
Application Decision

by **Richard Holland**

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

Decision date: 20 January 2016

Application Ref: COM 728
Fair Green, Epsom, Surrey

Register Unit No: CL 361

Commons Registration Authority: Surrey County Council

- The retrospective application, dated 24 August 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 Crest Nicholson/Galliford Try (Epsom) LLP c/o Linden Homes South East.
 - The works comprised the construction of a permanent tarmac surface approximately 1.2 m wide adjacent to an existing tarmac footway in order to create a shared cycle path and footway approximately 49 m in length and 3.0 m wide.
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Decision

1. Consent is granted for the works in accordance with the application dated 24 August 2015 and the plan submitted with it subject to the condition that all signs and street furniture shall be removed or relocated to the edge of the common no later than 3 months from the date of this decision.
2. For the purposes of identification only the location of the works are shown outlined 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, 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 (OSS), Miss C M Rankin and Ms Clare Partridge.
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;

¹ Common Land Consents Policy (Defra November 2015)

- 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 landowner, Epsom and Ewell Borough Council, is also the agent for this application. There are no common rights registered over the common. I do not therefore consider that the proposed works will impact adversely on the interests of those occupying or those having rights over the land.

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

8. The public has a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925. The OSS feels that the public's right to walk and ride over the whole of the common will be curtailed by the works. I cannot see how the formation of a shared cycle path and footway interferes with this right. However, because the works skirt the extreme edge of the common, I also do not consider that the path has made it easier for the public to access the common, nor has it enhanced their use of it, in any meaningful way. On balance, the impact of the works on public rights of access and on the neighbourhood is therefore neutral.

Nature conservation

9. There is no evidence before me to suggest that the works have impacted adversely on nature conservation interests.

Conservation of the landscape

10. Although the works are located at the edge of the common and run alongside a main road and around an existing parking area and cover a relatively small part of the common, the increased area of hard surfacing, extending to some 1.2m wide by 49m long, has had a somewhat urbanising effect and has detracted from the appearance of the common to some extent as a result.

Archaeological remains and features of historic interest

11. There is no evidence before me to suggest that the works have harmed any archaeological remains or features of historic interest.

Other matters

12. I note that Ms Rankin had some difficulty viewing the application documents at the Council Offices during the advertising period. The applicant confirms that this may have been due to new staff at the Council and steps were taken to ensure that no further difficulties occurred. I accept that the applicant made all reasonable attempts to ensure that the application documents were available and note that Ms Rankin was able to view the application documents and make a representation within the consultation period. I consider that the advertising requirements have been fully complied with.

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. The application was made before the proposed works had been undertaken. The applicant subsequently confirmed that the works had been carried out. I note that there is some concern about the application having been made retrospectively. However, an application may be made where works have already begun or been completed.
14. The OSS has referred to a car park on the common which it suggests may be unauthorised. However the application does not include the car park and consideration of its status is beyond the scope of this decision. The matter has not therefore influenced my determination of this application.
15. The OSS has referred to paragraphs 3.5 – 3.6 of Defra’s Common Land Consents Policy Guidance (July 2009) and suggests that there is a better alternative location for the works and that consent for the application should therefore be refused. However, the guidance was revised in November 2015 and no longer includes this policy. I have determined the application as made and on its merits.
16. A photograph supplied by Ms Partridge shows that a crossing patrol sign has yet to be removed or re-sited and currently presents an obstacle to those using the shared path. The applicant explains that moving the sign requires the use of a power contractor which has yet to be arranged but confirms that all items of street furniture will be removed or relocated to the edge of the common. This can be secured through the use of a condition of any consent.

Conclusion

17. The works are part of a larger scheme to provide the public with a new shared cycle and footway running approximately 1.4 miles from Epsom town centre to the Stew Ponds (part of Epsom Common) and form part of a section 278 agreement under the Highways Act 1980 with Surrey County Council. In providing a new combined cycle and footway the works should encourage local people to walk and cycle more; this is clearly in the public interest.
18. The works have harmed to some extent the appearance of the common but not the other interests set out in paragraph 6 above. However, this harm is outweighed by the benefits to the wider public by the provision of improved facilities for walking and cycling from Epsom town centre to the Stew Ponds. Consent for the work is therefore granted subject to the condition at paragraph 1.

Richard Holland