
Application Decision

by Richard Holland

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

Decision date: 8 March 2019

Application Ref: COM/3214409

Petridgewood Common, Redhill, Surrey

Register Unit No: CL41

Commons Registration Authority: Surrey County Council

- The application, dated 16 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 McDonalds Restaurants Ltd.
 - The works comprise the creation of an 18.7 square metres area of tarmac finished hardstanding to the south east of the existing McDonalds restaurant.
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Decision

1. Consent is refused.

Preliminary Matters

2. 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.
3. This application has been determined solely on the basis of written evidence.
4. I have taken account of the representations made by Surrey County Council's Heritage Conservation Team (SCCHCT), which does not object to the application, and the Open Spaces Society (OSS), which does object.
5. 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;
 - c. the public interest;² and
 - d. any other matter considered to be relevant.

¹ Common Land Consents policy (Defra November 2015)

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.

Reasons

The interests of those occupying or having rights over the land

6. The common land is owned by Banstead and Reigate Borough Council (the Council), which supports the application and granted planning permission for refurbishment of the restaurant on 19 July 2018 (Ref: 18/00111/F (Revised)). The permitted refurbishment includes reconfiguration of the drive-thru lane, for which a hardstanding, the subject of this application, is required. 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 and is closely linked to rights of public access. The affected land is a triangular area at the edge of the common abutting the restaurant's outside seating area on one side and a parking bay on the other. The land is grassed but, given its size and location, it would seem to have little recreational value other than for general access. However, it is proposed to be hard surfaced and incorporated into the restaurant's drive-thru, which will effectively bring an end to any recreational use the public may wish to make of it because the passage of vehicles of customers patronising the restaurant will severely interfere with public access over this part of the common. Indeed, at busy times when vehicles are queuing access may be prevented altogether. I conclude that the proposed works are not in the interests of the neighbourhood and the protection of public rights of access.

Nature conservation

8. There is no evidence before me that leads me to think the works would harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

9. The affected land is small and sits between an outside seating area and parking bay at the edge of the common. I consider that the proposed tarmac would cause limited visual harm and its impact on landscape interests would be negligible.

Archaeological remains and features of historic interest

10. SCCHCT advised that the proposals would not impact on any designated heritage assets and that it is highly unlikely that currently unknown assets in the form of buried archaeological remains are present within the area of impact. I am content, therefore, that the works would be unlikely to harm any such remains or features.

Other matters

11. OSS contends that an application under Section 16 of the 2006 Act to deregister and exchange common land should have been made instead of one under Section 38 to carry out restricted works as this would allow for the provision of replacement land to offset the loss of green space to tarmac. The applicant has advised that such an application will be made by the Council regardless of the outcome of this Section 38 application. The Council has confirmed that it will seek the deregistration of the land concerned but believes that a Section 16 application would likely take much longer to be determined and that a successful application under Section 38 would allow for the tarmac works to be lawfully carried out more quickly.
12. Whilst it may be that a Section 16 application could have been made instead of the Section 38 application, rather than in addition to it, a valid Section 38 application has been made and determined on its merits. The 2006 Act does not preclude the granting of consent for the proposed works under the provisions of Section 38. In determining this application I can give no weight to assurances that a future Section 16 application will be made.

Conclusion

13. The issues raised in this application are finely balanced. The proposed area of tarmac would not cause unacceptable harm to the interests of those occupying or having rights over the land. Neither would it unacceptably harm the interests of nature conservation, landscape or archaeological remains and features of historic interest. However, the works are proposed in the interests of a private business. I have not identified any benefit to the public interest arising from the works which outweighs the harm to the interests of users of the common. After considering these issues, I have concluded that the harm to the interests of the neighbourhood and public rights of access is unacceptable and that the works are not in the public interest. Consent is therefore refused for the works.

Richard Holland