



# Application Decision

**by Richard Holland**

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

Decision date: 11 May 2017

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## **Application Ref: COM/3168098**

### **Redhill & Earlswood Common, Surrey**

Register Unit No: CL 39

Commons Registration Authority: Surrey County Council

The application, dated 23 January 2017, 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 Surrey County Council.

The works comprise:

- a temporary (12 month) 1.8 m (H) x 46.5 m (L) galvanized steel fence enclosing 265 m<sup>2</sup> of common to form a temporary contractor's compound; and
  - a temporary workers welfare unit housed within the compound
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 23 January 2017 and accompanying plan, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. any temporary fencing or safety barriers shall be removed within one month of completion of the works; and
  - iii. the common shall be restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works is shown coloured red on the attached plan.

## **Preliminary Matters**

3. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> 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.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the Open Spaces Society (OSS).

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

7. The landowner, Reigate and Banstead Borough Council, has been consulted about the application and has not objected to the proposed works. There are no rights registered over the common. I am satisfied that the proposed works will not harm 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 test relates to whether the works will unacceptably interfere with the way the common is used by local people. The proposed works will be located adjacent to St John's Primary School and exclude access to the enclosed area for 12 months after which the works will be removed and the land reinstated. The proposed works are needed to enable the refurbishment of the school. The applicant explains that it has a statutory duty to maintain schools within its area and to ensure that the school estate is not subject to decay which could put the health and safety of children and staff at risk. The proposed works cannot be located within school grounds as this would disrupt the school's minimum outdoor space requirement and vehicle access or storage of large materials is prevented by a 3 m high brick boundary wall surrounding the school.
9. The works will, over the short term, prevent people from using or accessing the enclosed area. However, I am satisfied that the works will have no significant or lasting impact especially given the very small area of common affected (less than 0.02% of the whole). In any case the harm, such as it is, is outweighed by the wider public benefit conferred by the repair and refurbishment of a local primary school.

### ***Nature conservation***

10. I am satisfied that there is no evidence before me to indicate that the proposed works will harm nature conservation.

### ***Conservation of the landscape***

11. The fencing consists of temporary heras fence panels covered in a green net. The applicant explains that the fencing has been chosen to create a secure rather than solid barrier which will prevent damage to the ground. The net is intended to lessen

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<sup>2</sup>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.

the fence's visual impact by allowing it to blend in with the local surrounding environment.

12. I conclude that the fencing will have a temporary visual impact on the common. However, I accept that the fencing is needed to form a freestanding enclosure for the contractor's vehicles, welfare unit and the storage of materials. I consider that any visual impact on the landscape will be short term and there will be no lasting harmful impact on the common.

### ***Archaeological remains and features of historic interest***

13. I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest. The proposed works may perhaps benefit those interests by facilitating the repair of a building which the applicant says is "historic", although no details of the building's characteristics in this respect have been provided.

### **Other matters**

14. I note that the OSS contends that the works, if carried out, would be unlawful under the provisions of the Surrey Act 1985. However, I consider this to be a matter for the applicant to resolve as there is nothing in a section 38 consent which dispenses with the need to comply with other controls. I have therefore determined the application on its merits and with regard to the criteria referred to in paragraph 6.

### **Conclusion**

15. I conclude that the proposed works will not, in the long term, harm the interests set out in paragraph 6 above and will confer a public benefit on the local community by facilitating repairs to a local school. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

