
Application Decision

by Richard Holland

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

Decision date: 4 August 2020

Application Ref: COM/3241327

Land adjacent to the Thorney Road and Little Bridge, Whittlesey, Cambridgeshire

Register Unit No: CL56

Commons Registration Authority: Cambridgeshire County Council

- The application, dated 7 November 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 Persimmon Homes limited.
 - The works of approximately 8 weeks duration comprise:
 - i) tarmac resurfacing of an existing semi-tarmacked access track to create a 22m long dual carriageway (179m²) with adjacent 2m wide footway (81 m²);
 - ii) underground installation of a 375mm diameter SWS (storm water) pipe and concrete headwall for drainage discharge into nearby watercourse; and
 - iii) approximately 120m of temporary 2m high heras mesh safety/security fencing to be in place during the period of works.
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Decision

1. Consent is granted for the works in accordance with the application dated 7 November 2019 and the plan 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 from the completion of the works.
2. For the purposes of identification only the location of the 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, 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. The works are included in a reserved matters planning application pursuant to outline planning permission for the erection of 220 dwellings and garages at land north of Whittlesey, east of East Delph, Whittlesey, Cambridgeshire. Planning permission for

¹ Common Land Consents policy (Defra November 2015)

the reserved matters was granted on 13 September 2019 by Fenland District Council (Application F/YR19/0158/RM).

5. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by 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 land is owned by the Whittlesey Charity, which was consulted by the applicant about the application but did not comment. The common land register records no rights of common.
8. There is no evidence before me to suggest that the works will harm the interests of those having rights in relation to, or occupying, the land.

The interests of the neighbourhood and the protection of public rights of access

9. The common land unit includes strips of land along each side of the B1040 road. The eastern strip, crossed by the existing vehicular track, sits between the road and land proposed for the 220-dwelling development. The narrower western strip sits between the road and a watercourse into which the proposed drain, to be positioned opposite the track, will flow.
10. 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 with public rights of access. OSS advises that the common land is subject to rights of access on foot and on horseback under section 193 of the Law of Property Act 1925, which is not disputed by the applicant.
11. The resurfaced access track will occupy about 217 m²; this amounts to less than 0.5% of the total area of the common. Neither this area nor the pipe/headwall area would seem to have much recreational value, especially as the land either side of the track appears to be covered by dense vegetation, and are unlikely to be visited often by the public. There will of course be increased vehicular movement along the track once the housing development is completed, but local people and the wider public will continue to be able to walk or ride across it should they wish to do so. I am satisfied that the works will not have an unacceptable impact on the interests of the neighbourhood and public rights of access.

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.

12. The drainpipe works will be mostly underground and the only new above ground structure will be the concrete headwall. As it will be set into the bank of the watercourse, I am satisfied that it will not be an obstruction to anyone walking over the land.
13. All temporary fencing will be removed once the works are completed, which is expected to be within eight weeks, and can be secured by attaching a suitable condition to the consent. I conclude that it will not have an unacceptable or lasting impact on local and public access rights over the common.

Nature conservation and Archaeological remains and features of historic interest

14. Natural England was consulted about the proposals but did not comment. The works affect only a small area of vegetation on the west side of the B1040 and an existing partially surfaced track on the east side. I am satisfied that nature conservation interests are unlikely to be harmed by the works.
15. HE advised that it had no objections to the proposals but suggested that the relevant local authority archaeological advisor should be consulted. I am satisfied that the applicant consulted the local archaeological services at Peterborough City Council, which has not commented. There is no evidence before me to suggest that the proposals will harm any archaeological remains or features of historic interest.

Conservation of the landscape

16. The application land has no special landscape designation and lies each side of a B class road. The works will nevertheless have some impact on landscape interests.
17. The carriageway/footway works to create a formal vehicular and pedestrian entrance to a new housing development will have a somewhat urbanising effect on the area. The application includes a shrub planting and bark mulch-laying scheme to mitigate the visual impact of the works. OSS objected to the scheme because the proposed non-native plants would be inconsistent with the common's character and semi-natural state and I agree that this would likely be the case. In response, the applicant agreed to amend the scheme to include only native species and I am content that such planting will more appropriately soften the visual impact of the works.
18. The new drainpipe will be underground, with the above ground headwall set into the side of the riverbank such that it is unlikely to be visible from within the common or from the B1040. I consider that the drainpipe works will have a negligible impact on the landscape.
19. I am satisfied that, taken together, the proposed works will not unacceptably harm landscape interests.

Other matters

20. OSS initially objected to the application on the basis that it should have been made under Section 16, and not Section 38, of the 2006 Act to deregister and exchange common land as this would allow for the provision of replacement land. 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 therefore no sound reason for declining to determine the application, which has been decided on its merits.

21. Notwithstanding the above, OSS withdrew its objection to the carriageway/footway proposal following an assurance from the applicant that suitable nearby land will be the subject of a future application under section 15 of the 2006 Act to register it as a town or village green to offset the impact of the works. However, regardless of the outcome of such an application, this is not a matter for my consideration in determining this Section 38 application.
22. Defra's policy advises that '*...where it is proposed to construct or improve a vehicular way across a common... such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access or access for commoners' animals... The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common. Where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable.*'
23. I am satisfied that the proposed carriageway/footway works are consistent with the above policy objectives. In particular, I accept the applicant's explanation that whilst Otago Road and Teal Road could provide secondary access to the development site from the south, there is no alternative primary route into the development land (that is acceptable in planning terms) that does not involve crossing the common land from the B1040.
24. The works are in relation to the development of 220 new houses, 9% of which will be affordable housing. I am satisfied that the works will help facilitate the provision of much needed new housing, particularly affordable housing, which is in the wider public interest. This is an important factor in my decision.

Conclusion

25. I conclude that the works will not have a serious detrimental impact on public access and neighbourhood use of the common 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

NOTE:
THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL
SPECIFICATIONS AND DRAWINGS FOR THE PROJECT.
SPECIFICATION AVAILABLE FROM PERSIMMON HOMES
(EAST MIDLANDS) LTD

Notes:

- Selling area of farm: access road: 20m²
- Proposed area of farm: cartilageway: 17m²
- Proposed area of farm: (pathway): 81m²
- Proposed length of farm: cartilageway: 22m
- Proposed length of surface water drainage: 36.4m

Key:

- Common Land Boundary (CL56)
- Area of proposed works within Commons Land

REV COMMENT DATE BY

PERSIMMON

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Proposed Access Road

The Showfields
Whittlesey

1:250 @ A1
15.10.2019
BP

WHITTSNOWCOM01

