



# Application Decision

by **Richard Holland**

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

Decision date: 24 March 2016

---

**Application Ref: COM 756**  
**WONERSH COMMON, SURREY**

Register Unit No: CL 182

Commons Registration Authority: Surrey County Council

- The application, dated 18 November 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 Mrs Stephanie Staton-Young.
  - The works comprise: the creation of a 35 square metres (7 m by 5 m) 'grass-crete' easement/vehicular access.
- 

## Decision

1. Consent is granted for the works in accordance with the application dated 18 November 2015 and the plans submitted with it subject to the condition that the works shall begin no later than 3 years from the date of this decision.
2. For the purposes of identification only the location of the proposed works is shown hatched in red on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy Guidance<sup>1</sup> in determining this application under section 38, 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), Natural England (NE) and Mr Bob Milton.
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;

---

<sup>1</sup> Common Land Consents Policy (Defra November 2015)

- c. the public interest;<sup>2</sup> and
- d. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

- 7. The applicant, Womersley Parish Council, owns the common. The commons register records the common as being subject to protection by the local authority in whose area the land is situated under section 9 of the Commons Registration Act 1965. The parish council has not objected to the application and has granted a new easement for the vehicular access. There is one right of common for pasture. There is no indication that this right is exercised.
- 8. I do not consider that the works will prevent or hinder the exercise of the right of common. I am satisfied that the proposed works will not impact on the interests of those occupying or having rights over the land.

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

- 9. The proposed works will facilitate access for a vehicle to the applicant's property, enabling the applicant to park one vehicle on land within the curtilage of her property.
- 10. The applicant has advised that the common is subject to section 193 of the Law of Property Act 1925 which confers rights of access on foot and horseback. The OSS objects to the application. Among the concerns raised by the OSS is that the proposed access crosses a public footpath and will interfere not only with the public's right to walk over the common, but with the right to pass and repass along the footpath.
- 11. Defra's Common Land Consents Policy advises that where it is proposed to construct or improve a driveway across a common, such an application may be consistent with the continuing use of the land as common land, even where the driveway is entirely for private benefit, because the construction will not in itself prevent public access, or access for commoners' animals. I do not agree that the infrequent use of the proposed driveway by the applicant's vehicle will interfere unacceptably with public rights of access over the common. I conclude therefore that the works are not likely to impact adversely on either public rights of access or the interests of the neighbourhood and that they are consistent with Defra's policy objective. Any interference with the public footpath is a matter dealt with under other controls.

### ***Nature Conservation***

- 12. NE comments that the works will not have a detrimental effect on access, landscape or the biodiversity of the common as a whole. I am satisfied that the proposed works will not harm nature conservation interests.

### ***Conservation of the landscape***

- 13. The parish council stipulates the laying of grass-crete as a condition of the grant of easement to ensure no loss of grass. The site of the proposed works is a small triangle of land separated from the rest of the common by an unmade track. OSS has questioned the suitability of plastic mesh but I agree with the applicant when she says that it is in her interests to ensure that the system of reinforcement used for the

---

<sup>2</sup>Section 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.

driveway protects the grass and does not lead to unsightly erosion. I do not therefore consider the works will be out of keeping with the character of the common in this area or likely to impact adversely on the conservation of the landscape.

*Archaeological remains and features of historic interests*

14. English Heritage has made no substantial comments on the application. There is no evidence before me to suggest that the works would harm any archaeological remains or features of historic interest.

*Other relevant matters*

15. The OSS queries whether there is sufficient space within the private curtilage of the applicant's property to park a car and argues that the creation of the access could lead to other people parking on the common. I accept, for the purposes of this application, that the applicant wishes to park a car within the curtilage of her property and the works are needed to facilitate access only. Application decisions do not create precedents and each must be determined on its individual merits.

*Other matters*

16. Bob Milton and the OSS question the parish council's ability to grant an easement over the common for the proposed works. However, this matter is beyond the scope of this decision.

**Conclusion**

17. I conclude that the works will not harm the interests set out in paragraph 6 above and are consistent with Defra's policy guidance. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

**Richard Holland**