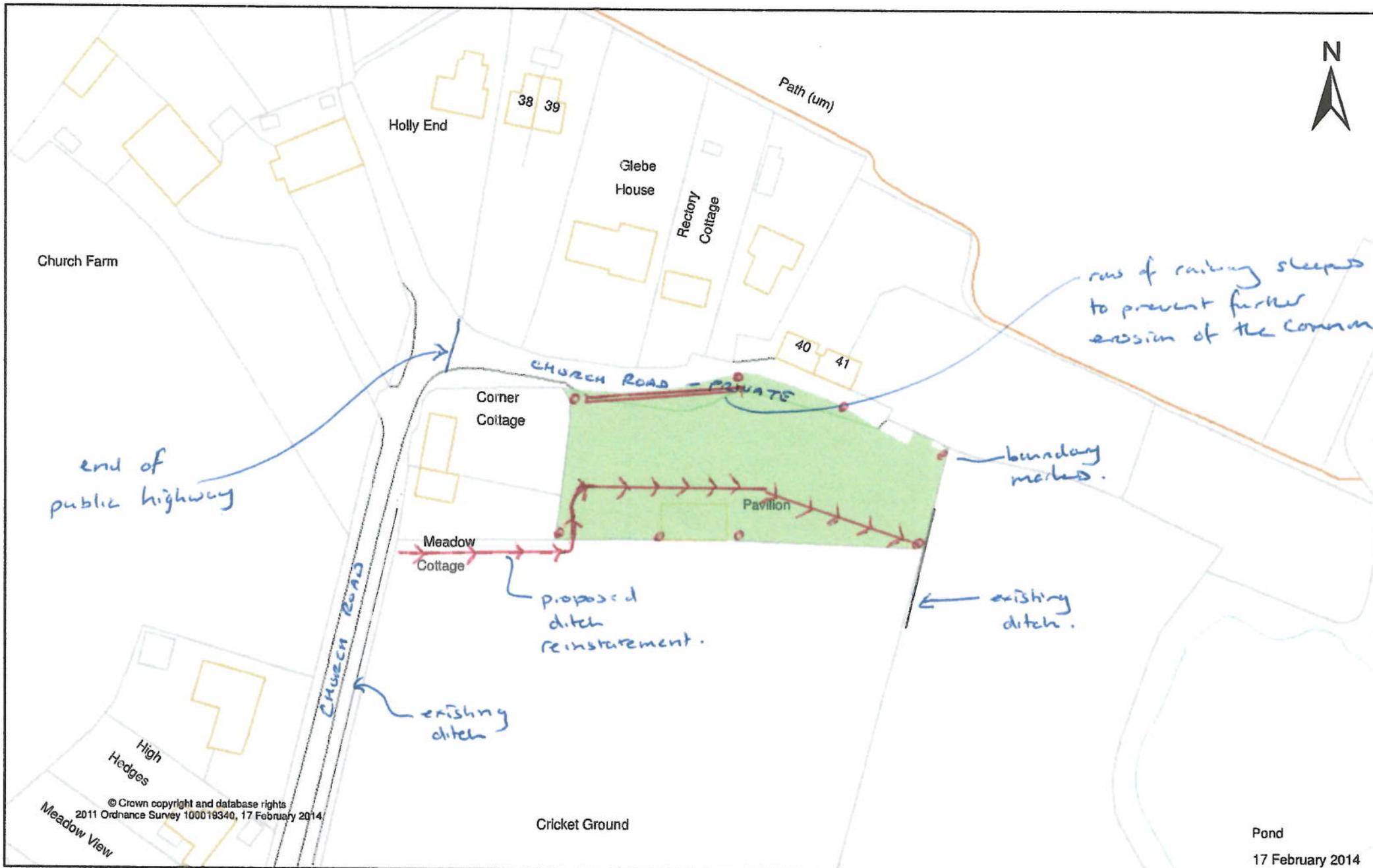
Archaeological remains and features of historic interest

19. HE advised that they did not wish to comment. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

Conclusion

20. I consider that the proposed works will not significantly harm any of the interests set out in paragraph 7 above; indeed they are likely to benefit public access and protect the common from damaging traffic encroachment. I conclude therefore that consent should be granted for the works subject to the condition set out in paragraph 1.

Richard Holland



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Ashmanhaugh