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# Application Decision

by **Richard Holland**

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

Decision date: 23 October 2017

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**Application Ref: COM/3176697**

**Effingham Common, Surrey**

Register Unit No: CL24

Commons Registration Authority: Surrey County Council

- The application, dated 24 May 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 Guildford Borough Council.
  - The works comprise:-
    - (i) a cattle grid with rails either side and fencing/gates at either end. The rails and fencing/gates are up to 1.5 m high. The area of the cattle grid (including rails and fencing/gates) is 10 m<sup>2</sup>;
    - (ii) a 7 m<sup>2</sup> footbridge.
  - The application, with the exception of the proposed gates, is made retrospectively.
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## Decision

1. Consent is granted for the works in accordance with the application dated 24 May 2017 and the plan submitted with it subject to the condition that the gates are installed within 3 years of the date of this decision.
2. For the purposes of identification only the location of the works is shown coloured red on the attached plan.

## Preliminary Matters

3. Although the cattle grid currently has a stock proof fence at either end the applicant has said that these will be replaced by gates. I have decided the application on this basis.
4. I have had regard to Defra's Common Land Consents Policy Guidance<sup>1</sup> in determining this application, 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Joy Taylor, Helen Craig, Carrie Taylor and the Open Spaces Society.
7. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

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

- 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***

8. The applicant is also the landowner and confirms that the commoners do not exercise their rights. A bi-annual commoners' day is held that includes a symbolic exercising of rights. I consider that the works are of benefit to the applicant as landowner and there is no indication that the works have impacted on those having rights over the land.

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

9. The interests of the neighbourhood test relates to whether the works have unacceptably interfered with the way the common land is used by local people. The applicant explains that the previous access over a ford had eroded the edges of a drainage ditch causing blockages; the cattle grid was installed to alleviate damage to the ford and gain machinery access to the southern end of the common for site maintenance work, or in case of an emergency for fire appliances. A short section of fencing has temporarily been placed at either end of the cattle grid to prevent dogs or horses from attempting to cross and being injured. The applicant has advised that the fencing will be replaced with gates. The footbridge across the ditch is within 5 m of the cattle grid.
10. Those objecting to the proposal are of the view that the main purpose of the works is to prevent access to horse riders and the cattle grid presents a hazard to horses. The objectors question why the works are needed as heavy machinery has accessed the common for many years and separate entry points are available for access. In response, the applicant explains that although machinery had previously managed to cross the ditch, it was not without difficulty and the cattle grid is needed to prevent current and future (heavier and larger) machinery from being damaged. The applicant confirms that there is no alternative to the cattle grid. The majority of the common is surrounded by private roads; the cattle grid allows access across the ditch from a public road.
11. The applicant confirms that there is no established historic right of access for horse riders on the common apart from on seasonal riding routes and on a bridleway along the edge of the common. Horses can safely cross between the common just as they have always done using the bridleway. The applicant advises that while the cattle grid is not intended to impact on either legitimate or illegal horse riding, it does have the additional benefit of deterring illegal riding on the common and public footpath. I note that the Open Spaces Society does not object to the works.
12. I note the concerns raised by objectors about the purpose of the works; however there is no evidence before me to indicate that the works have prevented horse riders from accessing any permitted riding route or bridleway. I am therefore satisfied that the works do not prevent horse riders from accessing the common. I accept that the addition of fencing (and their proposed replacement by gates) at either end of the cattle grid

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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.

addresses concerns about the potential hazard to horses and dogs and an adjacent footbridge enables walkers to cross the ditch from a public footpath. I do not consider that the proposed works have prevented local people from using the common in the way that they are used to. I conclude that the works have not adversely impacted on the interests of the neighbourhood or the protection of public rights of access.

### ***Nature conservation***

13. The applicant explains that the works benefit nature conservation by enabling the maintenance of the rare SNCI (Site of Nature Conservation Interest) grassland habitat essential to invertebrates and skylarks. There is no evidence before me to indicate that the works have harmed nature conservation interests.

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

14. The cattle grid and railings are constructed of grey galvanised steel. The steel wire stock fencing will be replaced with stock proof gates. The footbridge is constructed from railway sleepers.

15. Those objecting consider that the works have harmed the visual amenity of the common and interrupt the otherwise open views. They add that the drainage ditch has not been repaired, is overgrown and does not channel water even after heavy rainfall. The applicant describes the cattle grid as typical of a rural area and, being located in a dip between the commons, is scarcely visible amongst the grass. In the absence of grazing, the use of machinery is needed to prevent the common from scrubbing over. The cattle grid helps maintain the ditch boundary and prevent blockages, allowing the ditch to channel away water from the common.

16. The photographs provided by the applicant show that the footbridge, cattle grid and railings are largely screened by surrounding vegetation and do not appear to be prominent or incongruent features in the landscape. I consider the footbridge and cattle grid are in keeping with the rural character of the common. The gates and fencing may present a small visual barrier but again I do not consider the features out of keeping with the common. I conclude that the works are not harmful visually and, by facilitating machinery access needed to maintain and manage the common, help conserve the landscape.

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

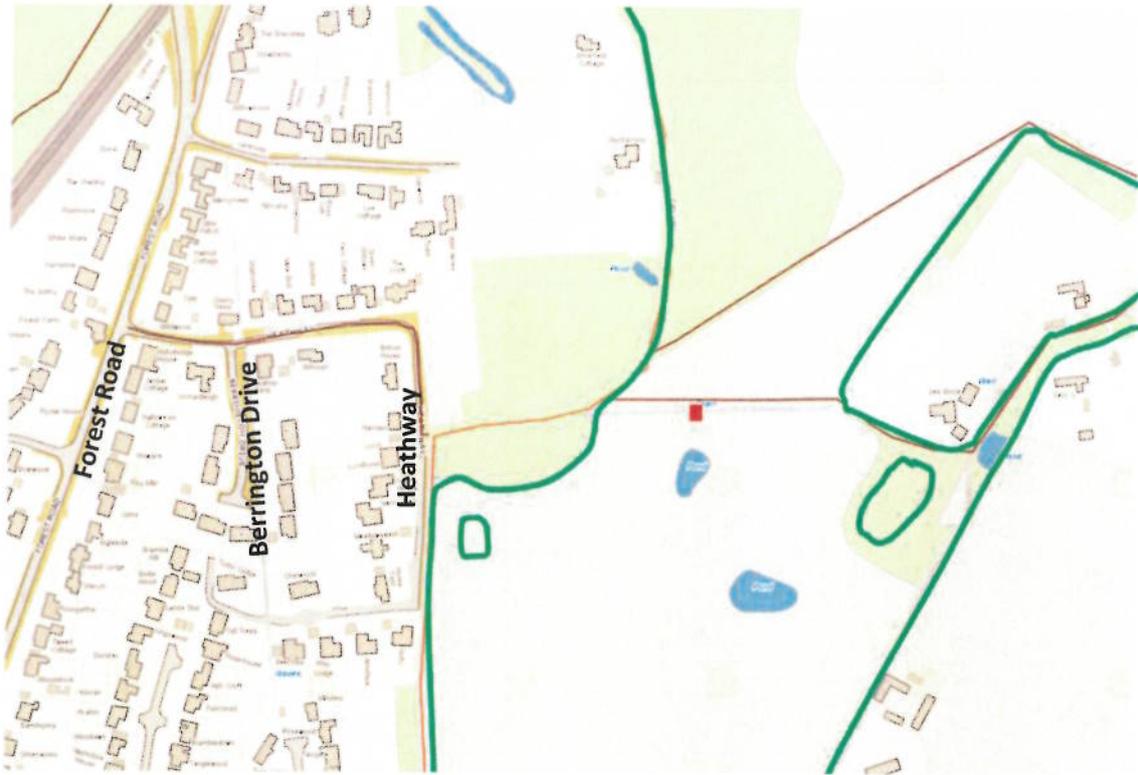
17. There is no evidence before me to indicate that the works have harmed archaeological remains or features of historic interest.

### **Conclusion**

18. I am satisfied that the works do not harm any of the interests set out in paragraph 7 above. Consent is therefore granted subject to the condition set out at paragraph 1.

**Richard Holland**

**APPENDIX 1 – Location of works (Cattle grid and pedestrian footbridge)**



Works: <ul style="list-style-type: none"> <li>• Cattle grid</li> <li>• Footbridge</li> </ul>		Map Ref	TQ 10216 55119
Commons Boundary		Nearest postcode	KT24 5EY
Grid reference for works	Easting 510216 Northing 155119	Nearest roads (shown on map)	Heathway Forest Road Berrington Drive