
Application Decision

On papers on file.

By Barney Grimshaw BA DPA MRTPI (Rtd)

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 7 December 2020

Application Ref: COM 3257008

Shenley and Elstree Common, Hertfordshire

Register Unit: CL 299

Registration Authority: Hertfordshire County Council

- The application, dated 23 July 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 on behalf of Legal and General Assurance Society Ltd.
- The works comprise the construction of a new access way joining Rowley Lane, the widening and reconstruction of an existing access way, the grubbing up and reinstatement by grassing and landscaping of two existing access ways, and the placing of underground utilities. Also, the diversion of Mimmshall Brook and the reinstatement of the existing culvert, realignment of Rowley Lane ditch and landscaping works.

Decision

1. Consent is granted for the proposed works subject to the condition that the works shall begin no later than 3 years from the date of this decision.

Preliminary Matters

2. I have not visited the site but have had the benefit of viewing extensive photographic images of the affected area including footage taken from above by use of a drone. As a result, I am satisfied that I am able to make my decision without the need for a visit and the applicant agreed that a visit was not necessary.
3. For purposes of identification only the location of the works is shown on the attached plan.

The Application

4. The application is made on behalf of Legal and General Assurance Society Ltd. It proposes the construction of a new access road from Rowley Lane across the common to land which is to be developed for film studios and associated works, the widening and reconstruction of an existing access, the grubbing up and reinstatement by grassing and landscaping of two existing access ways, and the placing of underground utilities. Also, the diversion of Mimmshall Brook and the reinstatement of the existing culvert, realignment of Rowley Lane ditch and landscaping works.

Main Issues

5. 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;¹
 - (d) any other matter considered to be relevant.
6. I will also have regard to the department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy², which has been published for the guidance of both the Planning Inspectorate and applicants.

Interests of those occupying or having rights over the land

7. The common is owned by Hertfordshire County Council which has made no objection regarding the effect of the proposed works on its interests and has stated that it supports the application.
8. No rights of common are registered over the common.
9. Only the applicant has the right to use the existing vehicular access ways across the common. Members of the public have the right to access the common on foot and this would continue to be the case after the proposed works have been carried out.
10. Overall, it is my view that the proposed works will have no significant adverse effect on the interests of those occupying or having rights over the land.

Interests of the Neighbourhood

11. In general terms works should only be permitted on common land if they maintain or improve the condition of the common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact³.
12. In this case, the area of common land affected by the application is effectively highway verge adjacent to Rowley Lane. It is partially overgrown by vegetation and is of little use for recreational purposes.
13. The proposed works will have the effect of converting a relatively small part of the common into paved roadways although, to some extent, the effect of this will be offset by the removal of two existing vehicular crossings and the reinstatement of land by grassing and landscaping.
14. In addition, the applicant has entered into an agreement with the County Council to register an area of land which is not currently part of the common as a village green if the application is approved.

¹ 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.

² Defra, Common Land Consents Policy, November 2015

³ Defra, Common Land Consents Policy, para.3.2

15. There was only one objection made to the application and that was withdrawn as a result of the agreement to provide the village green land.
16. The main reason this application has been made is to enable access to allow a large development to take place on land to the north-east of the common. This development is the construction of film/production studios and associated works which may well bring some economic benefit to the neighbourhood.
17. Overall, it is my view that on balance the proposed works will have little adverse effect on the interests of the neighbourhood and that their impact will be outweighed by the benefits that will result from the establishment of the village green and the development of adjoining land.

Public Interest

Nature Conservation

18. The area of proposed works is relatively small and their effect on natural habitats is likely to be limited. Hertfordshire Ecology, an organization that provides ecological advice to authorities and communities, was consulted and commented that there are "*no terrestrial ecological constraints to why the application should not be approved*".
19. Natural England, the official body responsible for advising on the public interest of commons, was also consulted and has chosen to make no comment on the application.
20. In my view, the proposed works will have limited adverse effect on nature conservation, and this will be mitigated by the provision of new planting and open space.

Landscape

21. As already stated, the area of common land affected by the proposed works effectively consists of highway verge which is somewhat overgrown. It is currently of limited landscape value which is unlikely to be adversely affected by the works. In fact, the landscaping works proposed may improve the appearance of the area.
22. In my view the works currently applied for will not have an adverse effect on the landscape of the common.

Public access

23. It is not proposed that the works applied for will have the effect of restricting the public's right of access to the common.

Archaeological remains and Features of Historic Interest

24. There is no evidence to suggest that the proposed works would have an adverse effect on any archaeological remains or features of historic interest. Historic England was consulted on the application and stated that the proposals would not impact upon any defined heritage assets and therefore no objection was made.

Conclusions

25. Having regard to these and all other matters raised in written representations I conclude that, the benefits of the proposed works and the establishment of the

village green will outweigh any disadvantages and on this basis all the criteria for approval have been satisfied and the application should therefore be approved subject to the condition that the works shall begin no later than 3 years from the date of this decision.

Barney Grimshaw
INSPECTOR

