



Application Decision

by **Richard Holland**

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

Decision date: 2 October 2019

Application Ref: COM/3232306

East Street Green

Register Unit No: CL60

Commons Registration Authority: Kent County Council

- The application, dated 27 June 2019, 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 Eversheds Sutherland (International) LLP for Highways England Company Limited.
 - The works of approximately 6 months duration are in relation to the construction of a motorway footbridge and comprise:
 - i. construction of one permanent 0.4m diameter steel bridge support column; and
 - ii. temporary enclosure of almost all the register unit with wooden security hoarding fencing up to 3m in height to create a works compound.
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Decision

1. Consent is granted for the works in accordance with the application dated 27 June 2019 and the plans submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision; and
 - ii. all temporary fencing shall be removed, and the land shall be fully reinstated within one month of completion of the works.
2. For the purposes of identification only, the location of the proposed works is shown 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 of the 2006 Act, 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 Natural England (NE) and the Open Spaces Society (OSS).

¹ Common Land consents policy (Defra November 2015)

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;
 - 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 Commons Commissioner found that no person was the owner of the land (Decision 19/U/33 of 31 January 1974) and that it remained subject to local authority protection under section 9 of the Commons Registration Act 1965 (now under section 45 of the Commons Act 2006). The applicant indicates that the relevant local authority is Addington Parish Council, which was consulted about the application but has not commented. Kent County Council has confirmed that the common land register for CL60 has no Rights section and that there are no registered rights of common. I am satisfied that the works are unlikely to harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood and public rights of access

8. The works are in relation to the construction of a footbridge over the M20 motorway, which runs past the common's northern tip. The interests of the neighbourhood test relates to whether the works will impact on the way the affected common land is used by local people and is closely linked with public rights of access. The applicant's own research has identified that the common is used mainly by dog walkers and I am satisfied that this is likely to be the case.
9. The new footbridge will replace one previously located at the same site. The old bridge, which did not encroach onto the common at all, was demolished following structural damage caused by a traffic accident. The new bridge will encroach slightly onto the common as one steel support column will be positioned inside the boundary. The column will support a spiral section of the bridge approach ramp, which will slightly overhang the common well above head height. It will be possible to walk under the ramp at this point so the only permanent physical impediment to access caused by the works will be the single 0.4m wide column. I consider that the column will have a negligible impact on local use of, and public access over, the common.
10. The main impact on access will be from use of the common as a temporary works compound, which will enclose the whole common except for the footpath running just inside the southern boundary. For reasons of public safety and site security the compound will be completely closed to all public access for approximately six months whilst the bridge is constructed, although the footpath will remain open. I consider that the compound will significantly interfere with local use of the common and public rights of access over it during the period of works.

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.

11. The bridge ramp site is to the west of the common, whereas access to the site for works vehicles and equipment is via East Street, which is to the east of the common. I accept that the only practical works access to the ramp site is through the common and that the common is the only practical location for the required works compound. I consider that the harm to public access caused by use of the common as a temporary works compound will be outweighed in the long term by increased access opportunities to the common from the north side of the motorway, including for dog walkers, once the bridge is completed. I therefore conclude that despite the negative short-term impact, the works are in the long-term interests of the neighbourhood and public rights of access.

The public interest

Nature Conservation

12. The applicant has advised that the proposals border an area on the priority habitat inventory but that it will be fenced off and will not be affected by the works. NE was initially concerned that the ramp would encroach much more significantly onto the common than the applicant's plans suggest. This is not borne out by closer examination of the plans and I am satisfied that it is not the case. NE advised that it had no further comments to make and there is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

13. The common land, described by the applicant as a tree-lined site, has no special designated landscape value and sits next to a motorway. The support column will cause little visual harm but the closed wooden hoarding, which in places will be 3m high, will cause significant visual harm as it will enclose most of the common, even though it will be painted green. However, I accept that the hoarding is needed to secure the site and to reduce noise and dust disturbance. The hoarding will be removed once the bridge has been built so the harm will only be temporary. The applicant has said it will enter into a licence with the Parish Council to agree the terms of reinstatement and replanting. This being the case, I am satisfied that the land will be reinstated following the works, which can be ensured by attaching a suitable condition to the consent.

Archaeological remains and features of historic interest

14. There is nothing before me to suggest that any excavation will be large scale. Whilst excavation will be required to install the single support column, there is no proposal to excavate land within the works compound area. In the absence of any comments from Historic England and Kent Archaeological Society, both of which were consulted about the application, there is no evidence to indicate that the works may harm archaeological remains or features of historic interest.

Conclusion

15. I conclude that the proposed works will not unacceptably harm the interests set out in paragraph 6 above; indeed, the works will facilitate the construction of a footbridge that will provide for additional access to the common. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland