
Application Decision

by Richard Holland

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

Decision date: 13 January 2021

Application Ref: COM 3244127

Harpenden Common, Hertfordshire

Register Unit No: CL 16

Commons Registration Authority: Hertfordshire County Council.

- The application dated 20 December 2019 is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Harpenden Town Council.
 - The works comprise:
 - i) the excavation, levelling and re-surfacing with a crushed concrete/fines mix of the existing 245m long circular pedestrian path around two drainage ponds known as Southdown Ponds on the eastern edge of Harpenden Common, the 30m long path to connect the circular footpath up to Southdown Road between the two ponds and the 55m long path from Southdown Road opposite St Dominic's Primary School across the lower section of the Common up to the amenity space; and
 - ii) 24m of Heras security/safety fencing to create a temporary 27 square metres site storage compound for plant/machinery, etc, during the approximate 3-week period of works.
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Decision

1. Consent is granted for the works in accordance with the application received 20 December 2019 and accompanying plan, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. all the fencing shall be removed and the common shall be fully restored within one month from the completion of the works.
2. For the purposes of identification only the location of the path 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. 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), The Harpenden Society (HS) and the Open Spaces Society (OSS).

¹ Common Land Consents Policy (Defra November 2015)

6. The application form and published application notice make no reference to the proposed temporary fenced working compound. However, the applicant has since confirmed that such works are part of the application. Whilst such a fenced compound constitutes restricted works under section 38 of the 2006 Act, as it is only temporary and is needed to carry out the resurfacing works, I will consider it when deciding the application. I am satisfied that, in doing so, the interests of those who have commented on the application will not be prejudiced.
7. 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

8. The landowner is also the applicant. There is one right of grazing registered over the common. The rights holder was consulted by the applicant but has not commented. The applicant confirms that the right is not exercised and that there has been no grazing on the common since 1962. I am satisfied that the proposed works will not harm the interests of those occupying the land 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 whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. The two ponds known as Southdown Ponds were renovated in 2007 to improve the environment for wildlife and have since become popular with visitors to the common for duck feeding and picnicking. Their original purpose was to collect water run-off from nearby roads and they are positioned close to Southdown Road from where visitors and commuters can access the common via unsurfaced paths that are the subject of this application.
10. The applicant says the surfacing works are needed because the paths have become increasingly eroded and uneven from extensive pedestrian use, causing trip hazards from exposed stones and roots. The paths can also be slippery with mud and puddled water in wet weather. The purpose of the works is to remove any trip hazards and to improve access, journey times and overall enjoyment for all users of the common in all weathers.
11. I consider the proposed surfacing works to be consistent with the established use of the land and I conclude that they are in the interests of the neighbourhood and the protection of public rights of access. I am satisfied that the proposed storage compound for plant/machinery necessary to the surfacing works will have only a minor and temporary impact on public access over the common and that it will facilitate efficient completion of the surfacing works to allow public use of the paths to resume.

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.

Nature conservation

12. NE advised that it had no comments to make about the application. There is no evidence before me to suggest that the works will harm nature conservation interests.

Conservation of the landscape

13. The works will introduce no new permanent features into the landscape but the appearance of the existing paths will change. However, the proposed crushed concrete/fines mix to be used to surface them has been used for previously consented works on the common and the applicant says it has proven to be durable as well as effective at blending in with its surroundings. I consider it likely that the proposed surface will improve the appearance of the paths, which are currently eroded and uneven with exposed stones and roots and are thus unsightly.
14. The works compound will cause some temporary visual harm but all fencing will be removed and the land reinstated to its former condition following completion of the surfacing works, which can be ensured by attaching suitable conditions to the consent.

Archaeological remains and features of historic interest

15. The works will not involve significant excavation of the soil and there is no evidence to suggest they will harm any archaeological remains and features of historic interest.

Other matters

16. HS advised that it supports the proposed surfacing of the circular paths around the two ponds but has concerns about the other two paths linking to Southdown Road. The concerns centre on whether the paths would be best moved so that they meet Southdown Road nearer to safer crossing points.
17. I accept that surfacing these two paths is likely to promote their use over any alternative informal routes across the common leading to potentially safer Southdown Road crossing points. However, the applicant has advised that the existing paths are the most direct routes to Southdown Road and doubts that attempts to introduce longer routes would be successful. In any case, the application before me is to surface existing paths, not to move them, and in deciding the application I give little weight to such concerns.

Conclusion

18. I conclude that the proposed works will not unacceptably harm the interests set out in paragraph 7 above. Indeed, the proposed surfacing will improve pedestrian use of established paths to the benefit of neighbourhood and public access interests. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

