
Application Decision

by Richard Holland

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

Decision date: 28 February 2017

Application Ref: COM/3164597 Berkhamsted Common, Hertfordshire

Register Unit No: CL74

Commons Registration Authority: Hertfordshire County Council

- The application, dated 18 November 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 Hertfordshire County Council (the Council).
- The works of approximately 4 weeks duration at 'The Common' highway comprise:
 - i. construction of a 33 metre length of footway along the south verge of the highway;
 - ii. removal of a corresponding length of footway along the north side of the highway;
 - iii. installation of dropped kerbs, drainage gullies and tactile paving on each side;
 - iv. a temporary contractor's compound secured by 2.05 metre high Heras fencing;
 - v. 274 metres of 1 metre high highways pedestrian guard barriers; and
 - vi. installation of appropriate advanced warning signage for motorists.

Decision

1. Consent is granted for the works in accordance with the application dated 18 November 2016 and the plans submitted with it subject to the following conditions:
 - i. the works shall begin no later than three years from the date of this decision;
 - ii. all temporary fencing and barriers shall be removed no later than 1 month after the completion of the works.
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 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.
4. This application has been determined solely on the basis of written evidence.

¹ Common Land consents policy (Defra November 2015)

5. I have taken account of the representation made by the Open Spaces Society (OSS), which does not object to the proposals as it considers them to be of public benefit.
6. 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

7. The land is owned by Berkhamsted Golf Club Trustee Ltd. Registered rights to cut and take furze, gorse, fern and underwood are attached to three properties. The Council has advised that these rights are exercised by commoners at all three properties although the extent to which they are exercised is not known. The owner and the commoners were consulted about the application but no comments were received from them. There is no evidence before me to suggest that the works will 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

8. The interests of the neighbourhood and the public interest in the protection of public rights of access are closely linked in this case. The existing pedestrian route between Berkhamsted and Potten End currently requires that pedestrians cross the highway known as The Common (which I shall refer to as 'the road') at a busy four-way junction with Nettleden Road and the highway known as Gravel Path. The Council wishes to move the pedestrian crossing point (and associated dropped kerbs, etc.) to a safer location further from the junction and to provide a new footway to it from the existing roadside footway along Gravel Path.
9. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people. The new footway is proposed for a very narrow unsurfaced roadside verge on the south side of the road where trees and undergrowth extend to the road edge. As it is such a narrow verge, and as there is an existing footway on the north side of the road, I consider it unlikely to be widely used by local people as a pedestrian route or for any other purpose.
10. The proposals include a temporary fenced contractor's compound for materials and plant storage and for workforce welfare facilities. The Council has confirmed that the compound site is the existing hard surfaced lay-by near to the junction on the north side of Nettleden Road, which forms part of the common land. The area of the compound will be restricted to the footprint of the lay-by and will not encroach onto adjacent grass and vegetation. I consider that the lay-by's temporary unavailability as common land will have a negligible impact on the interests of the neighbourhood.
11. The proposals also include the placing of pedestrian guard barriers on each side of all three roads around the junction area. This is proposed to provide a safe working area for

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.

contractors using heavy plant equipment and a 5 metre safety buffer to protect members of the public for the duration of the works. The Council has said that all the fencing proposals are in line with health and safety legislation and guidelines for works in the public domain. Nevertheless, the proposed barrier use is extensive and will impact on free pedestrian access to the immediate roadside around the junction area. However, the barriers are temporary and the works separated from the public by them will provide a safer crossing point for pedestrians. I consider that this outweighs the short term impact on pedestrian access to the area around the junction.

12. I conclude that the proposed works will together allow for the creation of a safer pedestrian crossing point away from the road junction and, in doing so, will serve the interests of the neighbourhood and the protection of public rights of access.

Nature conservation

13. The Council has said that the works will require the removal of a few small trees and some general vegetation clearance. This appears to be limited to the route of the new footway only, where trees and vegetation extend to the edge of the road. The land has no special nature conservation protection status and there is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

14. The common lies within the Chilterns Area of Outstanding Natural Beauty (AONB). Whilst the proposals will add a permanent urbanising feature into the landscape, the new footway on the south of the road will in part be balanced by the removal of a section of footway on the north side. Its removal is intended to discourage continued use of the existing crossing point and the land it occupies will be reinstated and returned to grass.
15. On balance I consider the scale and roadside location of works are unlikely to impact unacceptably on the appearance of the common or the conservation of the natural beauty of the AONB. In any event, any visual harm caused by the footway will be outweighed by the benefits arising from improved public access.

Archaeological remains and features of historic interest

16. There is no evidence before me of any archaeological features within the application site or nearby. I am therefore satisfied that the proposed works are unlikely to harm any archaeological remains or features of historic interest.

Conclusion

17. Having regard to the interests set out in paragraph 6 above, I conclude that the works will benefit the interests of the neighbourhood and public access without unacceptably harming the other interests. Consent should therefore be granted subject to the conditions at paragraph 1.

Richard Holland

