
Application Decision

by Richard Holland

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

Decision date: 26 October 2018

Application Ref: COM/3203592
Dunsfold Green and Common, Surrey

Register Unit No: CL162

Commons Registration Authority: Surrey County Council

- The application, dated 23 May 2018, is made under S 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by English Rural Housing Association, Astolat, Coniers Way, New Inn Lane, Guildford GU4 7HL.
 - The works of up to approximately 4 weeks duration comprise:
 - i. a 7m long hard surfaced vehicular access road and pavement covering an area of 86 square metres from Alfold Road to a proposed residential development; and
 - ii. temporary road works safety barriers and security Heras fencing as necessary during the period of works.
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Decision

1. Consent is granted for the works in accordance with the application dated 23 May 2018 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision;
 - ii. all temporary fencing 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. Planning permission for residential development (erection of 8 affordable dwellings), including the access road subject of this application, was granted by Waverley Borough Council (the Council) on 27 April 2018 (Application WA/2017/1815).
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. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by the Open Spaces Society (OSS).
5. I am required by Section 39 of the 2006 Act to have regard to the following in determining this application:-

¹ Common Land Consents policy (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;² and
- d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

6. The common land is owned by the Council, which was consulted about the application but did not comment. There are no registered rights of common. I am satisfied that the 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

7. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people. The common land is a grass verge alongside Alford Road (the highway) and appears to have little recreational value other than for general access. The proposed access road will provide a vehicular link from the highway to the development site across the verge, which is approximately 7 metres wide at that point. The access road will interrupt the path of anyone wishing to walk along the verge but only insofar as they might need to wait for vehicles to pass before continuing. However, photographs submitted by the applicant show the verge to be lined with trees and bushes, which significantly reduces the width available for public access to the extent that it can have no practical use other than as a narrow informal walkway at the edge of the highway. I therefore think it unlikely that the verge is well used by pedestrians, especially as the applicant's photographs also show there to be more room for pedestrian use on the other side of the highway. In any case, I do not consider that the access road will materially interfere with the way local people, or indeed the wider public, walk on this part of the common.
8. The application includes proposals to erect safety/security fencing around the access road as necessary during its construction. Such fencing is likely to further deter use of the verge as a pedestrian walkway. However, as the fencing will be removed on completion of the works, which is expected to be in around 4 weeks, I am satisfied that it will not seriously harm the interests of the neighbourhood or public rights of access.

Nature conservation

9. Natural England advised that it did not wish to comment on the application. There is no evidence before me that leads me to think the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

10. The common land has no special designated landscape value; it sits beside a highway and is visually unremarkable. I do not therefore consider that the access road will have an unacceptably urbanising effect despite its largely rural setting. The planning permission is subject to a landscaping condition imposed in the interests of the visual amenities of the area. It is not clear whether such landscaping includes the access road but even if it does not the works will not cause serious visual harm to the common.

Archaeological remains and features of historic interest

11. HE advised that it did not need to be further consulted about the application under the relevant statutory provisions. I take this to mean that HE has no comments to make about the application.

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.

There is no evidence before me of any archaeological features within the application site or nearby. I am content, therefore, that the works are unlikely to harm any such remains or features.

Other matters

12. OSS contends that an application under S16, and not S38, of the 2006 Act to deregister and exchange common land should have been made as this would allow for the provision of replacement land to offset the loss of green space to hard surfaced road. However, granting consent for the works will not lead to a reduction in the stock of common land - the application land will remain registered common. Whilst it may be that a S16 application could have been made, the applicant applied under S38 and has given reasons for not instead making a S16 application. Furthermore, common land legislation does not preclude the granting of consent for the proposed works under the provisions of S38. There is no sound reason for declining to determine the application which has been decided on its merits.
13. OSS also says the application land is subject to a scheme of management confirmed in 1951 under Part 1 of the Commons Act 1899 for the Hambledon Rural District commons and that under the scheme's byelaws it is an offence without lawful authority (which OSS considers to be land owner consent) *to draw, drive or place upon the commons, or any part thereof, any carriage, cart, caravan, truck, motor cycle or other vehicle*. However, applicants should satisfy themselves as to what consents, in addition to S38, may be needed for the works. Such other consents as may be needed are not a matter for my consideration.
14. OSS raises the issue of consistency in decision making and points to the decision on application reference COM/3190392 made under S38 for restricted works relating to a road scheme in Dorset (the Dorset case). OSS is concerned that granting the application before me would be inconsistent with the decision issued in the Dorset case. I give this argument little weight as whilst the Dorset case Inspector considered the issue of whether S38 or S16 was the most appropriate application mechanism, she went on to determine the application and grant consent. Furthermore, application decisions do not set precedents.
15. Defra's policy 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, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access or access for commoners' animals... The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common'*. OSS contends that this policy is intended to apply to private driveways and does not extend to new public roads across a common. I do not share this view because the policy does not preclude the construction of vehicular ways that are not for private benefit.
16. I have considered whether there is a practical alternative means of achieving access to the site without the need for works on common land. I am satisfied that the only practical means of accessing the site is via Alfold Road and that there is no alternative to crossing the verge of common land to gain such access. I conclude that the proposals are consistent with Defra's policy objectives in this regard.
17. The works will help facilitate the provision of 8 affordable dwellings. The provision of much needed affordable housing is in the public interest and this has added weight to my decision.

Conclusion

18. I conclude that the works will not unacceptably harm the interests set out in paragraph 5 above. Consent is therefore granted for the works subject to the conditions at paragraph 1 above.

Richard Holland



Client Name
 English Rural HA

Drawing Title
 Legal Plan 4

Drawn
 EM

Checked
 KE

Date
 16.05.17

Rev. Date Revision Details Dr. CD

Job Title
 Alföld Road, Dunsfold

Scale
 1:1250 @ A3

Job No.
 6211

Drawing No.
 L04


 76 Great Suffolk Street
 London, SE1 5SL
 T 0207 620 2773 E london@ecearchitecture.com
 11 Goring Road
 Worthing, West Sussex, BN12 4AE
 T 01903 248777 E w Sussex@ecearchitecture.com
 11 Goring Road
 Colchester, Essex, CO1 1AE
 T 01773 214 101 E Essex@ecearchitecture.com
ECE Architecture
 www.ecearchitecture.com

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