
Application Decision

by **Richard Holland**

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

Decision date: **11 May 2020**

Application Ref: **COM/3244409**

Waste of the Manor, Hemel Hempstead, Hertfordshire

Register Unit No: CL33

Commons Registration Authority: Hertfordshire County Council

- The application, dated 2 January 2020, 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 Homes England.
 - The works of up to 12 months duration along Three Cherry Trees Lane in relation to the Spencer's Park Phase 2 development comprise:
 - i. the laying of a combination of concrete, tarmac and paving over an area of up to 944 square metres along a 364 metres long section of roadside verge;
 - ii. creation of a footpath along the verge; and
 - iii. temporary Heras and/or barrier construction fencing to be in place for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 2 January 2020 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;
 - ii. all temporary fencing shall be removed on completion of the works; and
 - iii. the common land shall be restored within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown in purple on the attached plan.

Preliminary Matters

3. Outline planning permission for Spencer's Park Phase 2, land between Three Cherry Trees Lane and Cherry Tree Land, Hemel Hempstead, was granted on 30 April 2019 by Dacorum Borough Council (Application 4/02539/16/MOA) and St Albans City and District Council (Application reference 5/2016/2845).
4. 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.

¹ Common Land Consents policy (Defra November 2015)

5. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE), Historic England (HE) 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:-
 - 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 common land is owned by Dacorum Borough Council, which was consulted about the application but did not comment. 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

8. The common land the subject of this application (the affected land) lies along the north side of Three Cherry Trees Lane (the highway). It is described by the applicant as a small part of the common that is narrow and has traditionally been treated as highway verge. A new roundabout to serve the Spencer's Park development will be built over the verge which will be narrowed by highway widening on both sides of the roundabout, particularly to the west. The application plan suggests that the whole verge will become part of the hard-surfaced highway. However, the applicant confirms that this is not the case and that the proposed footpath will be inside the common land boundary on a remaining strip of grassed verge west of the roundabout. The applicant also confirms that a small area on the southern side of the highway, shown on the application plan in purple, is not subject to any works proposals and does not therefore form part of the application.
9. 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. NE suggests that the affected land does not provide an area that is important for access, although it goes on to suggest that this is a result of previous degradations and inappropriate use, and advises that the common is subject to rights of access on foot and on horseback under section 193 of the Law of Property Act 1925 (the 1925 Act). OSS raises concerns that the works will impede public access and have an adverse effect on public enjoyment of the common.
10. I consider it likely that the affected land has little recreational value other than for general access and that in practice it is likely to be rarely used due to its narrow width and nearness to the highway. However, whilst the highway widening works will narrow the verge further, and the roundabout works will render some of the affected land unusable as common land, I consider that the introduction of a footpath is likely to result in an increase in neighbourhood and public use. Furthermore, access rights under the 1925 Act will remain exercisable, albeit over a smaller area. I conclude that, on balance, neighbourhood use of, and public access over, the common will not be seriously harmed.
11. Whilst temporary fencing around the affected land may be in place for up to 12 months, the applicant advises that it could be closer to six months. In either case the period of disruption to public access is significant. However, the fencing is necessary for reasons of health and safety to

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.

separate the public from the worksite and will not have a lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation, conservation of the landscape and archaeological remains and features of historic interest

12. The applicant describes the affected land as a sliver of land containing hedgerows and other vegetation. NE advises that it is not an area that is rich in biodiversity or has great landscape character, which would seem to be consistent with its location. Conditions attached to the outline planning permissions require a landscape and ecological management plan (LEMP) to be submitted to, and approved by, the planning authorities and for landscaping works to be carried out. The applicant advises that the southern entrance into the Spencer's Park development from the new roundabout will be designed as a green gateway with groups of focal trees and colourful shrub planting laid out in concentric sinuous bands. In addition, new hedge planting will provide a green backdrop and a defined boundary between the public realm and the development land. In light of the above, I am satisfied that nature conservation and landscape interests will not be harmed by the works.
13. HE advises that it has no objection to the proposals. Conditions attached to the outline planning permissions require an Archaeological Written Scheme of Investigation to be submitted to, and approved by, the planning authorities to ensure that the impact of the proposed development on the historic environment is mitigated. I am content, therefore, that the works are unlikely to harm any such remains or features.

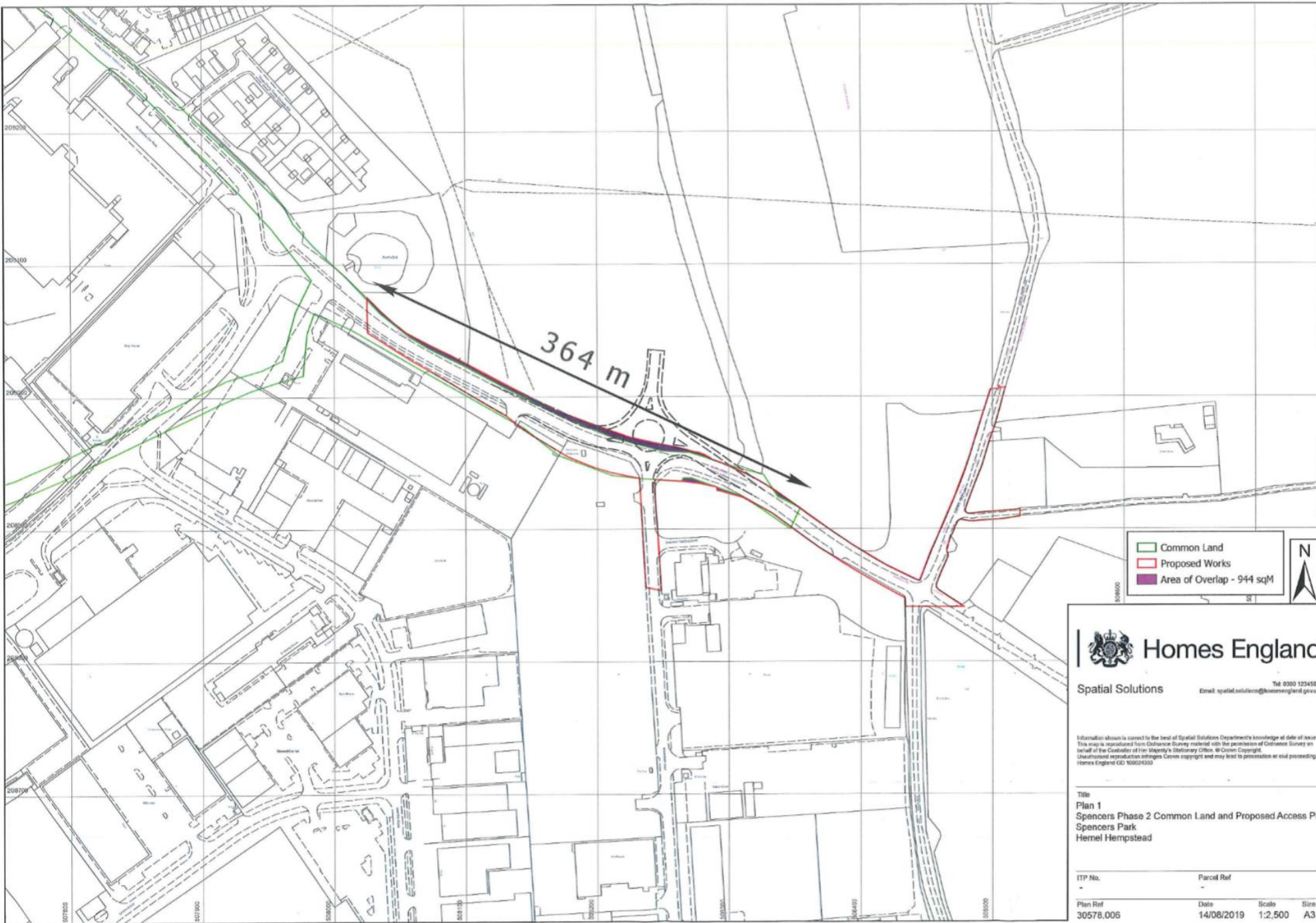
Other matters

14. The works are in relation to the Spencer's Park (Phase 2) development, which the applicant says has the potential to deliver approximately 1000 dwellings in the Dacorum Borough Core Strategy. The outline planning permissions give consent for residential development of up to 600 new homes, 35% of which will be affordable, together with other social and community infrastructure. I am satisfied that the works will help facilitate the provision of affordable housing, which is in the wider public interest. This has added weight to my decision.
15. OSS and NE contend that an application under Section 16, and not Section 38, of the 2006 Act to deregister and exchange common land should have been made as this would allow for the provision of replacement land. NE notes that open space and play areas will be provided as part of the development and suggests that such areas could constitute replacement land offered through the making of a Section 16 application. Whilst it may be that a Section 16 application could have been made, the applicant applied under Section 38 and has given reasons for not instead making a Section 16 application. Furthermore, common land legislation does not preclude the granting of consent for the proposed works under the provisions of Section 38. There is no sound reason for declining to determine the application, which has been decided on its merits.
16. In support of the application the applicant refers to previous consents granted for similar works on the common (Application Decisions COM 160 of 31 January 2011 and COM 573 of 10 June 2014). NE points out that the area of land for COM 160 was smaller than that in the current application, as was the COM 573 land. However, application decisions do not set precedents and each must be considered on its own merits.

Conclusion

17. I conclude that the works will not have a serious detrimental impact on public access and neighbourhood use of the common (and may be of some long-term benefit to these interests) nor on nature, landscape or archaeological interests. Any harm that may arise is outweighed by the wider public benefit of the provision of affordable new housing which the works will help to facilitate. I therefore conclude that consent should be given for the works subject to the conditions set out in paragraph 1.

Richard Holland



- Common Land
- Proposed Works
- Area of Overlap - 944 sqM



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Title
Plan 1
Spencers Phase 2 Common Land and Proposed Access Plan
Spencers Park
Hemel Hempstead

ITP No.	Parcel Ref		
-	-		
Plan Ref	Date	Scale	Size
30578.006	14/08/2019	1:2,500	A3