
Application Decision

by Richard Holland

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

Decision date: 28 April 2016

Application Ref: COM 758 Cassiobury Common, Watford, Hertfordshire

Register Unit No: None

Commons Registration Authority: Hertfordshire County Council

- The application, dated 24 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 Hertfordshire County Council (the Council), County Hall, Pegs Lane, Hertford SG13 8DN.
- The works comprise: i) widening of a section of existing footway to 2.5m/3.0m. ii) construction of a new footway from Rickmansworth Road to link with pedestrian facilities on either side of the common, and iii) a 600mm post and rail knee height fence along the Gade Avenue section of footway.

Decision

1. Consent is granted for the works in accordance with the application dated 24 November 2015 and the plans submitted with it.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. The subject land, also known as Cassio Common and Cassiobridge Common, is not registered common land. However, consent for the works is required under section 38 of the 2006 Act as the land is subject to a scheme under the Commons Act 1899 and therefore falls within the scope of 38(5)(b)(ii).
4. The application is wholly retrospective as all works applied for have been completed.
5. I have had regard to Defra's Common Land consents policy¹ 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.

¹ Common Land consents policy (Defra November 2015)

6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by Historic England (HE), Natural England (NE) and the Open Spaces Society (OSS).
8. 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

9. The land is owned by Watford Borough Council, which was consulted but made no representations about the works or the retrospective application for them. As the land is not registered common land there are no registered rights of common over it. There is therefore no evidence to suggest that the works adversely affect the interests of those occupying or having rights over the land.

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

10. The works were carried out as part of a Council initiative to bridge a gap in sustainable transport links to the new Cassiobridge station, which forms part of the broader Croxley Rail Link scheme in Watford. The works also serve to provide a connection to nearby Cassiobury Park to the north.
11. OSS does not object to the application but suggests that as the common lies in a former urban district the public has a right of access on horseback under section 193 of the Law of Property Act 1925. The Council advises that it has not identified any horse riding rights. Furthermore, there is no evidence before me to suggest that horse riders use the common or that they would wish to. Nevertheless there is no physical barrier created by the works that would prevent access on horseback.
12. The works applied for include a line of knee high wooden fencing along the section of existing footway abutting Gade Avenue. The wooden fencing replaces low-level chain link fencing which the Council advises was in place to prevent vehicle access but had become worn. I consider that the new fencing, which can be stepped over, introduces no impediment to pedestrian access over and above that caused by the previous chain link fencing.
13. The new link-up footway extends onto the common from a new pedestrian crossing point on the A412 Rickmansworth Road, facilitating access northwards to and through the common for users approaching from both the northern and southern sides of the road. I consider the positioning of the new footway to be beneficial to public access to the common.

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.

14. I conclude that the new and widened footways have improved pedestrian access to and through the common and that the knee high fencing deters vehicular access without creating a new impediment to public access on foot. I further conclude that for these reasons the works have benefited the interests of the neighbourhood.

Nature conservation

15. NE advises that no significant benefits to nature conservation are anticipated as a result of the works and I note that no such benefits are intended. However, no potential detriment to nature conservation has been identified by NE and I consider that the impact on nature conservation interests has been negligible.

Conservation of the landscape

16. OSS suggests that the black colour of the footway surface might be changed to green or fawn to make the route more in keeping with the grassed nature of the common. The Council advises that this would be contrary to local transport guidance in which coloured surfacing is not recommended for various reasons including that it can actually be detrimental to the streetscape and requires greater maintenance and upkeep costs. NE suggests that the works will probably have some urbanising influence on the landscape, whilst recognising that this will be limited given the common's location on the edge of an urban area. The Council suggests that successful re-turfing of a nearby section of the common that had previously not taken to seed will improve the appearance of the common and will serve to balance out some of the urbanising effect of the footway works.

17. I consider that the increased area of hard surfacing has had an urbanising effect to a certain extent. However, were it not for the new section of footway the upgrading of the pedestrian crossing on Rickmansworth Road may have created an informal desire line across the common from the crossing to the section of retained footway at the point where it meets the new footway. It is likely that this would have led to the erosion of the grass and harmed the appearance of the common. On balance I consider the works have not impacted unacceptably on the appearance of the common.

Archaeological remains and features of historic interest

18. HE advises that the works do not appear to have had a direct effect on any heritage assets. There is no evidence before me of archaeological features within the application site or nearby. I am therefore satisfied that the proposed works have not harmed any archaeological remains or features of historic interest.

Conclusion

19. Having regard to the interests set out in paragraph 8 above, I conclude that the works have benefited public access to and through the common without unacceptably harming the other interests. Consent should therefore be granted.

Richard Holland