

Application Decision

by **Richard Holland**

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

Decision date: 20 November 2019

Application Ref: COM/3237015**Rushett Common, Rooks Hill and Birtley Green, Surrey**

Register Unit No: CL 149

Commons Registration Authority: Surrey County Council

- The application, dated 30 August 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 Blackheath Cricket Club.
- The works of approximately 3 months duration comprise (i) a 25m² extension to the rear of the existing cricket pavilion (ii) installation of a 15m² standard size (6m long) shipping container on a concrete slab (iii) temporary tree protection fencing for the duration of the works, including the creation of a 150m² enclosure, and (iv) 5.4m of temporary heras fencing, which will in conjunction with temporary tree fencing create a working area enclosure of up to 300m² for the duration of the works.

Decision

1. Consent is granted for the works in accordance with the application dated 30 August 2019 and the plan submitted with it, subject to the following conditions:
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. all fencing shall be removed within one month from the completion of the works.
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 Natural England (NE), Historic England (HE), Waverley Borough Council and the Surrey County Council Archaeological Officer, none of which object to the application.
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);

¹ Common Land Consents Policy (Defra November 2015)

- 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 land is owned by Waverley Borough Council (the Council), which supports the application. The common land register for CL 149 records no 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 protection of public rights of access

8. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people and is closely linked with public rights of access. The area of the common concerned is traditionally used for playing cricket and was home to Grafham and Smithbrook Cricket Club until it was wound up in 2018.
9. The applicant, Blackheath Cricket Club (BCC), is seeking to take a 50-year lease of the cricket ground and pavilion from the Council. BCC proposes to improve the player facilities so that it can expand and play some of its matches there. It has secured funding for the project from Sport England and says completion of the works will ensure that cricket will continue to be played on the common in the long term.
10. The proposed works are to extend the rear of the existing brickwork pavilion with a single brickwork storey to provide additional changing room space with shower cubicles and toilets. The extension will also allow for an entrance porch with ramped access to an accessible toilet. The works are needed to update the pavilion so that it can be used as a base for BCC's women's and girl's teams as well as for some men's and boy's matches. BCC considers the works to be critical to these long-term plans as the existing facilities are completely unsuitable for women's cricket because the only showers are located in the male toilet area.
11. The terms of the lease will also make the ground available to local not-for-profit organisations (including schools) undertaking community activities. BCC has advised that "community activities" includes activities for the benefit of the local community which are "in keeping" with the use of the property as a cricket ground. In practice, BCC envisages that the refurbished pavilion will be used for community activities in a similar way to its main pavilion at Blackheath, which is used on an occasional basis by a variety of community groups (e.g. the Blackheath Village Society, an orienteering club, a church group, a dog-training group). The ground will also be used by a couple of local schools which lack adequate playing fields of their own.
12. The proposed standard size shipping container will replace an existing half size container to provide more storage space for groundsmen's machinery and equipment. The half size container sits to the side of the pavilion on a concrete slab. The slab has a larger footprint than the half size container but is too small to accommodate a standard size one so it will be extended to the same footprint as the new container. The temporary fencing is proposed to protect the health and safety of the public and trees close to the working area.
13. The pavilion extension and new shipping container will together occupy 40m² of the common and this area will no longer be accessible for recreational use. However, I consider it unlikely that land immediately next to the pavilion is much used for recreation by local people or the public. Furthermore, I consider it reasonable that more intensive and varied use of the cricket ground and pavilion, in line with BCC's plans, will require additional space for improved facilities and equipment

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.

storage. I also consider the extent of the proposed temporary fencing, which will be in place for approximately three months, to be reasonable for reasons of public health and safety and to protect trees close to the works area during the period of works.

14. I conclude that any harm to public access is outweighed by benefits arising from the works for those using the cricket ground and pavilion for recreation and sport, particularly members of the cricket club but also the wider community. In this way the works are in the interests of the neighbourhood.

Nature conservation and conservation of the landscape

15. NE advised that it had no comments to make about the application and there is no evidence before me to suggest that the works will harm nature conservation interests. The pavilion lies within a locally designated Area of Great Landscape Value (AGLV) just outside the Surrey Hills Area of Outstanding Natural Beauty (AONB). The extension will be of the same brickwork construction as the existing building and will also have windows and doors to match. The container will be painted green to help it blend in with the surroundings. BCC says the proposed extension will be surrounded by trees, as will the container, and this is supported by photographs in the Design and Access Statement submitted with the application. BCC also says the extension will be visible only from the club car park although, as the public has a right of access all around the pavilion, this is unlikely to be the case.
16. Trees are a significant feature in the cricket ground landscape and those close to the works area will be protected by fencing during the construction period in accordance with the Arboricultural Method Statement, Implications Assessment and Tree Protection Report submitted with the application. I am satisfied that appropriate measures will be put in place to protect the trees at risk of damage, which will in turn protect the landscape.
17. There will be some modest increase in the footprint of the pavilion and the container. However, as the proposals are in keeping with the existing structures and will be softened by tree cover, I consider that the works will have only a small visual impact. I conclude that the fencing will not have a significant or lasting impact on the common and the works will cause negligible harm to the landscape.

Archaeological remains and features of historic interest

18. HE advised that it does not object to the proposals as they will not harm any highly designated assets in the vicinity. Surrey County Council's Archaeological officer advised that he does not object to the proposals as they will not impact on any designated heritage assets and that unknown assets in the form of buried archaeological remains are unlikely to be present. I am satisfied that the proposed works will not harm archaeological remains and features of historic interest.

Conclusion

19. Defra's Common Land Consents Policy is that consent may be appropriate where permanent buildings are intrinsically related to the enjoyment or management of the common, such as a cricket pavilion, lambing shed or a keeper's hut. I am satisfied that the works accord with the policy. I also consider that the works will be in the interests of the cricket club and the wider community and will not unacceptably harm any of the other interests set out in paragraph 6 above. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

Richard Holland