



Penderfyniad ar Gais

Ymweliad safle a wnaed ar 23/06/15

gan Emyr Jones BSc(Hons) CEng
MICE MCI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 28/07/15

Application Decision

Site visit made on 23/06/15

by Emyr Jones BSc(Hons) CEng MICE
MCI

an Inspector appointed by the Welsh Ministers

Date: 28/07/15

Application Ref: APP/Z6950/X/14/516035

Site address: Ogmores Common, in the Community of St. Brides Major, Vale of Glamorgan

The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.

- The application dated 18th February 2015 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 relates to Ogmores Common (CL32). The Registration Authority is the Vale of Glamorgan Council (the Council).
 - The application is made by the Council's Director of Development Services.
 - The proposed works consists of a making a level path on a current slope, leading to onward routes.
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Decision

1. Consent is granted for the making a level path on a current slope at Ogmores Common, in the Community of St. Brides Major, Vale of Glamorgan in accordance with the application dated 18th February 2015 and the plans submitted with it subject to the following conditions:
 - (i) The works hereby permitted shall begin no later than 5 years from the date of this decision;
 - (ii) The works shall be carried out strictly in accordance with the details contained in the application and all affected Common land shall be fully reinstated upon completion of the works.

Preliminary matters

2. The Commons Register shows Ogmores Common (CL32) as having a total area of 372.292 hectares. The works would extend across an area of up to 232m² and be located in a discrete parcel of the Common with an overall area of some 2.321 km². Rights of pasture in respect of various categories of livestock, as well as estover rights relating to cutting and taking bracken and fern, are registered. The public have a right of access to the common for air and exercise under section 193 of the *Law of Property Act 1925*. The common is not subject to an Order of Limitation made under section 193. It is subject to a Scheme of Management made under the *Commons Act 1899*, approved on the 27th April 1953, as well as associated Byelaws.
3. The Scheme of Management allows for the setting out, construction and maintenance, or the authorisation of the construction and maintenance, of such new paths on the

common as appear to be necessary or expedient. Nonetheless, the application was submitted following legal advice. Whilst I have not had sight of that advice, such a precautionary approach does not prejudice anyone and allows for a greater opportunity for those that so desire to participate in the decision making process. I will, therefore, proceed to determine the application on its merits on the basis of the written representations and my accompanied visit to the site and surrounding area.

The application

4. The Council has secured grant funding to improve some sections of the Wales Coast Path. This includes re-aligning a section of the path into Ogmore Common to provide a safer route than the current alignment which follows a section of the B4524 that lacks a footway. The works would take place at the Common's northern end, to the east of the Pelican in her Piety Public House, and extend for a length of approximately 58m.
5. The proposed works comprise lifting and retaining the existing turf, excavating the exposed surface to a level depth, timber edging on both sides, using excavated soil to embank to the sloped timber side, the installation of grass mesh over which the existing turf would be re-laid and pinned, with some supplementary turf possibly being needed. The resultant path would be 1.5m wide. To the north east, beyond the common, it would connect with an already constructed length of path.
6. Informal consultation was carried out with the Commoners Association, Dunraven Estates, Merthyr Mawr Estates, the Duchy of Lancaster, the tenant at Ogmore Farm, the landlord of the Pelican in her Piety Public House, Southerndown Golf Club, the owners of Ivy Cottage and Ogmore Cottage, Natural Resources Wales and various Council departments. A notice of the proposal was published in the Glamorgan Gem on 12th February 2015 and posted at the main entry points to the Common, with relevant documents placed on deposit for public inspection at the Council's office. Formal notices were sent to the Commoners Association, all known commoners, the Dunraven Estates, Merthyr Mawr Estates, the Duchy of Lancaster, the tenant at Ogmore Farm, the landlord of the Pelican in her Piety Public House, Southerndown Golf Club, Natural Resources Wales, Cadw, the Open Spaces Society and St. Brides Community Council.

Representations

7. The Planning Inspectorate received representations from the Open Spaces Society and the landlord of the Pelican in her Piety Public House. The Open Spaces Society considers the works to be in the public interest, but requests that there be no interference with the right to walk and ride over the whole Common. The landlord of the Pelican in her Piety Public House raises concerns regarding two matters. The first relates to the possible erosive effect of water discharging from a pipe carrying run-off from the hill behind on the proposed path. The second concern relates to the view that the trip hazard on the proposed route justifies a handrail alongside.

The statutory requirements

8. In determining this application for consent I must have regard to¹ (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 (including the public interest in nature conservation, the conservation

¹ Commons Act 2006 Section 39

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 (d) any other matter considered to be relevant. The Welsh Government issued *Common Land Consents Guidance* in August 2014 and I will have regard to it in determining this application.

9. Common land is a finite resource and the Welsh Government has indicated that it should not be developed unnecessarily, access to it should not be prevented or impeded unnecessarily, and the proper management of it should be encouraged.

Reasons

The interests of persons occupying or having rights in relation to the land

10. It would appear that the common is part owned by Dunraven Estates and part owned by the Duchy of Lancaster, but the location of the boundary between the two is not entirely clear from the information submitted. Be that as it may, the Dunraven Estate Trustees have confirmed that they are supportive of the proposed works and the Duchy of Lancaster has also granted consent. The Commoners Association has no concerns regarding the works and is of the view that it would be much safer for the public to get off the road.
11. Given the limited extent of the area involved as compared to the common as a whole, any temporary interference with commoners' rights over the relatively short construction period would be negligible. As the path would be turfed, there would be no loss of grazing area once the path had been completed.
12. I am, therefore, satisfied that the proposed works would not unduly interfere with the ability of commoners and other rights holders to exercise their rights.

The interests of the neighbourhood

13. This is usually interpreted as relating to the way the common land is used by local people. When the works would be carried out there would be an insignificant impact on local people's ability to use the area for air and exercise. After which the provision of a pedestrian access to the common for those approaching along the B4524 from the Ewenny direction would considerably enhance local people's ability to use the common for that purpose in the long term. I, therefore, consider that the works would positively benefit the neighbourhood.

The public interest

14. I will consider nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest individually.

Nature conservation

15. Natural Resources Wales and the Council's Ecology Department were consulted and there are no objections from either on file. On the basis of the evidence before me, I consider that the proposed works would not have a material impact on the public interest in nature conservation.

Landscape

16. The intention to surface the path with turves would ensure that it would not be obtrusive and I am satisfied that the works would not have an unacceptable landscape impact.

Public rights of access

17. The works would prevent access to a very small area of the Common whilst they were being undertaken, but this would only be for a relatively short period after which the land would be accessible once again. There would be no impact on the right to walk and ride over the remainder of the Common. I have already noted that the route would considerably enhance local people's ability to use the Common for air and exercise in the long term and the same would apply to the public in general. As a result, the proposal would positively benefit the public right of access.

Archaeological remains and features of historic interest

18. Cadw was consulted and there are no objections from it on file. I have no evidence to suggest that known archaeological remains and features of historic interest would be affected by the proposed works.

Other relevant matters

19. I have already noted that the proposal would positively benefit the public right of access to the Common. However, its principal purpose is to enhance the safety and enjoyment of users of the Wales Coast Path which clearly extends well beyond the Common itself. This is in the wider public interest and is something that carries significant weight in the overall determination.

20. Once the turves had re-established, discharge from the pipe carrying run-off from the hill behind would be unlikely to erode the path. In any event, the Council has stated that it will monitor the situation and repair any damage that does take place. Insofar as a handrail is concerned, a proportionate approach is required. The proposed works would significantly reduce the trip risk that would exist from traversing the steep terrain as it currently exists. Adding a handrail would have a negative impact on the character and appearance of the common. I also note that, other than at the steps leading down to the B4524, the recently completed section of path outside the common has no handrail. I am not, therefore, persuaded that a handrail is necessary or desirable.

Conclusion

21. The proposed route would be much safer than the existing roadside one and provide improved access to the Common at its northern end. This would enhance people's ability to use the Common for recreation and access, and provide wider public benefits insofar as the Wales Coastal Path is concerned. I have identified no unacceptable impacts.

22. Having considered the information before me and the issues to which I am required to have regard under Section 39 of the *Commons Act 2006*, I am satisfied that it would be expedient for me to grant the consent for which this application was made subject to the conditions set out in paragraph 1.

E Jones

Inspector