



Application Decision

Site visit made on 17 August 2016

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 6 December 2016

Application Ref: COM 775

Broxhead Common, Bordon, Hampshire

Register Unit: CL 147

Commons Registration Authority: Hampshire County Council

- The application, dated 29 January 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 Mr Bruce Collinson on behalf of East Hampshire District Council, Penns Place, Petersfield, Hampshire.
- The works comprise:
- Post and rail fence with mesh along southern side of Lindford Road. Post and netting fence along north side of access track to Lindford Farm. Field Gate and horse friendly gate on public bridleway at Lindford Farm. Kissing gate at junction of new path and public bridleway at north-eastern end of the site. Surfacing of 200 linear metres of public bridleway and 176 linear metres of footpath with Fittleworth stone. Installation of 3 finger posts, 5 way markers, 1 information board, 3 interpretation boards, 2 wooden benches, 2 deck bridges. The creation of a natural play area (645m²) with a deadwood perimeter fence (327 linear metres) and 245m² of Fittleworth stone paths for access.

Decision

- 1. Consent is not granted for the erection of the fence alongside Lindford Road or the fence between Lindford Road and Lindford Farm. Consent is not granted for the pedestrian, horse or field gates specified in the application. Consent is not granted for the construction of a natural play area or works ancillary to its construction. Consent is not granted for 3 interpretation boards, for which no locations have been specified.**
- 2. Consent is granted for the following works. For the purposes of identification only the location of the works is shown within the common land boundary edged green on the attached plan.**
 - **provision of 376 linear metres of unsealed paths (shown as a pink line and a blue line):**
 - **3 finger posts (timber finger signs), 5 waymarkers (timber bollard signs), 1 information board, 1 formal wooden bench (timber bench) and 1 deck bridge (timber bridge minor crossing).**

Preliminary Matters

3. Following advertisement of the proposal, objections or representations were received from Broxhead Commoners' Association, Natural England, Open Spaces Society, Mr & Mrs Duff, Mr Ellis, Mr Foster, Mr Milton and Mr Warshaw all of which I have taken into account.
4. I carried out an accompanied site visit on 17 August 2016 in the company of Mr Collinson (East Hampshire District Council), Mrs Mann (Whitehill Town Council), Mrs Dobson (Deadwater Valley Trust), Mr Ellis and Mrs Comber (Broxhead Commoners' Association) and Miss Burr.
5. Subsequent to the site visit, further correspondence was received from Mr Ellis, together with a representation from a Mr Milne who states that one of the means of access to his property has been closed off by the fencing alongside Lindford Road; these additional representations were sent to the applicant for comment. In reaching my decision I have taken into account the matters raised in this additional correspondence.
6. This application has been determined on the basis of the written evidence, the comments submitted, and my observations of the site.

Description of the site

7. Broxhead Common is 161.874 hectares in total area and is located to the north of Bordon. The Common is crossed in a number of places by public roads, the most southerly of which is Lindford Road (B3002). The application land is a 6.69 hectare parcel of the Common which is located to the south of Lindford Road.
8. This part of Broxhead Common is predominantly woodland with open rides between the trees. There are parcels of the common which have been planted with conifers and I understand that this had been undertaken by the Ministry of Defence ('MoD') as the owner of the land. The Common is owned by the Defence Infrastructure Organisation and has formed part of the land held for military purposes with public access being governed by MoD Byelaws.
9. The MoD has vacated the Bordon Garrison with Louisburg and Quebec Barracks being re-developed for new housing. As part of the re-development of the nearby barracks and to mitigate a predicted increase in recreational pressure on the Wealden Heaths Phase II Special Protection Area arising from the new housing, 24 hectares of former military training land is being transformed into a Suitable Alternative Natural Greenspace (SANG). The District Council had included the application land within the SANG without being aware that the land was part of the registered Broxhead Common. The District Council submits that the works for which consent is sought are required to assist with the delivery of the SANG.
10. The objectors contend that the status of this part of Broxhead Common as registered common land is incompatible with its inclusion in the SANG. As public access for informal recreation on foot to Broxhead Common is provided for under the Countryside and Rights of Way Act 2000 it is surprising that this part of the common had been incorporated into the SANG.

The Main Issues

11. 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;¹
 - (d) any other matters considered to be relevant.
12. In determining this application I have had regard to the latest edition of Defra's Common Land Consents Policy² ('the 2015 Guidance') which has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

Assessment

The interests of those occupying or having rights over the land

13. The right to graze cows, horses and goats, the right of estovers and turbarry and the right to dig and take sand exist over this common land unit. Of these rights, the evidence before me is that only the right of estovers has been exercised in recent years.
14. On behalf of the Broxhead Commoners Association, Mr Ellis contends that the fence which has been erected on the southern side of Lindford Road³ will have a detrimental impact upon the exercise of the right of estovers as that part of the fence has closed off an access track which led over the common to Lindford Farm⁴ which had been used for the collection of firewood. In addition, the planned extension of the fence to St Lucia House would block a further track used for access to the common for the collection of wood. For the Applicant, Mr Collinson submits that the fence would not prevent access to the common as there was access via the track leading to Lindford Farm and a bare earth lay-by to the west of the common; in responding to Mr Milne's letter Mr Collinson states that there would be no problem in installing a gate at the former access to Lindford Farm should the fence remain.
15. As part of my site visit I parked my car just off the Lindford Road on a piece of ground which would be enclosed if the fence was extended as far as St Lucia House. For anyone wishing to collect firewood from the common this piece of land is likely to be of value as a place to park a vehicle and trailer. The extension of the fence is likely to prevent anyone from parking in this area and

¹ 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.

² Common Land Consents Policy, Defra November 2015.

³ Mr Ellis had notified the applicant that consent was needed for fencing whilst it was being erected, however a further 500 metres of fencing was erected after this notification before the project was halted.

⁴ This point was echoed by Mr Milne in his correspondence.

- is therefore likely to adversely impact upon the ability of the commoners to exercise their rights.
16. Similarly, the fence which has already been erected effectively blocks the track which leads onto the common and to Lindford Farm and which Mr Ellis said had been used as another collection point for firewood. Access to this track would allow a vehicle to be parked for the collection of firewood without causing an obstruction on Lindford Road. I consider that the fence already erected is likely to have an adverse impact upon the exercise of commoners' rights.
 17. The fence is also likely to have an adverse impact upon those members of the public seeking to exercise their right of access to the common on foot or to travel between that part of Broxhead Common to the north of Lindford Road and that part of the common at issue. The fence would restrict the ability of the public to access the common other than by the public bridleway at the eastern end of the common.
 18. The fence would effectively enclose this part of Broxhead Common and separate it from the remainder of CL 147. The purpose of the fence is not to prevent livestock from straying onto Lindford Road as the applicant does not propose to introduce grazing as a means by which the common can be managed. The stated reason behind the erection of the fence is to provide an obvious barrier between the northern end of the woodland and Lindford Road to enable visitors to roam freely within the site and to enable people to walk their dogs on the common off the lead.
 19. No evidence has been submitted to demonstrate that whilst the common has been unfenced there have been accidents on Lindford Road involving dogs or pedestrians stepping out into the road directly from the common. The reasons given by the applicant for the erection of the fence do not provide sufficient justification for the enclosure of this parcel of common land. I consider the fence which has already been erected and that which is proposed to be erected along Lindford Road to be contrary to two of the special qualities of common land; namely, its unenclosed and open nature.
 20. With regard to the interests of the commoners and members of the public seeking to exercise a right of access on foot, the fence is incompatible with the exercise of those rights.
 21. For these reasons consent should not be given for the retention of that part of the fence already erected, nor should consent be given for the continuation of that fence along the boundary of the common westwards towards St Lucia House.
 22. The applicant also seeks consent for the erection of a fence between Lindford Road and Lindford Farm together with consent for the erection of a field gate and 'horse friendly' gate near Lindford Farm and a kissing gate in the fence just south of Lindford Road. The post and rail structure to carry the kissing gate had been erected at the time of my site visit, but the gate itself had not been installed. A field gate and 'horse friendly' gate had been erected across the public bridleway near to Lindford Farm.
 23. The fence from Lindford Road to Lindford Farm was erected following consultations with the occupiers of Lindford Farm who it is said '*appreciated the*

inclusion of a physical boundary between the vehicle access and the SANG area. Whilst the occupiers of Lindford Farm may appreciate such a physical boundary, the access track to Lindford Farm is part of Broxhead Common and is not separate from it. The fence prevents free access over the common by commoners and the public other than at the point of the kissing gate or the 'horse friendly' gate.

24. The fence represents an internal sub-division of the common which does not appear to provide any benefit to its management. The fence has not been installed to control the movement of livestock or assist with conservation grazing. The purpose of the fence appears to be to suggest that the track is somehow different to, and separate from, Broxhead Common when this is not the case. The land to the south of this fence is as much a part of Broxhead Common as the land to its north. In the absence of any reasonable justification for the erection of this fence, consent should not be granted for its retention.
25. Similarly, no reasonable justification for the erection of the three gates on the common has been provided. The gates would provide a means of access through the fence, but as the fence is not required for the control of livestock and would otherwise sub-divide the common there can be no justification for the erection or retention of gates at the planned locations. It follows that as consent should not be granted for the retention of the internal fence, consent should not be granted for the retention of the field gate and 'horse friendly' gate, or for the erection of the proposed kissing gate.
26. One of the written representations made against the application claimed that the exercise of common rights in the area that has been cleared and laid out as a 'natural play area' would not be possible, indeed that it would be dangerous for the land to be continued to be used for the grazing of livestock or the digging and taking of sand. It was submitted that the works to create the 'natural play area' were wholly incompatible with the nature and purpose of common land and with the exercise of common rights. It was felt that commoner's activities would be prevented by those who would be responsible for the future management of the SANG project.
27. The digging and taking of sand may be problematic if there is an increase in recreational use of the common although there is no evidence before me that anyone has sought to exercise their right to take sand from the common in recent years. I see no fundamental incompatibility between the commoners seeking to exercise their rights and the right of the public to access the land for informal recreation; appropriate care and awareness of the rights of either party would have to be observed. However, the provision of formalised play facilities may be incompatible with the existence of a right to graze or take sand on this part of the common.
28. The earthworks already undertaken within the common to create mounds and pathways would not prevent commoners from exercising grazing rights although the brushwood hedge which surrounds this area would prevent access particularly as the technical drawings submitted show that it is intended to complete this brushwood hedge by the erection of a five bar gate. The combined effect of the brushwood hedge and gate would be to sub-divide the common in the same way that the fence along the track to Lindford Farm does. In my view, such sub-division is contrary to the open and unenclosed character

of the common. Consequently, I do not consider that retrospective consent for the dead wood hedge should be given.

Interests of the neighbourhood

29. The 2015 guidance indicates that the issues to be considered in this context include whether or not the proposal will offer a positive benefit to the neighbourhood, whether or not the works would prevent local people from using the common in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the common, whether by commoners, the public or others. For example, would fencing sterilise part of the land rendering it inaccessible?

Positive benefit

30. The works for which consent is sought are part of a programme to develop for public recreation a large area of land formerly designated for military training of which this part of Broxhead Common forms part. The applicant considers that the provision of the SANG will reduce recreational pressure upon those parts of Broxhead Common to the north of Lindford Road which form part of the Wealden Heaths Phase II Special Protection Area.

31. It is also argued that the development of a 'natural play area' on part of the common will provide a space for families from the immediate neighbourhood to engage in informal recreation within the woodland of the common. Whilst this may suggest that there would be a degree of positive benefit to the public arising from the proposed works, the public already has a right of access to the common for informal exercise under the Countryside and Rights of Way Act 2000; in such circumstances the benefit to the neighbourhood is likely to be limited.

Loss of existing use or interference with future use

32. As noted above, the fencing already installed prevents access to the common from Lindford Road and prevents free access between those parts of the common now sub-divided by the fence along the track leading to Lindford Farm. The fences restrict access which residents in the neighbourhood would have hitherto enjoyed. However, the use of local stone to provide an unsealed but durable surface on some paths and on parts of the public bridleway which crosses the common will improve access through the common for a wide variety of users. The proposed works would therefore have both negative and positive impacts upon the use of the common by residents in the neighbourhood.

The public interest

Nature conservation

33. I consider the form of construction used in the Lindford Road fence to be contrary to the public's interest in nature conservation. The fence is made of post and rails with close mesh (50mm x 50mm) from ground level rising to 800mm in height. Although this mesh may have been added to mitigate the escape of off-leash dogs onto Lindford Road from the common, it is also likely to interfere with the migration of other species of mammals between the two

parts of the common either side of Lindford Road. I have received (albeit anecdotal) evidence of a rise in the number of dead badgers found by the fence since its erection. Whilst the mesh would prevent dogs from getting out onto Lindford Road, it is highly likely that the same mesh will prevent other species from travelling south onto the common.

Conservation of the landscape

34. The fences along Lindford Road and along the track to Lindford Farm are intrusive, are contrary to the previous open character of the common and are in direct contrast to the openness of the remainder of Broxhead Common on the opposite side of Lindford Road. Although the applicant submits that vegetation growth would in time soften the visual impact of the fence, the fence would still be contrary to the hitherto open character of the common. The adverse impact of the fences upon the landscape of the common is a further reason why consent for their retention or completion should not be granted.
35. The provision of signposts and waymarkers at various points on the common and where the common abuts Bordon Inclosure do not detract from the woodland character of the site. The earth mounds, picnic tables and other features planned for the further development of the 'natural play area' however introduce an element of urbanisation onto the common which is at odds with its woodland character. I concur with some of the objectors that the construction of picnic tables, benches, art installations, a 'burial' mound and a wooden entrance 'henge' as part of this 'play area' are features which are more suited to a town park than a rural common and are harmful to the character of the common and its landscape.

Public access

36. The provision of unsealed surfacing to the public bridleway, the provision of footbridges over watercourses on existing paths and the provision of waymarks and information boards at specified locations on the common are likely to facilitate public access to the common without adversely affecting the commoners' ability to exercise their rights.
37. In contrast, the post and mesh fence along Lindford Road, the post and wire fence along the track to Lindford Farm, the dead wood hedge and the gates associated with those structures serve to enclose and subdivide the common in a way which is contrary to unrestricted public access into and over the common which is provided for under the Countryside and Rights of Way Act 2000.

Archaeological remains and features of historic interest

38. No evidence has been submitted to demonstrate that there are any archaeological remains or features of historic interest on the application land or in its immediate vicinity which would be adversely affected by the proposed works.

Other relevant matters

39. There are no other relevant matters for me to consider.

Conclusions

40. Having regard to the interests set out in paragraph 11 above, I find that the fencing and gates specified in the application would adversely affect those interests and that it is not expedient that consent for these works be granted. I also find that the works related to the construction of a 'natural play area' would also adversely affect those interests and that it is not expedient for consent for those works to be granted.
41. With regard to the provision of an unsealed surface on 376 linear metres of paths and the provision of waymarkers and signposts I find that they would not adversely affect the interests set out in paragraph 11 above and that it is expedient that consent should be granted for those works.

Alan Beckett

Inspector

