
Application Decision

by Richard Holland

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

Decision date: 4 May 2018

Application Ref: COM/3195766

Waste of the Manor, Hemel Hempstead, Hertfordshire

Register Unit No: CL33

Commons Registration Authority: Hertfordshire County Council

- The application, dated 8 February 2018, 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 Hightown Housing Association Ltd, Hightown House, Maylands Avenue, Hemel Hempstead HP2 4XH.
 - The works of up to 12 weeks duration next to the Viking House residential development site comprise:
 - i. a 180m x 2.5m gravel surfaced shared foot/cycleway covering an area of approximately 450 sqm; and
 - ii. temporary 2m high safety/security Heras fencing around the working area.
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Decision

1. Consent is granted for the works in accordance with the application dated 8 February 2018 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;
 - ii. all temporary fencing shall be removed on 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. The works are proposed in relation to a deed pursuant to section 106 of the Town and Country Planning Act 1990 concerning the residential development of the Viking House site, for which planning permission was granted by Dacorum Borough Council (the Council) on 8 November 2016 (Application 4/02772/15/MFA).
4. 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.
5. This application has been determined solely on the basis of written evidence.
6. No representations were received about the application.

¹ Common Land Consents policy (Defra November 2015)

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 common land is owned by the Council, which was consulted about the application but did not comment. There are no registered rights of common. I am satisfied that the works will not 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 relates to whether the works will affect the way the common land is used by local people and is closely linked with the interests of public rights of access. The common land is a grass verge alongside Redbourn Road and appears to have little recreational value other than for general access. The proposed shared foot/cycleway (the path) will link the Viking House residential development to the existing Nickey Line footway, which is outside the common land boundary. The path will begin at a new Redbourne Road pedestrian and vehicular entrance to the development site and extend northwards along the verge towards the Nickey Line footway. The path is not intended to benefit users of the common but rather to facilitate access (on foot or bicycle) for the occupants of, and visitors to, the Viking House development. However, I do not consider that such traffic will unacceptably disrupt the public's enjoyment of the common given that it offers very few recreational opportunities.
10. The application includes proposals to erect safety/security fencing around the path during its construction. The applicant has confirmed that approximately 30m of fencing will be in place at any one time; this will be moved along as the works progress. As the fencing will be removed on completion of the works, which are expected to take around 12 weeks, and it will be restricted to a 30m length at any one time, I am satisfied that it will not seriously harm public rights of access.

Nature conservation

11. Natural England advised that it did not wish to comment on the application. There is no evidence before me that leads me to think the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

12. The common land has no special designated landscape value and sits beside a busy highway in a built up area. It is nevertheless a green space that will be visually interrupted by a 2.5m wide gravel path. However, the verge will be used by pedestrians and cyclists travelling between the residential development at Viking House (once completed) and the Nickey Line footway regardless of whether a formal path is provided for them. I consider that in the absence of a path the grassed surface is likely to be damaged through regular pedestrian and cycle use leading to unsightly erosion; this would be visually more harmful than the path. I therefore conclude that, on balance, the works are in the interests of protecting the landscape.

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.

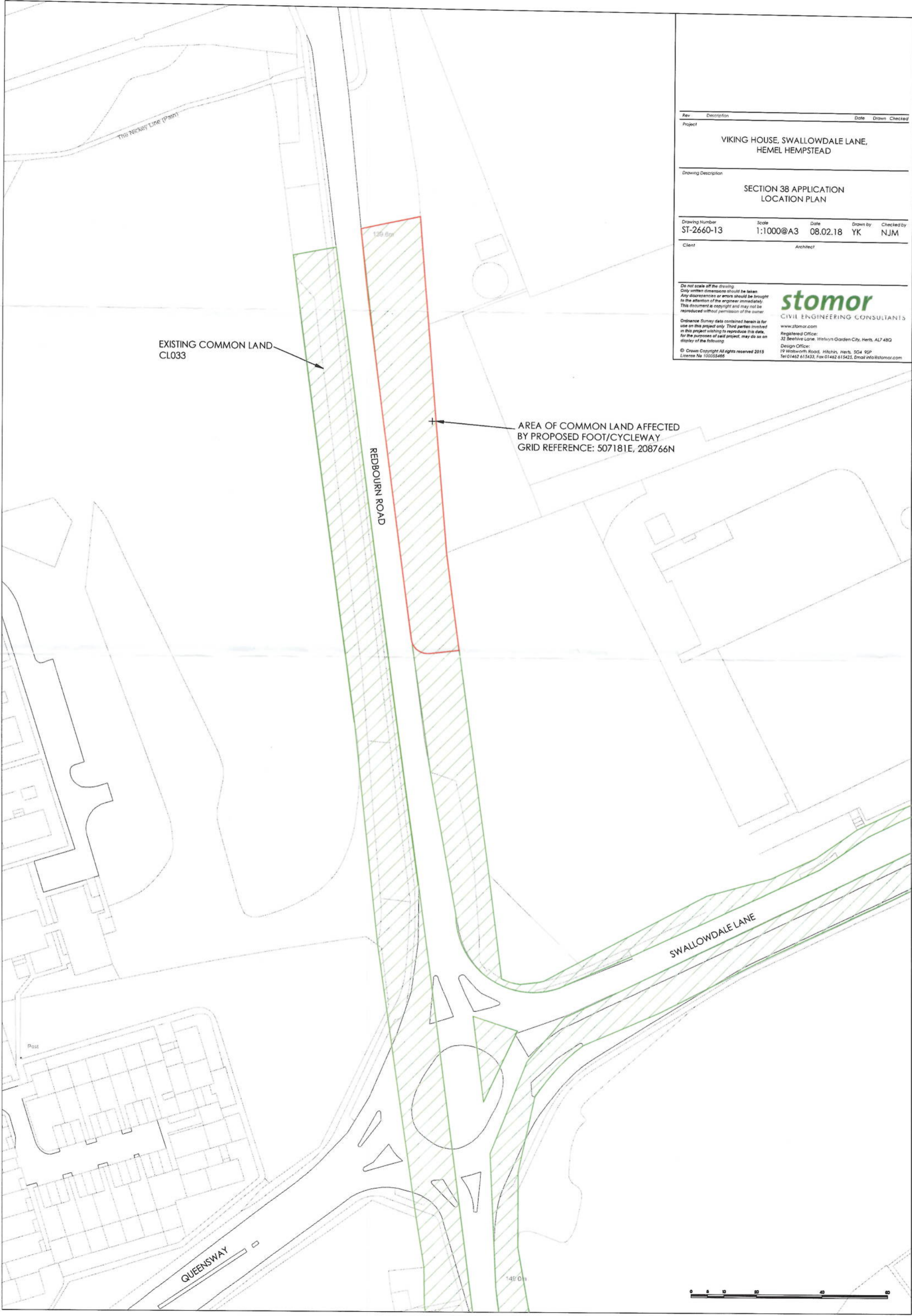
Archaeological remains and features of historic interest

13. There is no evidence before me of any archaeological features within the application site or nearby. I am content, therefore, that the works are unlikely to harm any such remains or features.

Conclusion

14. I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above and that they are likely to be in the interests of the conservation of the landscape. Consent is therefore granted for the works subject to the conditions at paragraph 1 above.

Richard Holland



EXISTING COMMON LAND
CL033

AREA OF COMMON LAND AFFECTED
BY PROPOSED FOOT/CYCLEWAY
GRID REFERENCE: 507181E, 208766N

Rev	Description	Date	Drawn	Checked
Project				
VIKING HOUSE, SWALLOWDALE LANE, HEMEL HEMPSTEAD				
Drawing Description				
SECTION 38 APPLICATION LOCATION PLAN				
Drawing Number	Scale	Date	Drawn by	Checked by
ST-2660-13	1:1000@A3	08.02.18	YK	NJM
Client		Architect		
<small>Do not scale off the drawing. Only written dimensions should be taken. Any discrepancies or errors should be brought to the attention of the engineer immediately. This document is copyright and may not be reproduced without permission of the owner.</small>				
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