



Penderfyniad ar Gais

Ymweliad â safle a wnaed ar 28/09/17

gan **Joanne Burston BSc MA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 10/11/2017

Application Decision

Site visit made on 28/09/17

by **Joanne Burston BSc MA MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 10/11/2017

Application Ref: COM/3178390

Cefn Hirgoed and Hirwaun Common, Pencoed, Bridgend

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

Register Unit No: CL 21

Commons Registration Authority: Bridgend County Borough Council

- The application, dated 15 June 2017, 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 Bridgend County Borough Council, Civic Centre, Angel Street, Bridgend CF31 4WB.
 - The works comprise: a surfaced community cycle route.
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Decision

1. Consent is granted for the works in accordance with the application dated 15 June 2017 and the accompanying plans.

Preliminary Matters

2. I carried out an unaccompanied site inspection on 28 September 2017. My decision has been made on the basis of my observations on this visit, taking account of the application and representations received in response to the advertisement of the application.
 3. The application received a number of representations. Of these 13 letters of support were received from the local community, the Ramblers Association, Coity Wallia Commoners Association and the Dunraven Trustees. Cadw, Conservators of the Coity Wallia Commons, National Grid and Vodafone raised no objection. The Open Spaces Society also raised no objection provided the route would be available for horse riders and no additional fencing would be required. Utility Companies raised objections due to the apparatus they have in the area. Mr and Mrs Davies also raised an objection due to the narrow nature of the cycle path between their hedge and the road, impact of drainage from the cycle path and access to water meters.
 4. I have had regard to the Welsh Government Common Land Consents Guidance, published in August 2014, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
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Main Issues

5. Section 38 of 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 over the land, including the placement of bollards. In considering such an application I am required by section 39 of the 2006 Act to have regard to the following:
- 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 which includes the interest in 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; and
 - d) any other matters considered to be relevant.

Reasons

6. The purpose of the application is to facilitate the construction of a community cycle route from the village of Pencoed to Heol y Cyn via Wern Tarw Cross. The Council advised that the section of the route between Pencoed and Wern Tarw Cross will be located on the southern side of the B4280. From Wern Tarw Cross to Heol y Cyw the route will be located on the northern side of the B4280.
7. The proposed route will be approximately 2 metres wide and surfaced with tarmac. The offset from the edge of the B4280 will vary along the length of the cycle route due to topographical features.
8. For the purposes of identification only the location of the works is shown in red on the attached plan.

The interests of those occupying or having rights over the land

9. The common land register records numerous rights of: pasture; grazing; piscary; turbary; estover; herbage; pannage; the taking of bracken, rushes, heather, furze, gorse, turf and ferns; to collect stones; to store farm manure; and to cut timber. The Trustees of the Dunraven Estate, the Conservators of the Coity Walia Common and Commoners Association whose members graze the Common were all consulted as part of the application process. All parties support the proposal.
10. Although there will be a reduction in the amount of grazing as a consequence of the works there is nothing to suggest that the loss will have any significant adverse effect on the rights of the Commoners. Further, there is no evidence before me to indicate any serious detriment to commoners in respect of the other rights of common.
11. Utility providers have raised objections due to the proximity of the proposed route to their apparatus and gaining access to such equipment. Nevertheless, further construction plans will be provided at detailed design stage which will be guided by the relevant company's 'special requirements' and any necessary infrastructure diversions would be at the applicants cost. Moreover, contractors would be aware of working near such infrastructure and would follow necessary health and safety procedures.
12. To conclude on this matter, I am satisfied that the works will not harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood

13. 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. Nevertheless, it is also appropriate to consider whether the proposed works will have an additional adverse effect on the neighbourhood. In this respect an objection by a local resident raises concerns in relation to highway safety due to the narrow nature of the path which runs alongside his boundary. However, there is insufficient evidence to establish the scale of any impact and there is nothing before me which indicates that any impact on the safety of those using the cycle path would be significant. Furthermore signing will be provided to warn those using the path of private accesses and road crossings, which is secured through a planning condition attached to permission ref: P/12/925/BCB.
14. There are a number of tracks through the common land in the vicinity of the proposed route. At my site visit it was apparent from footprints in the ground that some use is made of the tracks, but that such use did not appear to be extensive. In any event, the application site would remain common land and the surfaced track would not present a barrier to access given the existing fencing, drainage ditches and dense scrub along the route.
15. I accept that, for some, the physical presence of the cycle route will detract from the enjoyment of the common. However, the works will provide improved access and highway safety for those on foot and cycle.
16. Overall there will be some impact on the way the common is used and enjoyed. However, given the size of the common and the location of the works, on the edge of the common, I do not consider that there will be any significant impact on the interests of the neighbourhood in respect of access. Any detriment will be balanced to some extent by the advantages of the proposed scheme which will improve connectivity and safety in the local area.

The public interest

The protection of public rights of access

17. Use of the common in the vicinity of the works will be available albeit restricted along the route of the proposed works during construction operations. Furthermore, there is considerable support for the works which will remove the need for pedestrians and cyclists to use the B4280. Access to the remainder of the common will not be restricted.
18. The proposal will create a footpath under section 25 of the Highways Act 1980 and subsequently an Order will be made to convert the footpath into a cycle track under the provisions of the Cycle Tracks Act 1984. The proposed community route will therefore exclude the use of the proposed path by horse riders, which in any event would be incompatible with cyclists, particularly given the width of the proposed path. Nevertheless, existing accesses, such as field gates and routes from side roads will be maintained and therefore I consider that the proposed works would not unduly restrict access to the common on horseback.
19. I consider that the community cycle route would not have a significant adverse impact on public access to and enjoyment of the common land.

Nature Conservation

20. Planning permission for the proposed works has been granted by Bridgend County Borough Council. In granting planning permission the planning authority will have

taken into account the environmental values of the site and determined whether or not the works are consistent with national and local policies. There is nothing to indicate that the planning authority has not given due and proper consideration to the proposals in the context of its statutory purposes and policies. Some weight should be given to the granting of planning permission in the context of the effect of the works on nature conservation, the landscape and archaeology, which I consider below at paragraphs 23 to 25.

Conservation of the landscape

21. The erection of the cycle track and associated fencing will have some visual impact. However, there are manmade structures in the area and in any event, the fence, with its 'light touch' traditional post and rail appearance, will not be particularly intrusive in views of the wider landscape. Thus the very limited landscape impacts would be clearly outweighed by the important community benefits.
22. Accordingly, I am satisfied that the landscape has the capacity to accommodate the proposal without adversely affecting the enjoyment of the common as a whole.

Archaeological remains and features of historic interest

23. Cadw has confirmed that there are no scheduled monuments or registered parks or gardens within the vicinity of the proposed works and therefore they have no comments to make. With no evidence to the contrary I see no reason to disagree with Cadw's comments.

Other matters

24. Concerns were raised by Mr and Mrs Davies in respect of drainage from the proposed cycle route and how drainage would affect their boundary hedge. The applicant has confirmed that the Council is prepared to improve this boundary and I have no evidence that a suitable drainage scheme could not be implemented.

Conclusion

25. I have taken into account all matters raised and conclude that the proposed works would not unacceptably affect the interests of persons having rights in relation to the land, the interests of the neighbourhood or the wider public interest. The works would be in conformity with the Welsh Government's policy objectives and Guidance in relation to works on common land and would have a wider public benefit.
26. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.
27. I conclude that the proposed works will not harm the interests set out in paragraph 5 above. Indeed, the proposal will benefit the neighbourhood by providing off road cycling facilities to increase the connectivity of local communities. Consent is therefore granted for the works.

Joanne Burston

INSPECTOR

