



## Application Decision

Site visit held on 15 August 2018

**by Sue M Arnott FIPROW**

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

**Decision date: 28 August 2018**

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**Application Ref: COM/3195184**

**Redhill and Earlswood Common, Surrey**

Register Unit No.: CL 39

Registration Authority: Surrey County Council

- The application, dated 2 February 2018, is made under Section 38 of the Commons Act 2006 for consent to carry out restricted works on common land.
- The application is made by Mr B Feist on behalf of Merstham Cricket Club.
- Consent is sought for an extension of a previously granted time-limited permission for the siting of a storage container adjacent to the cricket pavilion on Earlswood Common so as to store machinery and equipment associated with use of the cricket pitch.

**Summary of Decision: The application is granted.**

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### Preliminary matters

1. I visited the land referred to in the application on Tuesday 15 August 2018 accompanied by Mr Feist (the applicant) representing Merstham Cricket Club. No other parties chose to attend.
2. For the purposes of identification, the location of the storage container is shown green in the area outlined in red on the plan attached as Appendix A.

### Main Issues

3. In general terms Section 38 of the Commons Act 2006 (the 2006 Act) prohibits the carrying out of certain restricted works on common land without the appropriate consent. Restricted works include buildings and other physical features which prevent or impede access to or over land.
4. In determining this application made under Section 38 I must have regard to Defra's Common Land Consents Policy which has been published<sup>1</sup> for the guidance of both the Planning Inspectorate and for applicants. This makes clear that, amongst other things, this process should aim to achieve the following outcomes:
  - *That works take place on common land only when they maintain or improve the condition of the common or, exceptionally, where they confer some wider public benefit and are either temporary in duration or have no lasting impact, and*

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<sup>1</sup> In November 2015

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- *That any use of the common or green is consistent with its status as common land or village green.*
5. Section 39 of the 2006 Act requires that I also have regard to the following:
    - (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.
  6. Every application is considered on its merits. A determination will depart from policy guidance only if it is appropriate to do so in which case full reasons will be given.

### **The application**

7. This application is made on behalf of Merstham Cricket Club. It proposes the retention of the dark green metal storage container measuring 6.1 metres x 2.44m x 2.44m which is currently located adjacent to the pavilion leased by the cricket club from the owner of the common, Reigate and Banstead Borough Council.
8. A previous application in 2015 for the same facility was granted temporary consent under Section 38 of the 2006 Act on 5 April 2016. This consent expired on 28 February 2018 although the unit remains on the site.
9. The associated planning permission for the initial development also expired on 28 February 2018 but this has been renewed for a further term, extending the period until 28 February 2021. As required by the planning authority, a hedge has been planted around two sides of the container using native species.
10. The container was originally intended as a temporary measure whilst the necessary planning, consultation and funding is put in place for a permanent building to replace a previous store which was demolished several years ago when it became unsafe. Despite ongoing negotiations and promised funding, final agreement with the landowner has not yet been reached. Consequently the initial reason for seeking consent for the storage unit still applies.

### **Consultation**

11. A public notice was published in the Surrey Mirror on 8 February 2018 and on the site giving brief details of the proposal. The application was available for public inspection by appointment with the Secretary of Merstham Cricket Club for the statutory 28 day period and copies were available on written request. Consultation letters were sent to interested parties as required, including the commons registration authority (Surrey County Council), Reigate and Banstead Borough Council, the Local Archaeological Service, Historic England<sup>3</sup>, Natural England, the Open Spaces Society and the Common Management Committee.

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<sup>2</sup> Section 16(8) 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.

<sup>3</sup> Noted in the application as English Heritage

## **Representations and objections**

12. Three representations were submitted in response to notice of the application. Two of these were from individuals supporting the application; the other, from the Open Spaces Society, offered no objection to the proposed retention of the container.
13. In determining this application, I have taken account of the information submitted on behalf of the applicant and in these written representations.

## **The application site**

14. To put this application into context, the total area of land registered as Redhill and Earlswood Common (CL 39) is 134.86 hectares, consisting of open mown areas (much of which is used for golf) surrounded by semi-natural woodland.
15. The storage container has a footprint of approximately 15 m<sup>2</sup>. It is located to the rear of the brick-built sports pavilion which faces the mown-grass cricket and football fields that lie within the common towards its eastern side but to the west of the A23 Horley Road.

## **Reasons**

### *The interests of those occupying, or having rights in relation to, the common*

16. The application is made on behalf of the Merstham Cricket Club which holds a lease from the owner of the land, Reigate and Banstead Council. No common rights are registered over the land; various rights of access are recorded but none are affected by this proposal. There are therefore no additional interests to be considered under this heading other than the Cricket Club itself.

### *The interests of the neighbourhood*

17. There is no definition of the term 'neighbourhood' within the 2006 Act. In this case, I do not consider it unreasonable to take into account here the interests of local people who either play or watch cricket on the common.
18. The applicant reports that Merstham Cricket Club now enjoys a thriving membership with a significant number of young players involved in the sport supported by their families.
19. On a common such as this to which Section 193 of the Law of Property Act 1925 applies, enjoyment by the public for air and exercise is enshrined in law. Indeed the applicant reports that cricket has been played here for over a century with the present brick-built pavilion standing adjacent to the site of an earlier wooden building that was destroyed by fire.
20. Whilst pedestrian access would obviously be suspended temporarily over the actual site of the container whilst in situ, it is clear that the continuation of cricket at this venue could not continue without suitable storage for the ground maintenance equipment vital to ensure a safe pitch to play on.
21. With two representations from local people strongly supporting the retention of the container until a permanent storage solution can be agreed, I consider this to be a significant factor to be weighed in the balance when determining this application.

*The public interest*

22. There is no evidence to suggest that any archaeological remains or features of historic interest will be affected by the retention of this container. Neither has it been suggested that any particular nature conservation interests are at issue here. The loss of temporary access for the public over the 15m<sup>2</sup> of common on which the container stands is negligible in this context and no representations have been made to the contrary.
23. The only issue of any significance to be considered when the first application was made for the container was its visual appearance and impact in the local landscape. Having had the advantage of actually seeing the store in situ, I am satisfied that what is undoubtedly an alien feature (a green metal box) is positioned as discreetly as is possible in this landscape. From the south-west, it is screened by the pavilion itself. The hedge planted on the north and eastern sides (as required by the planning authority) will eventually provide additional cover but the store is also surrounded on three sides by trees and shrubs. Unless walking to the site via one of two informal woodland paths from the A23 to the east, it would be difficult to spot the container at all at most times of the year.
24. I am therefore satisfied that the works will not cause permanent harm to the local landscape to any significant extent although as an industrial feature in a relatively rural context, its retention on a long-term basis is not desirable.

**Conclusions**

25. On the basis that this is again a temporary facility, I consider there to be no substantive adverse effects in terms of the interests that fall to be considered here: the interests of right holders on the common, the interests of the neighbourhood or the public interest, other than the temporary loss of access over a relatively small area.
26. As regards the aims of the consent regime, the container is necessary for the maintenance of a particular part of the common (the cricket field) and is intended to be a temporary arrangement until a permanent store can be constructed. To the extent that this supports an activity which has been taking place on the common for over 100 years, I am satisfied that the works proposed are consistent with its status as common land albeit only on a temporary basis.
27. Overall I conclude that consent should be granted for the works proposed for the period requested.

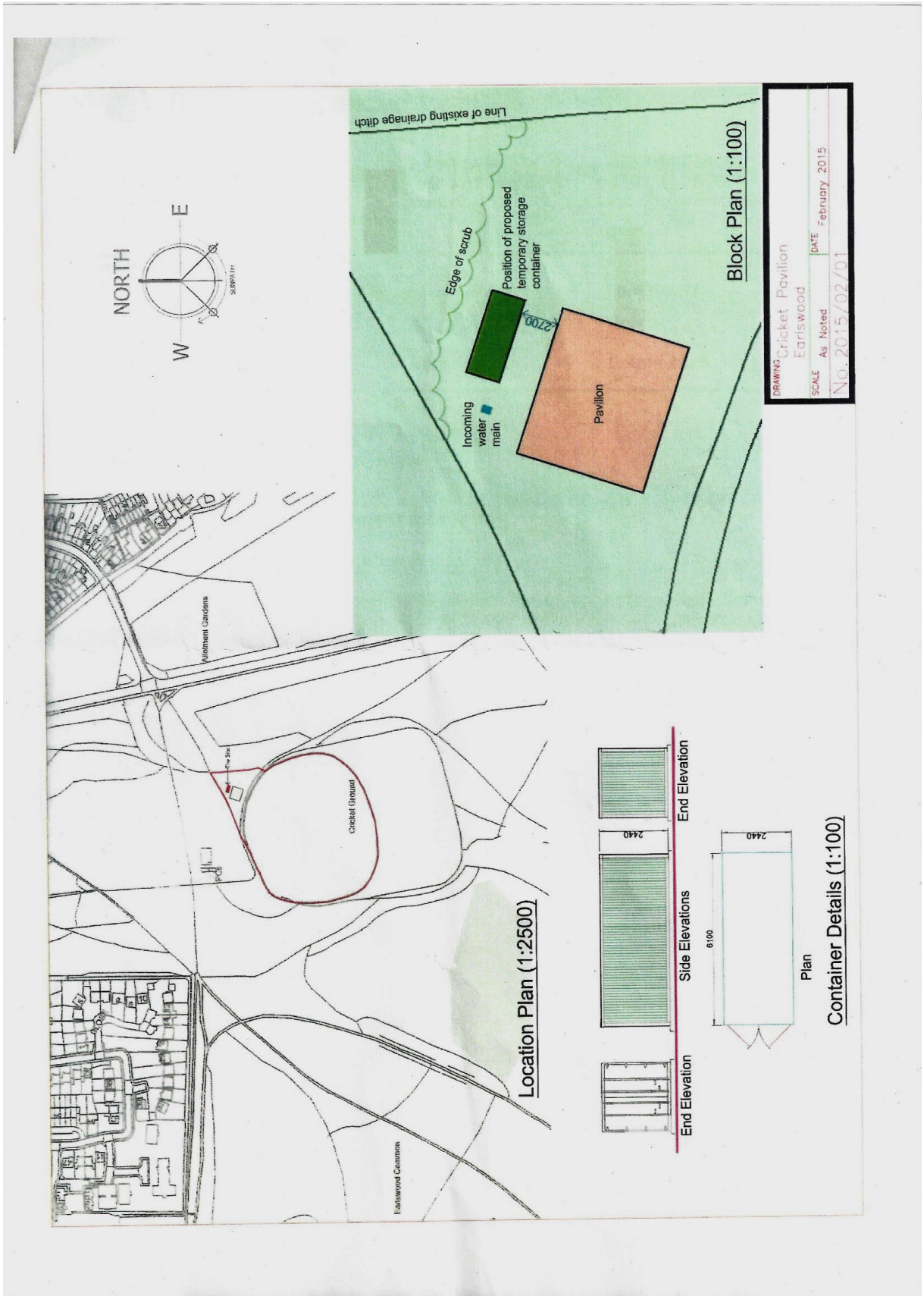
**Formal Decision**

28. Consent is granted under Section 38 of the Commons Act 2006 for the works sought by the application (COM/3195184) dated 2 February 2018 and the plans submitted with it, subject to the condition that the container shall be removed from the site no later than 31 December 2021.

*Sue Arnott*

**INSPECTOR**

**APPENDIX A**



NOT TO ORIGINAL SCALE