



Application Decision

Site visit held on 20 June 2018

By Martin Elliott BSc FIPROW

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

Decision date: 26 July 2018

Application Ref: COM/3191799

The Vine Waste, Sevenoaks

Register Unit: CL118

Registration Authority: Kent County Council

- The application, dated 13 December 2017, 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 Sevenoaks District Council.
 - The works comprise: the provision of a tarmac surfaced entrance extending 15 metres into the common and the provision of mesh matting as a temporary surface over the existing area of grass to provide for a temporary car park until the end of June 2019.
 - The works occupy an area of 1,977 square metres.
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Decision

1. Consent is refused.

Preliminary Matters

2. I carried out an accompanied site visit on 20 June 2018 when I was joined by a representative of Sevenoaks District Council and objectors to the application including representatives of the Vine Preservation Association (VPA). My decision has been made on the basis of my observations on this visit, taking account of the application and representations received in response to the advertisement of the application.

Main Issues

3. In considering the application I am required by section 39 of the 2006 Act to have regard to the following:
 - (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 which includes the interest in nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) any other matters considered to be relevant.

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.

Assessment

Interests of those occupying or having rights over the land

5. There are no registered rights of common over the Vine Waste. The land is owned by Sevenoaks Town Council who have been consulted on the application and have made no response.
6. There is nothing before me to indicate any adverse effect on rights over the land.

Interests of the neighbourhood

7. 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.
8. The proposed works are to provide temporary car parking for 70 vehicles displaced whilst the redevelopment of Buckhurst 2 car park takes place. The site is proposed to be used by permit holders from the existing car park.
9. I have no evidence that the works will provide a positive benefit to the neighbourhood. The works will enable permit holders for car parking at Buckhurst 2 to use the land for car parking on a temporary basis.
10. As regards whether the proposed works will prevent local people from using the common the applicant has noted the comments of Natural England that the land is subject to access under section 193 under the Law of Property Act 1925. However, the applicant makes the point that Natural England have provided no evidence to support this contention. The applicant offers no information as to whether the land is subject to section 193 of the Law of Property Act 1925. Nevertheless the land, as common land, is subject to the provisions of open access on foot under the Countryside and Rights of Way Act 2000. A number of objectors also make the point that the land was gifted to the town by the Sackville Family and the Knole Estate. The deed of transfer states that the land should '*be forever hereafter used and maintained as a site for a public memorial to those men of Sevenoaks ... and for an open space and place of public recreation for the benefit of persons within the neighbourhood of the urban district of Sevenoaks*'. Bearing in mind the above the common is available for access by those from the neighbourhood.
11. The applicant indicates that the land is generally used for car parking at the weekend between May and September, when events take place on the cricket ground and by members of the public entering and leaving the cricket ground.

¹ Common Land consents policy (Defra November 2015)

In respect of this latter element it is not clear if this is use by vehicles. Whilst the land is used for car parking for certain events the evidence before me indicates that such use is seasonal and not extensive. On the other hand the works will enable the land to be used by up to 70 vehicles up to the end of June 2019. The Planning Permission stipulates that by 30 June 2019 the works will have to be removed and the land restored to its former use. It is likely therefore that the land will cease to be used for car parking before that date. Nevertheless the land is open to use by those in the neighbourhood and during my time on site I noticed use of the land for informal recreation and as a through route. Evidence from objectors is that the land is used for walking, walking dogs and informal recreation. During the period up to June 2019 access will be restricted by cars parked on the land. Consequently the car parking facilitated by the works will have an adverse impact on the way that local people use the land. After June 2019, when the site will have been restored, access will be unhindered and the enjoyment of the common will not be adversely affected

The public interest

The protection of public rights of access

12. Noting my observations at paragraph 10 above it is not clear whether the public have access to the land in consequence of section 193 of the Law of Property Act 1925. However the public will have access to the land in consequence of the Countryside and Rights of Way Act 2000. Although the works are temporary, and it is noted that the land is used for car parking on other occasions (paragraph 11), public access will be restricted whilst cars are parked on the land. As such the application will have an adverse effect on public access. In the short term the effects will be significant although given that the works are temporary there will be no lasting effect.

Nature conservation

13. Natural England has been consulted on the application and raise no concerns in respect of nature conservation. They do suggest that instead of returning the common to its present condition after the works are no longer needed the opportunity is taken to improve and benefit the common. However, this is not a matter for my consideration. As noted below the applicant, as part of the planning permission, is expected to restore the land in accordance with a scheme of restoration. The application is for a temporary car park and this does not amount to works which are beneficial to conservation.
14. Objectors raise concerns in respect of the potential effect on a number of trees which are adjacent to the proposed works and I note that one tree falls within the application land. The VPA have commissioned an Arboricultural Impact Assessment which has concluded that the layout of the car park, access arrangements and associated vehicular and parking movements will encroach on the RPA (Root Protection Area) of site trees. A Draft Tree Protection plan identifies the minimum distance to protect rooting environments and illustrates construction exclusion zones with the aim of preventing any damage within the RPA of the trees. The Assessment concludes that that the proposed development fails to address important tree considerations to ensure that existing trees will be fully protected.

15. Although I can appreciate the concerns the applicant makes the point that the local planning authority had all the relevant and necessary information to enable the determination of the planning application. The applicant also states that it will ensure that adequate precautions are taken with regard to damage to roots of any existing tree. The applicant therefore acknowledges the potential impact on the trees on and adjacent to the site. Planning permission is granted subject to a number of conditions for the protection of trees. Condition 3 requires details of surfacing to have been submitted and approved in writing by the local planning authority in order to prevent damage to trees on and adjacent to the site. Condition 4 also requires details of works to trees to have been submitted and approved to prevent damage to trees on and adjacent to the site. Condition 5 requires that no development shall be carried out until full details of tree protection measures have been submitted and approved so as to prevent damage to mature trees on and adjacent to the site. All these conditions have been imposed as the local planning authority is satisfied that it is fundamental to the development permitted to address the issues in relation to trees before development. The planning permission also states that without the safeguards planning permission should not be granted.
16. It is suggested in opposition to the application that the excavation of material to provide for vehicular access will mean the loss of habitat. However, I have no evidence to indicate that there will be any adverse effect on nature conservation. Natural England raise no concerns in this respect and the VPA acknowledge that the site is not a Site of Special Scientific Interest. It is appreciated that it is unlikely that the same material will be replaced when the site is restored but again there is nothing to indicate this will have any adverse impact on nature conservation.
17. Having regard to the above, although the details of the proposed works are limited, the planning permission contains a number of conditions intended to protect trees on and adjacent to the application land. There is nothing to indicate that, given the conditions, the proposed works will be detrimental to the trees. There is no evidence before me to suggest that there will be any adverse effects on nature conservation.

Conservation of landscape

18. The Vine Waste falls within the Vine Conservation Area in an area of greenspace which includes the Vine cricket ground and a war memorial. Whilst the greenspace is severed to a certain extent by the Dartford Road the Vine Waste integrates with the cricket ground which overall provides a reasonably extensive area of greenspace close to the town centre. It is clear from the representations that this area of greenspace is valued by residents.
19. As noted previously the proposed works will enable the Vine Waste to be used for the parking of 70 cars. In my view the parking of cars on this land will have a significant adverse impact on the landscape as the parked vehicles will be visible from many aspects. Given the gradient and lower elevation of The Vine Waste views of parked cars from the Vine cricket ground will be more limited. However, cars will still be visible from certain parts of the cricket ground.
20. Whilst the parking of cars will have an adverse impact on the landscape it is noted that the works, and therefore the parking of cars, will be temporary in nature and there will therefore be no lasting impact.

Archaeological remains and features of historic interest

21. Historic England have been consulted on the application and have raised no concerns in this respect. A number of representations refer to the historical setting of the area in close proximity to the Vine cricket ground, claimed to be one of the oldest cricket grounds in the country, the war memorial site and nearby listed buildings.
22. Whilst the proposed works may adversely affect the historic setting of the area by allowing the parking of cars I do not consider that there will be a significant adverse impact on these features of historic interest. There is nothing to indicate any adverse effect on archaeological remains.

Other relevant matters

Highway Safety

23. Concerns are raised in respect of highway safety at the various junctions in the proximity of the entrance to the land which will be used by vehicular access. Whilst I note and can appreciate all these concerns it is clear the Highway Authority was consulted on the proposals and did not raise any objections. Some weight should be given to the view of the Highway Authority and no evidence has been put before me that the proposals will have a significant adverse effect on road safety. Condition 6 of the Planning Permission requires that use of the temporary car park will not commence until details of how the car park will be managed have been submitted and approved by the local planning authority. This condition has been imposed in the interest of highway safety as supported by policy EN1 of the Sevenoaks Allocations and Development Management Plan.

Need for the works

24. As noted above the application is to provide temporary car parking for 70 vehicles displaced during the redevelopment of the Buckhurst 2 car park. The initial statement (21 February 2018) from the applicant indicates that the existing car park closed on 5 January. Furthermore it is stated that it is too early to judge whether all the alternative provision that has been made to accommodate car parking will be required.
25. The VPA notes that the Buckhurst car park has been closed and advises that it has been informed by the Council that all displaced users of the former town centre car park who have requested other spaces have already been accommodated elsewhere. The applicant does not dispute this statement. The VPA has also regularly inspected on street parking in St Botolph's Road and has observed around 50 vacant spaces during inspections. I have no details as to any methodology for assessing the availability of car parking spaces which lessens the weight I can give to these assertions. Nevertheless the submissions would indicate the availability of parking spaces on St Botolph's Road which I observed on my way to the site visit.
26. The VPA also contend that the Council has failed to identify other existing facilities which could be used, namely Bradbourne car park and the Otford Park and Ride site. The VPA have carried out a survey of available car parking spaces at the Bradbourne car park from 10 January 2018 shortly after the closure of the Buckhurst car park. Again, although the details of the methodology are not provided the survey suggests that there are car parking

spaces available. The VPA acknowledge that this car park is not centrally located but state that it is a short walking distance from the town centre. As such the Bradbourne car park may not be as convenient as other car parks including that proposed by the applicant.

27. One of the objectors refers to the Design, Access and Heritage Statement in connection with an application, not by the District Council, to develop a brown field site for the temporary parking for 78 vehicles. The statement suggests that the brown field site will be more sustainable than the proposal for parking off Park Lane (the application land). Furthermore, that the applicant has plans in place to deliver the temporary car park in a short timeframe and that if this is possible this may have a knock-on impact of removing the need to put into action The Vine temporary car park. Whilst I note this potential alternative provision I have no evidence before me that the planning permission for this development has been granted or whether the temporary car parking spaces can be delivered within the appropriate timescale. As such it is difficult to give this evidence any weight. Nevertheless it does indicate a potential for provision of the temporary car parking spaces to be made elsewhere without impacting on the common.
28. As noted above, the Council does not dispute the statement made by a council officer that displaced users have been accommodated and it is apparent that in January 2018 the Council were uncertain as to whether all the alternative provision will be required. In light of this, and the evidence from the VPA as to the availability of car parking spaces, it is not clear that the temporary car parking on the Vine Waste is required. In considering the effect on the common land the need for the works, which will adversely affect the common, needs to be put in the overall balance when considering the application.

Restoration following works

29. Concerns are raised by the objectors as to the restoration of the land. Some objectors are concerned that the site will not be restored and will continue to be used for car parking once the land is no longer needed for the parking of permit holder's vehicles.
30. The planning permission for the temporary use of the land is granted until 30 June 2019. Condition 1 of the Planning Permission indicates that, by the date on which the planning permission expires, the works will be removed and that the site shall be restored in accordance with a scheme of restoration submitted to and approved by the local planning authority. The condition requires that the site shall return to its former use. The condition is to reflect the temporary nature of the works and to safeguard the longer term function of the land as allocated open space. The submissions from the applicant accept that the land will be required to be reinstated to the previous condition and will undertake a pre commencement survey and record of the land to ensure proper reinstatement.
31. The application before me is for consent for temporary works until the end of June 2019. If I am minded to approve the application then any consent will be time limited to the end of June 2019. Any works remaining on the land after that date will be without consent and will also breach the terms of the Planning Permission. Whilst I note the concerns in respect of reinstatement and continued use of the land any breach will be enforceable.

Amenity issues

32. The VPA state that the land is identified in the Local Plan as an 'Important Area of Open Space'. The Sevenoaks Allocations and Development Management Plan (ADMP) 2015 (Policy G12) states that the change of use of such land will not be permitted unless one of three stated criterion are met. In summary the criterion are that the open space is surplus to requirements, the loss will be mitigated by equivalent provision and the development is for alternative sports/recreational use. Although the proposed works, and the planning permission, is temporary the proposal does not appear to be in accordance with the policy objectives.
33. Policy EN1 of the ADMP requires development to respect topography and the character of the site and not result in any loss of open space which would have an unacceptable impact on the character of the area. The temporary loss of open space would again appear to conflict with this policy.
34. The VPA refer to ADMP Policy EN2 which looks to protect residential amenities. I consider below the issue of emergency access at paragraph 35 below. In respect of an increase in vehicular traffic and the intensification of use of Park Lane it is likely that at peak times an increase in traffic may have an adverse impact on adjoining residential amenities. However given that any effect is most likely to be at peak times and not throughout the day any impact is not significant.

Access for emergency vehicles

35. Concerns are raised as to the effect of the works on emergency access to the frontages of properties on Park Lane which are onto the Vine Waste. The applicant suggests that access for emergency vehicles can be gained from Hollybush Lane and that the width in the fencing on the Vine Waste would in any event preclude certain vehicle types from reaching the front of the properties on Park Lane. Whilst access could be gained from Hollybush Lane, as noted on my site visit, access from this road was prevented by the presence of parked cars and there is also no dropped crossing. In respect of access from the Vine Waste, although this may be limited by the width of the gap in the fencing it would not preclude access for emergency vehicles. The use of the application land for temporary parking would however inhibit access to properties on Park Lane with the frontages on the Vine Waste. Nevertheless, in an emergency situation there is nothing to indicate that access by emergency vehicles could not be gained to the properties.

Drainage

36. One objector makes the point that there is likely to be a need for the enlargement of main sewers to evacuate rain water running off the hardcore rather than soaking in to the grass.
37. Whilst the proposed works include an area of asphalt at the entrance to the proposed car park the majority of the site will be covered with some form of mesh matting which will allow for the continued drainage of the site. There is nothing to indicate that any engineering works will be required to accommodate any water runoff.

Lack of replacement land

38. The VPA make the point that there is no replacement land as an alternative open space whilst the land is being used for car parking. However, the application is for consent for works on common land and not for the exchange of common land. There is therefore no obligation to provide alternative land for use as open space. Nevertheless, as noted above, the works will have an adverse effect on access by those from the neighbourhood and the public for the duration of the works.

Other matters

39. Representations are raised in respect of car parking in Sevenoaks more generally and the need for improved bus services, the provision of car parking in Sevenoaks and the cost of car parking. Although I note these issues I am required to consider the application before me measured against the relevant criteria set out above at paragraph 3. It is also suggested that the application would set a precedent. However, any application must be considered on its merits measured against the appropriate tests.

Conclusions

40. The Commons Act 2006, and earlier legislation relating to common land, enables government to safeguard commons, ensure the special qualities of common land are protected and improve the contribution of common land to enhancing biodiversity and conserving wildlife. Commons should be maintained or improved as a result of any proposed works with section 38 of the 2006 Act conferring additional protection on common land rather than for purposes inconsistent with its status. Consent under section 38 may however be appropriate where the works are temporary, where the works will cause negligible impact on the land and the proposals ensure the full restoration of the land and confer a public benefit.
41. Bearing in mind all of the above, there will be some adverse effect on the interests of the neighbourhood and the public. However, any works and the consequential use of the land for car parking will be of a temporary nature as will any adverse impacts. Notwithstanding this, the works are to provide for temporary parking for some permit holders for parking in Buckhurst 2. The works are to benefit a limited number of car park users and there is no evidence that the works are of public benefit. The works clearly do not assist in maintaining or improving the common.
42. Whilst in some circumstances consent for works which are temporary may be appropriate I consider that the provision of temporary car parking is inconsistent with the status of the common. I am mindful of the fact that the common is used on occasions for the parking of vehicles when events are held in the area. However, the works, albeit temporary, will enable car parking on the land for permit holders of Buckhurst 2 and not for events on the Vine. As noted above there is no evidence that the works are of public benefit.
43. In addition to the above, in response to representations, the applicant states, following the closure of Buckhurst 2, that it is too early to judge whether all the alternative provision will be required. Other evidence before me indicates that all permit holders displaced by the demolition of Buckhurst 2 have been accommodated and that there is alternative provision for permit holders in the area without the need to carry out works on common land. In the absence of


any need, and the availability of alternative provision, I consider it inappropriate to carry out works on common land which, as noted above, are inconsistent with the status of the common, provide no public benefit nor maintain or improve the common.

44. Having regard to these and all other matters raised in the application and in the written representations I conclude that, on balance, the application should be refused.

Martin Elliott

INSPECTOR

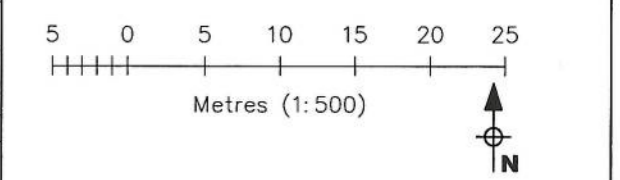



INDICATIVE ONLY

Proposed Works Site

Common Land Boundary

Note:
 This drawing is for planning purposes only and should not be used for construction purposes. DHA Planning accept no liability for the exact location of RPAs and the advice of a qualified arborologist should be sought in the first instance.



REV	DATE	BY	DESCRIPTION	CHK	APD
P4	12.12.17	GL	Boundary fence amended	CS	CS
P3	02.08.17	SS	Scale bar	SS	JSL
P2	21.07.17	SS	Updated OS	SS	JSL
P1	15.10.14	CC	First Issue	CC	JSL

client
SEVENOAKS DISTRICT COUNCIL

project
**TEMPORARY CAR PARK
 VINE WASTE, SEVENOAKS**

title
70 SPACE CAR PARK

project	10485	drwg	10485-T-01	rev	P4
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Drawn	Checked	Approved	scale @ A3	date
CC	CC	JSL	1:500	15.10.14

status
FOR INFORMATION P



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CAD Reference: **A3**