



Application Decision

by Richard Holland

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

Decision date: 7 January 2019

Application Ref: COM 3213538

Harpenden Common, Hertfordshire

Register Unit No: CL 16

Commons Registration Authority: Hertfordshire County Council

- The application, dated 5 October 2018 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 Harpenden Town Council
 - The works comprise the construction of a ditch 30m in length, 2m wide and 1.5m deep enclosed by timber two rail fencing 72m long by 1m high.
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Decision

1. Consent is granted for the works in accordance with the application dated 5 October 2018 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown outlined 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 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 Commons Registration Authority at Hertfordshire County Council and Historic England (HE).
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;

¹ Common Land Consents Policy (Defra November 2015)

- 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 landowner is also the applicant. There is one right of grazing registered over the common which the applicant confirms is not exercised. I am satisfied that the proposed works will not harm the interests of those occupying the land 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 impact on the way the common land is used by local people. The works form part of a rebuild of an existing drainage system which is needed to alleviate surface water flooding on the local road network. The rebuild includes the construction of a new soakaway ditch on the common and fencing around the ditch. The ditch is located near a shared pedestrian/cycle path and is likely to fill with water at times of heavy rainfall. The fencing is required to protect the public from any potential hazards.
- 9. I accept that the works are needed in this location in connection with the rebuild of a nearby drainage system, and the fencing is essential for the health and safety of the public. Photographs submitted of the area, upon which the works will be undertaken, show that the damaged culvert is waterlogged and the surrounding common is overgrown and unlikely to be used by the public for access or recreation. I am satisfied that the works will not significantly harm the interests of the neighbourhood or unacceptably impinge on public rights of access.

Nature conservation

- 10. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

- 11. The works are located between two trees on the edge of the common which limits its length to 30m. Timber fencing is proposed to reduce its visual impact and it is suggested that the fencing can be stained to an appropriate colour in keeping with the rural environment. The height of the fencing and type of fencing (two rail) will help retain the open aspect of the common and allow views through the fencing.
- 12. I conclude that while the fencing is likely to have some visual impact on the common, the impact will not be great. In any case, I consider that this limited impact is outweighed by the benefits to the common and to the public from improved drainage.

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.

Archaeological remains and features of historic interest

13. HE does not object to the works and recommends that archaeological staff at St Albans Council are consulted about undesignated archaeological remains and historic features. The applicant confirms that St Albans District Archaeologist has been consulted. I am satisfied that the proposed works will not harm any archaeological remains and features of historic interest.

Conclusion

14. I conclude that the proposed works will not unacceptably harm the interests set out at paragraph 6. While the fencing will be somewhat visually intrusive this is outweighed by the benefit to the public through the alleviation of surface water flooding of the local road network. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

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Harpenden Common Proposed Ditch Works Location Map

SCALE :
1 : 2500 @ A3

DATE :
05/10/18

GRID REFERENCE: TL13611 13394



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