
Application Decision

by **Richard Holland**

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

Decision date: 27 October 2015

Application Ref: COM 718

Epsom Common, Surrey

Register Unit No: CL359

Commons Registration Authority: Surrey County Council

- The application, dated 28 July 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 is made by Epsom and Ewell Borough Council.
 - The works comprise the provision of underground steel protection plates to cover an existing oil pipeline that crosses Epsom Common. The proposal is to install steel plates at traffic crossovers onto the Common: two at the Wells Road entrance, one at the Christchurch Road entrance and one at the Stew Ponds Car Park entrance. Temporary fencing will be erected for safety whilst the works are carried out. The proposed works will cover a total area of approx. 100m².
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Decision

1. Consent is granted for the works described above in accordance with the application dated 28 July 2015 and the plans submitted with it subject to the following conditions:
 - i) the works shall begin no later than 3 years from the date of this decision;
 - ii) the common shall be restored within 1 month of completion of the works; and
 - iii) the fencing shall be removed within 1 month of completion of the works.
2. For the purposes of identification only the location of the proposed works is shown in red on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy Guidance¹ 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. However, every application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the Open Spaces Society, Natural England and Surrey County Council Archaeological Officer.

¹ Common Land Consents Policy Guidance (Defra July 2009)

6. 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

7. The applicant, Epsom and Ewell Borough Council (the Council), is also the landowner, and the common rights holder has been consulted about the proposed works and has not objected. I conclude therefore that the works will not harm the interests of persons occupying or having rights over the land.

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

8. A fuel pipeline crosses the common and goes under a car park and paths used by vehicles. The Oil Pipeline Agency (the Agency) has asked the Council to install the pipeline protection plates as its safety standards have increased since the pipeline was first installed. The Agency requires permanent safety protection to be installed so that vehicles can continue to use the crossovers for access onto the common. Temporary fencing is needed as a safety measure to protect users of the common from the ground works, which are expected to take three weeks. Once the works are complete, the trenches will be backfilled and the disturbed parts of the tracks will be reinstated with similar materials to match adjacent surfaces.
9. The Open Spaces Society has no objection to the proposal provided the common is fully reinstated when the works are complete.
10. Although free access over the common may be restricted at the three locations while the works are underway, only relatively small areas will be affected and for a relatively short period. The protection plates will be installed underground, and on completion of the works the fencing will be removed, the excavations will be backfilled and the path will be reinstated. I consider therefore that any harmful effect on the interests of the neighbourhood or public rights of access over the common will be minimal and short lived, and that by enabling continued vehicle access onto the common, the works will convey an underlying public benefit.

Nature conservation and conservation of the landscape

11. The works will be principally underground and of short duration, after which the surface will be reinstated and the temporary safety fencing will be removed.
12. The applicant has advised that the works are near to Epsom and Ashted SSSI but Natural England does not see them as having a detrimental effect on either landscape or access, or the biodiversity of the common as a whole, and I note that it has given consent for the works.

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.

13. I am satisfied therefore that the works will not harm any nature conservation interests or have any lasting harmful visual impact on the common.

Protection of archaeological remains and features of historic interest

14. Surrey County Council's Archaeological Officer sees no need for archaeological work in conjunction with the proposed works on the site. I am content therefore that the proposed works are unlikely to harm any archaeological remains or features of historic interest.

Conclusion

15. Defra's policy guidance advises that *'works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. An application for consent to such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued. Exceptionally, however, consent may be appropriate where the works are of temporary duration (such as a worksite) or where the works will be installed underground (such as a pipeline or pumping station), the proposals ensure the full restoration of the land affected, and the works confer a public benefit'*.

16. I am satisfied that the application works accord with this policy objective because they will not seriously harm the interests set out in paragraph 6 above and they will confer a wider public benefit by protecting the oil pipeline, thus enabling the public's continued use of the vehicle crossover onto the common. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland