
Application Decision

Site visit made on 9 August 2016

by Alan Beckett BA MSc MIPROW

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

Decision date: 5 September 2016

Application Ref: COM 765

Land in the vicinity of Downs Terrace, Stebbing

Register Unit: CL 205

Commons Registration Authority: Essex County Council

- The application, dated 7 January 2016, 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 Mr David Rich-Jones on behalf of Richstone Procurement Limited, 118 Priory Lane, London SW15 5JL.
 - The works comprise:
 - The resurfacing of an existing agricultural access to establish a vehicular, pedestrian and cycle access to a projected development of up to 30 houses. The works will comprise the alteration of the existing metalled / hard surfaced area including the creation of new kerb lines, footways and drainage infrastructure.
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Decision

1. Consent is granted for the works set out in the application dated 7 January 2016. The works for which consent is granted shall not take place unless the development for which outline planning permission was granted on 17 February 2015 [application reference: UTT/14/1069/OP] is begun.

Preliminary Matters

2. Following advertisement of the proposal, objections or representations were received from Stebbing Parish Council, Historic England, Natural England, Mr Tony Long and Mrs Margaret Rufus all of which I have taken into account.
3. I carried out an accompanied site visit on 24 February 2016 in the company of Mrs Cross of Andrew Martin-Planning, Mrs Goodwin and Mrs Merifield of Stebbing Parish Council and Mrs Rufus.
4. This application has been determined on the basis of the written evidence, the comments submitted, and my observations of the site.

Description of the site

5. The application land is located to the north-eastern side of the cul-de-sac section of the road known as The Downs. The majority of the application land consists of tarmac which provides hard surfaced access to adjacent agricultural land and to residential properties located at this part of The Downs. Part of the application land is occupied by the footway on the northern side of the road whereas the minority of the application land is grassland which at the time of

- my site visit was unmanaged. This parcel of grass extends to approximately 6 metres in length and tapers from approximately 4 metres to 2 metres in depth.
6. The application land forms part of the registered common at Stebbing which is essentially linear in nature and is comprised of various stretches of verge at the side of the carriageway which were registered pursuant to an uncontested registration under the Commons Act 1965. The Highways Authority has confirmed that the application land forms part of the publicly maintainable highway and was so maintainable prior to the land being registered as common. The registration of the land as common does not affect the highway rights in existence over the land.
 7. Outline planning permission has been granted for the development of up to 30 houses on land adjacent to the application land (UTT/14/1069/OP). Consent for the proposed works is sought to enable construction of the western 6 metres of the access road which would serve the new housing development. The application land is shown edged red and hatched green on the plan attached to this decision.

The Main Issues

8. 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 matters considered to be relevant.
9. In determining this application I have had regard to the latest edition of Defra's Common Land Consents Policy² ('the 2015 guidance') which has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

Assessment

The interests of those occupying or having rights over the land

10. As the land is part of the maintainable public highway it is not possible for any party or parties to occupy the land. There are no rights of common registered over CL 205. Consequently I conclude that there are no individuals whose interests would be adversely affected by the proposed works.

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 Common Land Consents Policy, Defra November 2015

Interest of the neighbourhood

11. The 2015 guidance indicates that the issues to be considered in this context include whether or not the proposal will offer a positive benefit to the neighbourhood, whether or not the works would prevent local people from using the common in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the common, whether by commoners, the public or others. For example, would fencing sterilise part of the land rendering it inaccessible.

Positive benefit

12. The proposed works would see the substitution of the existing tarmac surface of the application land and its replacement with a further tarmac surface together with the necessary kerbs and other infrastructure features of an access road. Approximately 10m² of the unsurfaced area of the application land would be subject to the proposed works.
13. Although it was submitted by the Parish Council and by Natural England that the proposed works would have an urbanising influence on the landscape, having had the opportunity to view the site, I am of the view that the application land is already of an urban character being hard surfaced and serving as both agricultural and residential access. The application land does not form part of a wide usable area of common land on which recreational or other activities can take place. As the current surface of the application land is predominantly tarmac, I consider that the proposed works would have a neutral impact upon this part of the register unit. Whilst the proposed works may not deliver a positive benefit to the common, neither would they adversely impact upon it.

Loss of existing use or interference with future use

14. There is little evidence of use of this part of the register unit other than by pedestrians as a means of passing and re-passing along the footway on the northern side of The Downs or as a means by which children can make their way to Stebbing Primary School from the houses on Pound Gate and Garden Fields via the two nearby public footpaths. The proposed works would not prevent the current use of the application land to pass and re-pass although caution would have to be exercised by anyone wishing to cross the end of the access road which the works would create. Whilst there would be some interference in future use arising from the construction of the access road, that interference is not substantial enough to warrant the refusal of consent.
15. Mrs Rufus submitted that the proposed works may impact upon the garden waste collection service provided by Stebbing Parish Council. I understand that The Downs is used as the collection point for this service as it is a cul-de-sac in a predominantly linear village. However it appears that the collection vehicle is parked in the road and not on the application land; the proposed works are therefore unlikely to have any impact upon this service as the works do not extend into the road.

The public interest

Nature conservation

16. Mrs Rufus³ submitted that the public's interest in nature conservation would be adversely affected by the proposed works as they would disturb an existing population of Lesser Calamint (*Clinopodium calamintha*) present on the unsurfaced part of the application land. Lesser Calamint is an Essex Red Data List plant and is nationally scarce. The verge opposite the application land is a Local Wildlife Site (Ufd 270) on account of the presence of Lesser Calamint.
17. For the applicant, Mrs Cross submitted that the presence of Lesser Calamint on the application land was not noted in 2014 when an ecological survey was carried out. As part of the planning application for the housing development, the applicant has entered into a section 106 agreement which includes an ecological management plan that proposes a mitigation area of land to be dedicated to maintain a population of Lesser Calamint. This area is intended to provide an area of biodiversity gain as part of the housing development.
18. I have not seen the ecological survey conducted in 2014 by the applicant, nor have I seen the section 106 agreement as neither document was submitted as part of the evidence supporting this application. However, I have no reason to doubt the existence or veracity of such documents as there is no dispute between the parties as to their content or intent. Despite Lesser Calamint not being recorded in the 2014 ecological survey, at the time of my site visit there were a number of such plants growing and flowering in the unsurfaced section of the application land. These plants were primarily at the footway side of the verge and Mrs Rufus may be correct in that they have established from plants present in the protected roadside verge opposite.
19. The proposed works would impact upon some of the plants present on site and the loss of those locally and nationally rare plants would be detrimental to the public's interest in nature conservation. However, I consider that the adverse impact of the works could be mitigated by the creation of an area of land to be dedicated to the maintenance of another population of this species under the section 106 agreement.

Conservation of the landscape

20. Although set in a rural part of Essex, the application land is set in a residential street and the sealed surface of the majority of the application land forms part of that urban setting. The replacement of the existing sealed surface with a new surface as part of the projected access road is unlikely to have any adverse impact upon the landscape in the immediate vicinity of the application land.

Public access

21. As noted above, public access to the application land mainly takes the form of pedestrian movements along the footway on the northern side of The Downs. Other than requiring pedestrians to exercise due care when crossing the

³ Mrs Rufus acts as a volunteer plant surveyor for the Essex Wildlife Trust for special roadside verges Ufd 270 (The Downs) and Ufd 267 (Bran End).

proposed access road, the proposed works are unlikely to have any adverse impact upon public access to the application land.

22. It was submitted by the Open Spaces Society that the proposed works were of private benefit only and did not fulfil the requirements of section 38 of the 2006 Act. In relation to the creation of a vehicular way across common land section 5.9 of the Common Land Consents Policy states "*such an application may be consistent with the continuing use of the land as common land, even when the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access, or access for commoners' animals*". In this case, the proposed works will not prevent public access to the land; consequently, the application is consistent with section 38 of the 2006 Act.

Archaeological remains and features of historic interest

23. No evidence has been submitted to demonstrate that there are any archaeological remains or features of historic interest on the application land or in its immediate vicinity which would be adversely affected by the proposed works.

Housing

24. In addition to the above, there is a wider public interest in the proposed works as they will facilitate the construction of up to 30 new homes of which up to 40% will be affordable homes. The proposed residential development on adjacent land served by the access road for which consent is sought would make a contribution towards the supply of new homes in this part of Essex.

Other relevant matters

25. In his objection, Mr Long took issue with works being carried out on the application land when only outline permission to develop the adjacent land had been granted. Mr Long was concerned that works may be undertaken which may not be required unless full planning permission was obtained. In my view, whilst consent to the proposed works would be necessary for those works to be undertaken, those works would only be required if the current development scheme was implemented under a full planning permission. Consequently, I consider that the granting of consent for the proposed works should be conditional upon the commencement of the development for which outline planning permission has been granted.

Conclusions

26. Having regard to the interests set out in paragraph 8 above, I find that the works would not adversely affect those interests and that it is expedient that conditional consent be granted.
27. For the purposes of identification only, the location of the works is shown on the attached plan.

Alan Beckett

Inspector

APPENDIX (Not to original scale)

