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# Application Decision

by **Richard Holland**

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

Decision date: 7 April 2016

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## **Application Ref: COM 737 Midsummer Common, Cambridgeshire**

Register Unit No: CL59

Commons Registration Authority: Cambridgeshire County Council

- The application, dated 23 September 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 Rushby Stuart on behalf of Cambridgeshire County Council, Stirling Way, Witchford, Ely, Cambridgeshire CB6 3NR.
- The works comprise: reconstruction and widening of three areas of footpath, surfacing for delivery vehicles and the installation of solar studs. Safety barriers and fencing will be used during construction.

## **Decision**

1. Consent is granted for the works in accordance with the application dated 23 September 2015 and the plans submitted with it subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown 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 Environment Agency, The Wildlife Trust for Bedfordshire, Cambridgeshire and Northamptonshire, the Open Spaces Society and Mr J Hefford.
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

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<sup>1</sup> Common Land consents policy (Defra November 2015)

- 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;<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 land is owned by Cambridge City Council, which has been closely involved with the development of the proposals. The registered grazing rights are also exercised by the pinder who works directly for the Council. I consider therefore that the proposed works will not adversely affect the interests of those persons having rights in relation to 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 Open Spaces Society does not object to the widening of the footpaths and consultations carried out before the application was made show broad support for the proposed works among users of the common.
9. Mr Hefford raised concerns that wider paths would encourage cyclists to speed up, making the common less safe and pleasant for pedestrians. It stands to reason, however, that wider paths will reduce conflicts between cyclists and pedestrians and I must agree with the applicant's view that a wider path with an even surface will help provide space for all users. I conclude that the proposed works will improve access and benefit the neighbourhood.

### *Nature conservation*

10. Midsummer Common is a City Wildlife Site and The Wildlife Trust suggested possible biodiversity enhancements should be explored to make up for grass lost to the new surfacing. The areas lost are only a small part of the grassed areas on the common and I do not consider this significant in terms of habitat loss or reduced biodiversity.
11. The Open Spaces Society (OSS) opposed new street lighting in the area, partly because of the impact on wildlife. The applicant confirmed that no lighting is currently proposed except for solar studs in the path surface. The studs emit a low level of light and have minimal impact on wildlife. The OSS does not oppose the use of solar studs. I conclude therefore that the impact on nature conservation interests will be negligible.

### *Conservation of the landscape*

12. High volumes of cyclist and pedestrian use and limited available space on the existing paths have led users to encroach on the common causing unsightly damage to the path verges. The area outside the Fort St George public house is

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<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.

used by delivery vehicles in accordance with rights of access; however, limited space has led to damage here too.

13. Although the increased area of hard surfacing may have a somewhat urbanising effect, the appearance of the common is likely to benefit from reduced pressure on the path verges and grassed areas by pedestrians and cyclists. The surfacing materials to be used will match the existing as will the new areas of granite setts outside the Fort St George. The appearance of the setts will be softened by the planting of a tree near the Fort St George. On balance I consider the works will enhance the appearance of the common.

#### *Archaeological remains and features of historic interest*

14. There is no evidence before me of archaeological features within the application site or nearby and I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

#### **Other matters**

15. The Environment Agency indicated that the works may require flood defence consent. The applicant has confirmed they will arrange for a meeting to consider this issue. However, this is a matter dealt with under other controls and it does not impact on my consideration of the application.

#### **Conclusion**

16. Having regard to the interests set out in paragraph 6 above, I conclude that the works will benefit the users of the common and improve its appearance without unacceptably harming the other interests. Consent should therefore be granted.

**Richard Holland**