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# Application Decision

**by Richard Holland**

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

**Decision date: 18 January 2019**

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## **Application Ref: COM/3208123**

### **Ewhurst Green, Surrey**

Register Unit No: CL 133

Commons Registration Authority: Surrey County Council

- The application, dated 24 July 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 Beechcroft Land Limited.
  - The works comprise the construction of a sealed road and path, together with the construction of a culvert below the proposed road and the construction of a swale for surface water drainage. The works will cover approximately 96.7 m<sup>2</sup>.
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 24 July 2018 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. the common shall be reinstated within 1 month from the completion of the works.
2. For the purposes of identification only the location of the works is outlined in 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 Stephen Dennison, James Bloomfield, Heritage Conservation Team at Surrey County Council and the Open Spaces Society (OSS).
6. 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 (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***

7. The owner of the common, Waverley 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 works will not harm the interests of those occupying the common and the interests of those having rights over the land is not at issue.

### ***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 are to create an access and footpath across a strip of common land located between a road known as The Green and a housing development site which the works will serve. The housing development of 18 dwellings (6 of which will be affordable), which includes the works, has been granted outline planning permission (WA/2017/0772). A 1m wide by 300mm swale will connect to an existing ditch to form part of a sustainable drainage system. The applicant explains that there is no alternative to the works on the common. The OSS does not object provided that the common is reinstated after the works are completed.
9. Objections to the work include lack of consideration of suitable alternatives, an unnecessary footpath and concerns about highway safety. It is suggested by an objector that using an existing access to a property known as 'Chanrossa' or the creation of a shared entrance to the development should be considered. A concern is also raised about the new footpath appearing to not link to the existing roadside footpath on the common.
10. In response, the applicant has advised that the existing access to Chanrossa has been assessed as unsuitable as it would not create a safe access due to poor visibility and would impact on 5 to 6 mature trees. The application access only impacts on one tree. The highway safety issues were addressed during the planning process and no objections were made by the highway authority. The footpath is intended to connect the proposed development to an existing footway alongside The Green.
11. I accept that the formation of an access across the common is needed and its location has been chosen as the safest and least harmful means of accessing the new development. The application site is located on a part of the common which is narrow roadside verge and is unlikely to be well used by the public, other than for access. I am satisfied that public rights of access over the common will be

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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.

maintained and the new footpath will facilitate access to and from the development. I do not consider that the works will prevent local people from using the common in the way that they are used to. I conclude that the works will not adversely impact on the interests of the neighbourhood or public rights of access.

### ***Nature conservation and conservation of the landscape***

12. The applicant confirms that the surface of the access and footpath will be blacktop/tarmac to meet adopted highway requirements and a culvert will be constructed beneath the access road to enable the movement of protected species.
13. Those objecting are concerned that the works will urbanise the common. The site of the works is located within the Ewhurst Green Conservation Area and will harm flora and fauna. The habitats of the great crested newt or dormice have not been taken into account. The proposed culvert and splay do not protect the common or adequately address flooding and drainage.
14. The applicant in response explains that an Ecological Assessment (dated April 2017) has been undertaken. The mitigation measures proposed by the assessment have been agreed with Surrey Wildlife Trust and the planning conditions are designed to avoid harm to protected species and enhance biodiversity. The planting of new native trees is proposed to mitigate the loss of a single tree. Flooding and drainage issues have been addressed during the planning process and are subject to conditions of the planning permission. The applicant has supplied a Flood risk Assessment and Surface Water Drainage Strategy (dated April 2017).
15. The application site is situated in a largely suburban area where there are hard-surfaced accesses serving nearby properties. While the works will introduce a further urbanising feature onto the common, the location has been chosen to limit the impact on existing trees and the visual impact will be mitigated to some extent by the planting of new native trees. Furthermore, the planning conditions will help mitigate the impact of the works on the conservation area. The mitigation and enhancement measures, secured through the planning conditions, will help protect nature conservation interests and limit the impact on the landscape. Natural England has been consulted about the application and has not objected. Overall, I consider that the works will not harm nature conservation issues and will have only a limited visual impact on the landscape.

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

16. The Archaeological Officer at Surrey County Council does not object to the proposed works and advises that the proposal will not impact upon any designated heritage assets and it is highly unlikely that currently unknown assets in the form of buried archaeological remains will be present within the area of impact. I am therefore satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

### ***Other relevant matters***

17. I am satisfied that the works will help facilitate the provision of affordable housing, delivered through the Section 106 Agreement, which is in the wider public interest. This has added weight to my decision.

## **Other matters**

18. Concerns have been raised by an objector about the process for granting planning permission and the meeting of planning conditions. I consider these matters are beyond the scope of my considerations and they cannot form part of my decision.

## **Conclusion**

19. Defra's policy guidance advises that *".....works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses.....consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit"* I am satisfied that the proposed works accord with the policy guidance.
20. I conclude that the works will not harm most of the interests set out in paragraph 6 above and the limited visual impact on the landscape is outweighed by the benefits to the wider public interest through the provision of affordable housing. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

**Richard Holland**

