
Application Decision

by Richard Holland

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

Decision date: 7 July 2016

Application Ref: COM 781

Smarts Heath Common, Woking, Surrey

Register Unit No: CL117

Commons Registration Authority: Surrey County Council

- The application, dated 7 March 2016, 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 Woking Borough Council (the Council).
 - The works comprise 120 square metres of tarmac surfacing on the 20 metres long driveway at the entrance to 3 J's Nursery, Smarts Heath Road, Mayford, Woking.
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Decision

1. Consent is granted for the works in accordance with the application dated 7 March 2016 and the plan 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 application is wholly retrospective as the works were carried out in 2008.
4. 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 policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by 3 J's Nursery (supporter); the Open Spaces Society (OSS), which does not object; and objecting parties David & Wendy Aldous, David Askew, A & A J Buckland, R & G Giddings, Alastair Gray, Lynda Hirst, Edmund Mc Donald, Alexandra McInnes, Graham Murray and Christopher Punch.
7. 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, the interests of the neighbourhood, and the protection of public rights of access

- 8. The Council is both applicant and land owner and there are no registered rights of common. The driveway provides vehicular access from the highway, Smarts Heath Road, to 3 J's Nursery, which has a prescriptive right of access over it; the nursery supports the application. I am therefore satisfied that the interests of persons occupying or having rights over the land will not be harmed.
- 9. The interests of the neighbourhood test relates to whether the works impact on the way the common land is used by local people. Smarts Heath Road separates 'Smarts Heath Common' (CL117), which is largely a wooded strip of roadside verge on the north side, from the much larger and separately registered common land unit 'Smarts Heath' (CL23) to the south. The driveway cuts through the wooded strip and is used solely as a means of vehicular access to 3 J's Nursery. In making their representations, none of the objecting parties indicated that the wooded strip is used by the neighbourhood for any leisure activity and its amenity value seems to be low. Nevertheless, I am satisfied that the driveway causes no impediment to such activity as it is open on both sides and can be walked across.
- 10. Section 193 of the Law of Property Act 1925 gives a public right of access for air and exercise over the land. The rights apply generally to access on horseback as well as on foot. I am satisfied that the driveway does not prevent the exercising of these rights.

Nature conservation

- 11. CL23 to the south of the highway forms part of the Smarts Heath Common Site of Special Scientific Interest (SSSI) but CL117 to the north of the highway does not. Natural England was consulted about this retrospective application but offered no comments. There is no evidence before me which leads me to think that the works have harmed, or will harm, any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

- 12. Smarts Heath Common has no special designated landscape value. 3 J's Nursery contends that a hard, but not perhaps bonded such as concrete or tarmac, surface has been in place in one form or another since 1836. Objectors have not contested that a hard surface is a long-established feature at the site. The issue to consider is whether the tarmac surface laid in 2008 unacceptably harms the landscape of the common. Photographs submitted by the Council taken in 2008, before the resurfacing, and in March 2016 provide a 'then and now' picture of the driveway. While the current tarmac surface has introduced a somewhat urbanising feature into the common, its visual impact is not markedly greater than that of the previous surface and in any case is not so unacceptable that consent should be refused for this reason alone.

Archaeological remains and features of historic interest

- 13. There is no evidence before me of any archaeological features within the application site or nearby. I am content, therefore, that the works are unlikely to harm any such remains or features.

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.

Other matters

14. Objectors have raised concerns that granting retrospective consent might set a precedent, particularly in respect of planning proposals for local green belt land. As set out in Defra's policy, every section 38 application must be considered on its merits; application decisions do not set precedents. Furthermore, planning matters are not relevant to my consideration of this application.

Conclusion

15. Defra's policy is that improving a vehicular way across common land may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access or access for commoners' animals. It acknowledges that paving will impact the common by reducing the area for recreation and grazing, by harming habitat, possibly affecting drainage, and by introducing an urbanising feature into what will normally be an open and natural setting. Only one of these threats applies here and then, as I have said at paragraph 12 above, to an insignificant degree. Defra's policy goes on to say that, in some cases, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common. I am satisfied that the application accords with this policy objective. I have also given weight to 3 J's Nursery's representations that an adequately surfaced access is needed if the business, which employs ten local people, is to continue to thrive; to this extent the works confer a benefit on the wider community.

16. I conclude that the works do not unacceptably harm any of the interests set out in paragraph 7 above. Consent is therefore granted for the works.

Richard Holland

Smart's Heath
Common



KEY

- Brown = SSSI
- Hatched = Common Land inc CL23
- Green = CL117
- Red = Works area

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SCALE 1:2,500

60 30 0 60 Metres

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