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# Application Decision

by **Richard Holland**

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

Decision date: 16 October 2019

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## Application Ref: COM/3223576

### Roadside waste from the Halfway public house to Church Lane, Bovingdon, Hertfordshire

Register Unit No: CL206

Commons Registration Authority: Hertfordshire County Council

- The application, dated 15 February 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 Dacorum Borough Council (the Council).
  - The works comprise:
    - i. installation of six tarmac surfaced parking bays occupying an area of 140 square metres on roadside grassed verge along a 20 metre section of Bovingdon High Street;
    - ii. a vehicular cross-over from the highway; and
    - iii. temporary plastic barriers around the working area, enclosing approximately 160 square metres of common land for approximately three weeks.
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## Decision

1. Consent is refused.

## Preliminary Matters

2. I have had regard to Defra's Common Land consents policy<sup>1</sup> (Defra's policy) 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. The formal name of common land unit CL206, as recorded in the common land register, is 'Roadside waste from the Halfway public house to Church Lane'. In the application form it is referred to as 'Amenity Green, adjacent to New Hall Close, Bovingdon. CL206'. In the published application notice it is referred to as 'Grassed area adjacent to New Hall Close, Bovingdon. CL206'. I am satisfied that no-one wishing to make a representation about the application has been prejudiced by the inconsistency. Indeed, in referring in the application form and notice to New Hall Close the applicant has clarified the location of the proposed works.
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), Historic England (HE) the Open Spaces Society (OSS), Mr R and Mrs S Baldwin, Mrs D Beckley, Mrs J Cooper, Philip and Kim Hay and Mrs M Joiner. With the exception of HE, all object to the application.

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<sup>1</sup> 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;<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 Commons Commissioner found that no person was the owner of the land (Decision 16/U/59 of 23 August 1978) and that it remained subject to protection under section 9 of the Commons Registration Act 1965 (now section 45 of the Commons Act 2006). Hertfordshire County Council has confirmed that the common land register for CL260 has no Rights section. 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 the protection of public rights of access***

8. The interests of the neighbourhood relates to whether the works will affect the way the common land is used by local people and is closely linked with the interests of public rights of access. The affected common land is within a grassed verge along the north side of Bovingdon High Street close to residential properties. It appears to have little recreational value other than for general access, although Mr and Mrs Baldwin and Mrs Beckley have said it is used by the Church at Easter and Christmas for religious displays/events. The applicant does not dispute this.
9. The works are proposed to increase parking provision on Bovingdon High Street, which the applicant describes as a very busy road with very limited parking. Where parking is allowed at the kerbside the two-way traffic flow is reduced to one-way flow. Creating six new parking bays on the verge will increase parking provision and, as vehicles will not be able to park on the cross-over (the access point from the highway to the bays), it will provide a passing place for two-way traffic flow.
10. Whilst the proposals may go some way towards easing parking and traffic flow problems along Bovingdon High Street, parked vehicles will seriously interfere with public rights of access over the common and will also interfere with the land's apparently established use at Easter and Christmas for religious displays/events. I conclude that the proposals will unacceptably harm the interests of the neighbourhood and rights of public access over the land.

### ***Nature conservation***

11. NE considers it inappropriate to use the common for parking but, in commenting on the proposals, raises no specific nature conservation concerns. The land has no special nature conservation status and 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***

12. Although the common has no special designated landscape value it is a prominent green space and the formation of 140 square metres of tarmac will mar its appearance. This damaging urbanising effect will unacceptably harm landscape interests. Some of the objectors are concerned about the urbanising visual effect of the proposals and the loss of green space. The applicant acknowledges these concerns and concedes that there are few green spaces along the High Street, although it is clear from the application that no measures to mitigate the visual impact of the works are

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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.

proposed. Indeed, it is not clear how the visual impact of the works could be reduced to an acceptable degree.

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

13. HE advises that it has no objections to the proposals. There is no evidence before me to suggest that any archaeological remains and features of historic interest are likely to be harmed by the proposals.

### ***Other matters***

14. The objectors raise various other concerns such as the effect of parking bays on the value of nearby properties, damage to individual properties caused by poor parking practice, and local residents' living conditions but these are not relevant to the determination of the application. Other concerns may be of some relevance but are general in nature and unsubstantiated, such as increased vandalism/anti-social behaviour and danger to pedestrians/other motorists. I give little weight to these matters in determining the application.

### **Conclusion**

15. The works will not harm the interests of those occupying or having rights over the common, nature conservation or heritage interests. However, Defra's policy advises that any use of common land should be consistent with its status as common land and that works should take place only where they maintain or improve the condition of the common. I conclude that the provision of parking bays is not consistent with the policy. The policy goes on to say that some proposed works on common land that do not benefit the common may be acceptable if they convey a wider public benefit, so long as their impact on the common is acceptable. The provision of parking bays may benefit the wider community but this is outweighed by the harm the works will cause to the appearance of the common and how it is used. Consent is therefore refused for the works.

**Richard Holland**