



## Penderfyniad ar y Cais

gan Isabel Nethell

Benodir gan Weinidogion Cymru

Dyddiad: 18/12/14

## Application Decision

by Isabel Nethell

Appointed by the Welsh Ministers

Date: 18/12/14

**Application Ref: APP/B6855/X/2014/516001**

**Site Address: Cannisland Park, Fairwood & Clyne Common**

**Determination of this application has been delegated to me by the Welsh Ministers.**

- The application, dated 3 September 2014, 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 Fairwood and Clyne Common (CL 15) and the Commons Registration Authority is the City & County of Swansea Council ("the Council").
- The application is made by the City & County of Swansea Council ("the applicant").
- The works proposed is the construction of a bus stop hard-standing approximately 37 metres north-east of the entrance to Cannisland Park, Fairwood Common.

### Decision

1. Consent is granted for the works in accordance with the application dated 3 September 2014 and the plans submitted with it, subject to the following conditions:
  - (i) The proposed works hereby permitted shall begin not later than 5 years from the date of the decision;
  - (ii) The works must be carried out strictly in accordance with the details contained in the application.
2. For the purposes of identification only, the location of the works is shown edged in red on the attached plan.

### Preliminary Matters

3. I am content that the proposed works will contribute to the benefit of the local community in that they will improve the safety for those boarding and disembarking bus services along the A4118 at Cannisland Park. It is noted that there is local support for the proposal

### The Common

4. The proposed works affect part of registered common land CL 15 at Fairwood and Clyne Common which has an area of some 752 hectares. The common is split in to numerous parcels each varying in size. The affected parcel of common land lies 37 metres north east of the entrance to Cannisland Park on the eastern edge of the A4118 and is 36 metres south west from the junction of the A4118 with Kittle Hill Lane on 18 square metres of common land. The land is owned by the City & County of Swansea Council and although there are grazing rights on the common, no information has been received from any party to claim that grazing rights are exercised at the location of the proposed works.

5. The land is registered as common land under the Commons Registration Act 1965. It is subject to Section 193 of the Law of Property Act 1925, but not to an Order of Limitations under Section 193 or a Scheme of Management under the Commons Act 1899. The site is not within a Site of Specific Scientific Interest (SSSI) and will not have an effect on a Scheduled Ancient Monument. The site is, however, within the Gower Area of Outstanding Natural Beauty (AONB).

### **The Proposal**

6. The proposed works are for the construction of a bus stop hard standing 18 square metres in size in graded stone with a grit finish and a stone kerb at a 130mm up-stand adjacent to the carriageway. While the proposed works are carried out a temporary traffic barrier adjacent to the working area would enclose the excavations. The barrier would be 8 metres in length by 3 metres in width comprising of white and red plastic board, 150 mm high and fixed on 1 metre high traffic cones. The fencing would be required for the duration of the works, estimated to be for 2 days.

### **Application Procedures**

7. The procedures for an application of this sort are set out in The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012. The Regulations require that the application be publicised and that an opportunity be provided for representations to be submitted to the determining authority by any person. In accordance with these requirements the applicant posted notices on the site (which were maintained for the required period of time), advertisements were placed in the Swansea Leader on 8 September 2014, and copies of the appropriate documentation were made available for public inspection at the City & County of Swansea Council offices, Oystermouth Road, Swansea.
8. In addition, the applicant confirmed that formal notification was sent to Pennard Community Council, Gower Commoners Association, the Commons Registration Authority, the Local Member, Natural Resources Wales (NRW), Cadw, Gower Society, nearby properties, the Ramblers, those owner/occupiers with rights over the Common and the Open Spaces Society (OSS). There were no representations made during the statutory period.

### **Main Issues**

9. The matters to be considered in determining an application for consent are set out in Section 39(1) of the Commons Act 2006:
  - (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;
  - (d) any other matter considered to be relevant.
10. Paragraph 39(2) of the Act further explains 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;

(d) the protection of archaeological remains and features of historic interest.

11. I have also had regard to the Welsh Government's Common Land Consents Guidance<sup>1</sup> in determining this application under section 38 of the 2006 Act, which has been published for the guidance of both the Planning Inspectorate and applicants. 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. Taking these principles into account, the main issues in this case are the effects of the proposed works on the interests of persons having rights in relation to the land, on the interests of the neighbourhood, and on the public interest, and the benefits to be gained from carrying out the proposed works.

### **Reasons for the Decision**

12. I am satisfied that the applicant carried out extensive consultations as set out in the 2012 Regulations and that, through these actions, all those with an interest in the land have been provided with an opportunity to comment on the application.
13. In the absence of any representations from Commoners or those using the common, and in view of the nature of the works proposed, I do not consider that there is anything before me to lead me to the conclusion that the works would unacceptably affect the interests of those having rights in the land or occupying it or the interests of the neighbourhood.
14. Based on the information before me, I am satisfied that there will be no adverse or unacceptable effects in relation to nature conservation or the conservation of the landscape, and that public rights of access to the area will not be adversely affected. No issues have been raised relating to the protection of archaeological remains and features of historic interest.
15. I have taken into account all of the matters specified in the legislation and conclude that in the light of the comments above I am satisfied that, having considered the information before me, it is expedient that consent should be granted for the application made.

### **Formal Decision**

16. For the reasons given above I allow the application and hereby grant consent under Section 38 of the Commons Act 2006 for the works identified in the preamble and sections 14 and 15 of the application form. Consent is therefore granted subject to and the conditions specified at paragraph 1.
17. This decision does not convey any approval or consent which may be required under any enactment, by-law, order, regulation or private agreement other than section 38 of the Commons Act 2006.

*Isabel Nethell*

*Isabel Nethell*

*Head of Service – Operations & Policy (Wales) - Planning Inspectorate*

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<sup>1</sup> Welsh Government – Common Land Consents Guidance (August 2014)

Location Plan (not to scale)

