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# Application Decision

**by Richard Holland**

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

Decision date: 22 December 2020

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## **Application Ref: COM/3249152**

### **Shere Heath, Surrey**

Register Unit No: CL 197

Commons Registration Authority: Surrey County Council

- The application dated 05 October 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 Network Rail.
  - The works comprise:-
    - (i) 2 x 100 m long x 2 m high temporary fencing along either side of the North Downs to Gatwick railway;
    - (ii) 250 m long x 2m high temporary fencing enclosing a storage compound measuring 15 x 15 m; and
    - (iii) an access route consisting of a temporary matted surface running from the existing car park on Little London Road to the Network Rail boundary fence about 25 m from the current foot crossing.
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 05 October 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; and
  - ii. the works shall be removed and the common restored within one month from the completion of the footbridge.
2. For the purposes of identification only the location of the works are outlined in red within the common land boundary outlined in green on the attached plans.

## **Preliminary Matters**

3. I have had regard to Defra's Common Land Consents Policy Guidance<sup>1</sup> 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
4. Following the submission of the application, the applicant provided a further map which shows more clearly the location of the proposed fencing. I have taken this map into

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<sup>1</sup> Common Land Consents Policy Guidance (Defra November 2015)

account and am satisfied that, in doing so, the interests of anyone who may have wished to comment on the application have not been prejudiced.

5. The application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Natural England (NE), the British Horse Society (BHS) and the Open Spaces Society (OSS).
7. I am required by section 39 of the 2006 Act to have regard to the following in determining these applications:-
  - 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***

8. The landowners, Denton and Company Trustees Limited and Hurst Lea Limited, have been consulted and have not objected to the application. The applicant confirms that the registered right of pasture is not exercised. I do not consider that the temporary works will 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***

9. The interests of the neighbourhood test relates to how the works will impact on the way the common land is used by local people. The works are needed to facilitate the construction of a footbridge over the railway that is not on the common. Temporary fencing is required to maintain public safety and secure the Network Rail boundary for the duration of the works which are expected to last four months. The applicant confirms that public access will be maintained during the works
10. In response to concerns raised by the BHS about access, the applicant clarifies that a section of car park will be used for storage and the access route to Network Rail's land will still be open to other users. The applicant adds that the contractors undertaking the works will ensure that the needs of the public are addressed where shared access is required.
11. The fencing running either side of the railway will not interfere with public access and the compound fencing will occupy only a small proportion of the common. I do not consider that the works, which are of short duration, will unacceptably interfere with access or how the common is used by local people. I am satisfied that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

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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.

## **Nature conservation**

12. NE commented that any damage caused by the temporary works, including to any biodiversity features, is made good and that the applicant works with Surrey Wildlife Trust, which may have an interest in the site, to form a plan of the works. The applicant confirms that any damage will be repaired and an ecologist will be engaged to ensure compliance with building regulations.
13. I am satisfied that the steps taken by the applicant will ensure that the works have no lasting harmful impact on nature conservation interests.

## **Conservation of the landscape**

14. The common is situated within the Surrey Hills Area of Outstanding Natural Beauty. The applicant advises that it may only be necessary to use temporary matting for the access route in inclement weather to enable access to the site and avoid causing any damage to the existing surface.
15. I am satisfied that as all temporary works will be removed upon completion of the footbridge and the common reinstated, the works will not cause any lasting harm to the appearance of the common. I conclude that the landscape will be conserved.

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

16. There is no evidence before me to indicate that the works will harm any archaeological remains or features of historic interest.


## **Other matters**

17. The BHS has raised concerns about the footbridge and the proposed diversion of two bridleways. The construction of the footbridge, which is not on common land, and the proposed diversions are subject to separate controls and do not form part of this application. The BHS' concerns are therefore outside the scope of my considerations.

## **Conclusion**

18. Defra's policy advises that *"...works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits. However, consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit."*
19. Having regard to the interests set out in paragraph 7, I consider that the works will have no significant or lasting impact on the common and accord with the policy guidance. I therefore conclude that consent should be granted for the works subject to the conditions at paragraph 1.

*Richard Holland*



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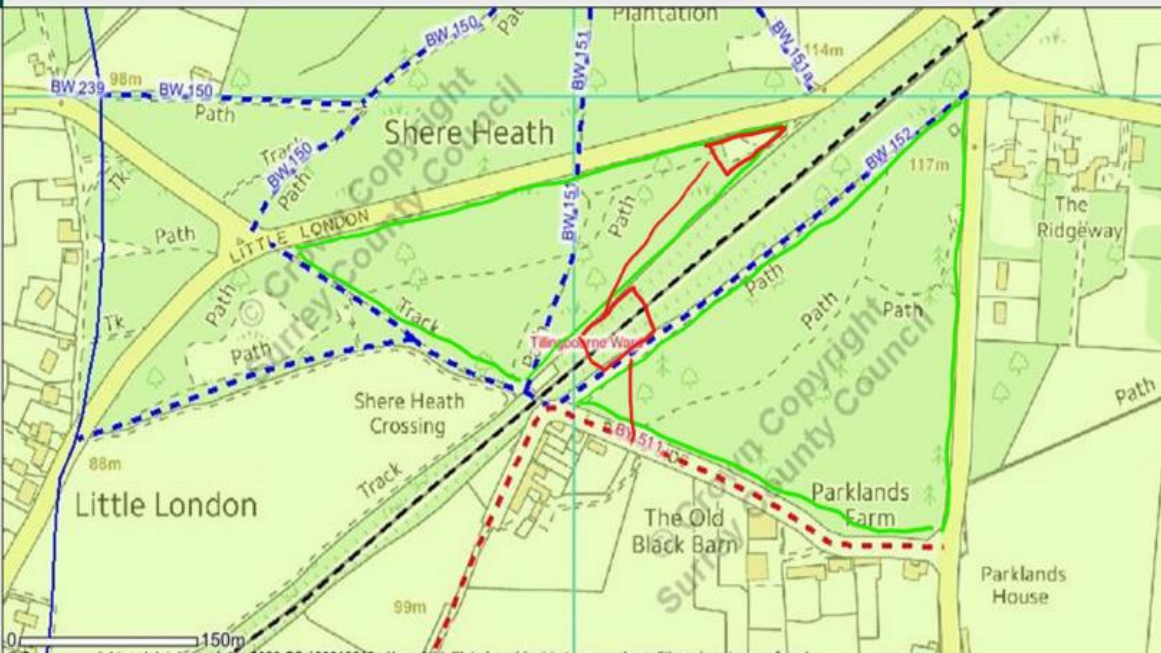
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