



Application Decision

by **Richard Holland**

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

Decision date: 30 December 2016

Application Ref: COM/3158679

Colney Heath Common, Hertfordshire

Register Unit No: CL 93

Commons Registration Authority: Hertfordshire County Council

- The application, dated 15 September 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 Concrete Consultancy 2000.
 - The works comprise: the construction of a new concrete vehicular access from Coursers Road to Fredericks Wood in Colney Heath. The works will impact 54m² of the Common Land which is located between Fredericks Wood and the Public Highway boundary.
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Decision

1. Consent is granted for the works in accordance with the application dated 15 September 2016 and accompanying plan, 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 outlined in red on the attached plan.

Preliminary Matters

3. The application originally gave the size of the common occupied by the works as 3.6m². This was subsequently corrected to 54m² and the application was re-advertised accordingly. The application has been decided on the basis of the corrected figure.
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 the Open Spaces Society (OSS) and Historic England (HE).

¹ Common Land Consents Policy (Defra November 2015)

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;
 - 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

8. The owner of the common land, Colney Heath Parish Council, has been consulted about the application and has not objected to the proposed works. There is one right of common for grazing. The applicant confirms that rights of common are not exercised over the site of the proposed works. I am satisfied that the interests of those occupying or having rights over the land will not be harmed by the granting of consent for the proposed works.

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

9. The proposed works are needed to provide a safer access from Coursers Road to land used and owned by the applicant to carry out forestry work on land known as Fredericks Wood. The OSS objects to the application as it considers the proposed works unnecessary as there is an existing access serving Fredericks Wood nearby.
10. The applicant explains that there have been a number of accidents on Coursers Road in the vicinity of the current access which is poorly positioned and poses a hazard not only to those using the access, particularly larger vehicles, but also vehicles traveling on Coursers Road. The proposed works will be located on a straighter section of Coursers Road to improve safety. Planning permission has been granted for the proposed access (Ref No. 5/15/0274) and I note that in doing so the local planning authority felt that the proposed access would have a positive impact on highway safety. The highway authority has also apparently approved the design of the access and the applicant is currently seeking its agreement to carry out works on the public highway.
11. The OSS advises that the common is subject to section 193 of the Law of Property Act 1925 which provides for access on foot and horseback. The proposed works will not exclude rights of access under section 193. The applicant describes the site of the proposed works as a ditch, which is supported by photographic evidence, and is not enjoyed by members of the community or grazed upon. There is no evidence to show that the site is used by local people or the general public for recreation or access on foot or horseback.

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.

12. I accept that the location of the existing access is dangerous and an alternative access at the location proposed is needed to allow for safer ingress and egress. The recreational value of this part of the common appears to be low but nevertheless there is no indication that the proposed works will impact unacceptably on the current or future use of the common as public access over the site will not be prevented. People walking on the common would need to be aware of the presence of vehicles when crossing the access. However, given that vehicular use of the access is likely to be infrequent any interference with the use or enjoyment of the common would be small.
13. I am satisfied that the proposed works are not likely to unacceptably impact on the interests of the neighbourhood or public rights of access.

Nature conservation

14. The application site appears to have very little wildlife value and there is no evidence before me to suggest that the proposed works will impact unacceptably on nature conservation.

Conservation of the landscape

15. Colney Heath Common is, according to the commons register, 28.64 hectares in area (288,400 m²). The proposed works affect a 54 m² area of common sandwiched between non common land owned by the applicant and the public highway. The area will become hardstanding and link the highway to Fredericks Wood. The applicant proposes to mitigate the visual impact of the access by providing approved road signs to warn traffic on the approach to the new access. However, I cannot see in what way road signs could lessen the visual impact of the access.
16. The OSS argues that the access would render the natural setting of Coursers Road across Colney Heath an industrial access way and is contrary to the policy guidance. The applicant in response points out that a similar access way to a residential property has recently been built from Coursers Road over the common.
17. I note that, in granting planning permission, the local authority said it was satisfied that the access works are compatible with the character and appearance of the area; I agree. While the proposed access would have a somewhat urbanising effect, I consider that as it is restricted to roadside verge, on what is proportionately a very small area of the common (around 0.02% of the whole) next to a busy public highway, the impact is likely to be minimal. I also consider that the visual harm is outweighed by the need to improve road safety on this stretch of Coursers Road.

Archaeological remains and features of historic interest

18. HE advises that the proposed works will not have a direct effect on any designated assets. I am therefore satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

Other matters

19. The OSS says that Colney Heath Parish Council has not given consent for the works. However, the Parish Council has not objected to the application and is seeking to conclude easement arrangements over the site with the applicant.

20. The OSS raises concerns about the cost of the proposed works and possible future developments at Frederick Woods. However, these are not matters that I can take into account when deciding the application.

Conclusion

21. Defra's policy guidance advises that "*Where it is proposed to construct or improve a vehicular way across a common.....Such an application may be consistent with the continuing use of the land as common land.....because the construction will not in itself prevent public access.....*" and "*.....in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common.*" As set out in my considerations above, I am satisfied that the impact of the proposed works on the common, including public access, will be slight and is outweighed by the need to construct a safer access to the applicant's land at the location proposed.
22. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

