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# Application Decision

Site visit held on 22 May 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**

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## **Application Ref: COM/3188090**

### **Weybridge Heath, Surrey**

Register Unit: CL192

Registration Authority: Surrey County Council

- The application, dated 23 October 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 Surrey County Council.
  - The works comprise: the construction of a sealed surfaced path for pedestrians and cyclists along Heath Road between Old Heath Road by Weybridge Station and Brooklands Lane. The proposed route will be 3.8 metres wide where it follows Heath Road (this will involve widening the existing footway, which forms part of the highway, by 1.8 metres onto the common) and 3.0 metres wide where the common is open where the route will follow an existing track.
  - The works occupy an area of 1,931 square metres.
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## **Decision**

1. Consent is granted in accordance with the application dated 23 October 2017 subject to the condition that works shall begin no later than three years from the date of this decision. For the purpose of identification only, a copy of the application plan is attached to this decision.

## **Preliminary Matters**

2. I carried out an accompanied site visit on 22 May 2018 when I was joined by representatives of Surrey County Council, supporters of and objectors to the application. 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.
3. Following the site visit additional evidence was submitted by one of the objectors. I sought comments thereon from the parties.

## **Main Issues**

4. 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.

5. I have had regard to Defra's Common Land Consents Policy<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 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***

6. There are no registered rights of common over Weybridge Heath and the land is owned by Elmbridge Borough Council who support the application.
7. The residents of Rogues Roost have an access agreement over Weybridge Heath from Heath Road. Whilst initially raising objections to the application the residents now support the application. This was following further responses from the County Council which indicated that they would work with the residents to agree on a design which maintains a quality and safety of access and concurs with the deed of grant. Additionally the residents of 1 Rose Cottages have an access agreement over Weybridge Heath from Brooklands Lane. This access is unaffected by the proposed works.
8. There is nothing before me to indicate that the interests of those occupying or having rights over the land will be adversely affected by the proposed works.

### ***Interests of the neighbourhood***

9. 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.
10. The proposed works are aimed at providing an all year round safe and attractive route for pedestrians and cyclists to provide wider travel choices and encourage travel by sustainable means. The proposal has, for a long time, been considered as a priority cycle route in Elmbridge that is needed to provide for existing cyclists and encourage new cyclists. The scheme features in the Elmbridge Local Transport Strategy and Forward Programme 2014 and is one of the main priorities of the Elmbridge Cycling Plan which sets out the local implementation of the Surrey Cycling Strategy. The proposed route provides direct linkage with Weybridge railway station and Brooklands College.
11. The proposed works will provide an opportunity for those in the neighbourhood to use more sustainable transport along a route which meets the aspirations of the local transport strategy. It is noted that transport improvements are needed in the area to support additional development in Weybridge, both office

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<sup>1</sup> Common Land consents policy (Defra November 2015)

floor space and housing. The works will provide alternative travel options. The letters of support state that the proposed works will provide significant benefits to pedestrians and cyclists, encourage sustainable transport, and improve safety. The Open Spaces Society makes the point that the works will encourage and enable greater year-round use of the common and would be very much in the interests of the neighbourhood. The Weybridge Town Business Group are also in favour of developing links between Brooklands and the railway station. They view the proposal as positive and supportive to the business success of Weybridge town.

12. Bearing in mind the above the proposed works will provide benefits to the neighbourhood and will not restrict or affect the way in which local people use and enjoy the common.

### ***The public interest***

#### *The protection of public rights of access*

13. The proposed works will provide improved facilities for pedestrians and cyclists. The works will not restrict access to the common but will improve access.

#### *Nature conservation*

14. A number of objectors raise concerns in respect of the environmental effect due to the removal of trees along the route. The Weybridge Society, with some members regretting the loss of nature and trees, consider that the remaining heathland would be sufficient to make some loss of natural habitat worthwhile for the benefits of a wider footpath better segregated from Heath Road. Natural England have been consulted on the application and have not raised any concerns in respect of nature conservation. It is noted that the Elmbridge Conservation Consultative Group has provided support for the proposal which took into account nature conservation, recreation and the use of green spaces.
15. The Council acknowledge in their application that trees and vegetation will need to be removed on the proposed width of the path. This will also be necessary beyond the path width to provide sufficient verge to facilitate the path and to avoid root disturbance. Where appropriate the path may be narrowed around significant trees where it is not essential to remove them. This should especially be the case for mature specimen trees which provide high value in the area. The Council advise that the project team will work with the arboricultural team to ensure the impact on mature trees and disruption to habitats is minimised. Any works will avoid sensitive times of the year, including the bird nesting season, although the Council claim that no evidence of nests has been discovered along the line of the heath adjacent to Heath Road.
16. Whilst the works will involve the removal of vegetation and some trees there is nothing to indicate that such works will have a significant adverse impact on nature conservation. Any impact will be minimised by working with the arboricultural team and by avoiding works during the nesting season. It should be noted that, other than the northern section of the proposed route which crosses an area of grassland and where no vegetation or trees will require removal, the route runs adjacent to Heath Road. There is already an environmental impact on the edge of the heath as a consequence of traffic including pedestrians. The extent of any vegetation and tree removal will also be proportionately very small in the context of the total area of the common.

17. Whilst one objector raises concerns as to the impact on the wood ant colonies I have no evidence that any such colonies are present on the land subject to the works or that such colonies would be disturbed. No nests were observed on the land proposed to be surfaced although the Council were able to draw my attention to a number of nests on the common land to the east of Heath Road. As noted above Natural England have not raised any concerns in respect of Nature Conservation.

#### *Conservation of landscape*

18. Between Old Heath Road and the access road to Brooklands College there is a tarmac surfaced footway. From the north of the access road to the College to where the proposed pedestrian/cycle route enters the more open land the footway has an unbound surface with evidence of timber edging on its western side. This is with the exception of a 67 metre section where the common is used for the parking of vehicles and where the unbound surface is 6.7 metres wide. The proposed works will involve the widening of the footway onto the common with the provision of a 3.8 metre wide tarmac surfaced path. In respect of the existing tarmac surface section this will involve the extending of the existing footway by around 1.8 metres. Given that the works involve the widening of an existing facility adjacent to a well-used highway I do not consider that there will be a significant adverse impact on the landscape. As noted above, there may be a need to remove some vegetation and trees. However, given the dense vegetation on the common there will be no discernible impact on the landscape in this respect.
19. Where the proposed route leaves Heath Road and crosses the area of common which is grassland the route will cross an area where there is currently a worn desire line which is subject to erosion. The proposed route then meets and follows an existing unbound surfaced, but edged, path which is 1.9 metres wide. The proposed works will involve the provision of a 3 metre wide surfaced path. Given the existing surfaced path, whilst there may be some visual impact this will not have any significant adverse effect on the landscape. The provision of a surfaced path along the desire line will address the erosion of the land and in my view will improve the visual landscape.

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

20. Historic England do not raise any objections to the application and recommend that the application is determined in accordance with national and local policy guidance and on the basis of Surrey County Council/local expert conservation advice. The Surrey County Council Archaeological Officer for the area has confirmed that he has no archaeological concerns. There is no evidence that the proposals will have any adverse effect on archaeological remains or features of historic interest.
21. An objector makes reference to a grade 2\* listed church but the proposed works will have no adverse effect on this building which is to the east of Heath Road.

#### **Other relevant matters**

##### *Car parking*

22. Of particular concern to a number of residents on Heath Road is that the proposed works will involve the removal of an area used for parking (see

paragraph 18 above) both by residents and commuters. I understand this area is also used by visitors to the common and tradesmen when working on properties in the area. The concern is that the removal of the parking will remove much needed car parking and will impact on neighbouring roads where there is limited parking. It will also increase off peak parking on Heath Road which could obstruct and slow traffic. The Council describe this parking as 'unofficial' and state that the parking on the land is without agreement.

23. I appreciate that the removal of the parking from this area of the common will result in an increase in parking on neighbouring roads and will cause inconvenience to those who park their vehicles on this land. The evidence from one of the objectors is that around seven cars owned by residents consistently park on the land. However, whilst there appears to be dropped crossings which may facilitate access to this land by vehicles, there is no evidence of any right to park on the land. There is also no indication that the parking of vehicles has been authorised by the landowner, in this case Elmbridge Borough Council, who supports the application. In the submissions post site visit it is argued that the photograph shows that the parking area has existed for at least 60 years. Whilst the photograph, reputedly taken in the late 1950s, shows a vehicle on the land now used for car parking the photograph cannot provide information as to the basis of the use of the land by the vehicle concerned. The photograph, in the absence of any other evidence, does not demonstrate any right to use the land for the parking of vehicles.
24. I note the concerns as to safety to residents who may have to walk to other available parking and the effect on house values. However, I have no evidence to support these concerns and am therefore unable to give these issues much weight.
25. The proposed works offer an opportunity to remove the unauthorised parking of vehicles and therefore enhance this part of the common. Whilst the area involved is relatively small compared to the overall size of the common the restoration of this area, albeit with a pedestrian/cycle route amounts to a benefit of the proposed works.

#### *Need for the works*

26. In opposition to the application it is suggested that the works are not needed as cyclists can use other routes over the common. However, as noted above the intention of the works is to provide an all year round route and to encourage use of more sustainable travel modes. The proposed route is identified in the local transport strategy with a view to provide for existing cyclists and to encourage new cyclists. Some weight should be given to the inclusion of a route in the local transport strategy. Research carried out as part of the Surrey Cycling Strategy found that the single most influential factor which would encourage non-cyclists to cycle is more cycle paths separated from traffic.
27. It may be possible that other routes over the common can be used but these routes may be unusable in wet weather and some people may be deterred from using such routes after dark. I am also aware that students have a tendency to use a variety of routes over the common. It is likely that such use will continue but the proposed works provide an all year round route separated from traffic and an improved opportunity for sustainable travel modes. The proposed works form part of a larger pedestrian/cycle scheme between

Weybridge town centre, Weybridge railway station and Brooklands Business Park. As part of developing the business case for the scheme an assessment of the benefits of the scheme suggests there will be an increase in cyclists in the area.

28. I note the point that the works proposed in the application do not continue into Weybridge and that cyclists will have to join Heath Road at some point. It may also be the case that some cyclists will not use the northern section of the route where it passes over the grassed area of the common and joins Heath Road; some cyclists may not use the route at all. However, the proposed works provide for a pedestrian/cycle facility which is segregated from the vehicular traffic on Heath Road and therefore has benefits for pedestrians and cyclists and will encourage the use of more sustainable transport modes. More confident cyclists may be content to use Heath Road but as noted above (paragraph 26) the single most important factor in encouraging non-cyclists to cycle is the provision of more cycle paths segregated from traffic.
29. As for the suggestion that the path is too wide I have already concluded that the proposed works will not have a significant effect on the landscape. In terms of the width, the evidence from the Council is that the path has heavy footfall and levels of usage, particularly at peak times. As such a width of 3.8 metres adjacent to Heath Road is appropriate and is the minimum width required for segregating pedestrians and cyclists. In respect of the section proposed to be surfaced to a width of 3 metres this provides sufficient width for a good quality facility given that the route is not confined by any road or adjacent vegetation. A width less than 3 metres would not be sufficient to provide for pedestrian and cycle use.

#### *Pedestrian safety*

30. Concerns are raised that cyclists travelling on off road paths at high speed increase the risk of pedestrian casualties. Although I can appreciate the concerns the proposed width is sufficient to provide for pedestrian and cycle use. As stated by the Council at the width of 3.8 metres it would be possible to segregate the route. There is nothing before me to indicate that, given the width of the route, this is insufficient such as to present a risk to pedestrians.
31. It is also suggested that the gradient of the path means that cyclists travelling downhill will attain high speeds thereby heightening the risk to pedestrians. The Council has calculated that the average gradient for the length of the proposed route is 2.3% with a maximum gradient over a short distance of 7%. The overall gradient is not particularly high and the Council indicate that signage will be incorporated into the design so as to manage speeds where needed. The scheme will be subject to road safety audits. There is nothing to suggest that the gradient is such that cycle speeds will attain speeds which will pose a significant risk to pedestrians and any such issues can be addressed by good design.

#### *Restrictions on vehicular access*

32. It is pointed out in opposition to the application that there is no mention in the application of securing the common against vehicular access. The Council acknowledge that if the scheme proceeds this will be taken into account at the detailed design stage so as to prevent unauthorised vehicular access.

### *Alternative proposals*

33. It is contended in opposition that there is already a sealed tarmac path on the east side of Heath Road and therefore the proposed route on the west side is not necessary. I concur with the Council that the footway on the east side of Heath Road would need to be widened so as to accommodate pedestrians and cyclists. Similar works would be required along the east side of Heath Road where the footway passes adjacent to the common. Thereafter widening would not be possible due to the presence of a number of properties. There are also more side/access roads which would disrupt the continuity of any route. Furthermore, the use of the eastern side of Heath Road would require some users to cross the road twice to reach a destination on the west side of the road. As such I do not consider alternative provision could be achieved on the eastern side of Heath Road

### **Other matters**

34. Representations are made in respect of the continuation of the route north of the common. Suggestions are also made that a residents' parking scheme be set up in the area so as to prevent commuters utilising scarce parking spaces. Whilst I note these issues they are not matters for my consideration. I am required to consider the application before me measured against the relevant criteria set out above at paragraph 4.

### **Conclusions**

35. Having regard to these and all other matters raised in the application and in the written representations I conclude that the application will have no effect on those with rights over the common. There will be a benefit to the neighbourhood in the provision of a pedestrian/cycle facility. As regards the interests of the public, whilst there may be some impact on nature conservation arising from the loss of some trees and vegetation there is nothing to indicate that any adverse effects are significant. Any adverse effect on the landscape will also not be significant. None of the other relevant matters lead me to conclude that the works should not take place. Taking all factors into account I conclude that, on balance, the application should be allowed.

*Martin Elliott*

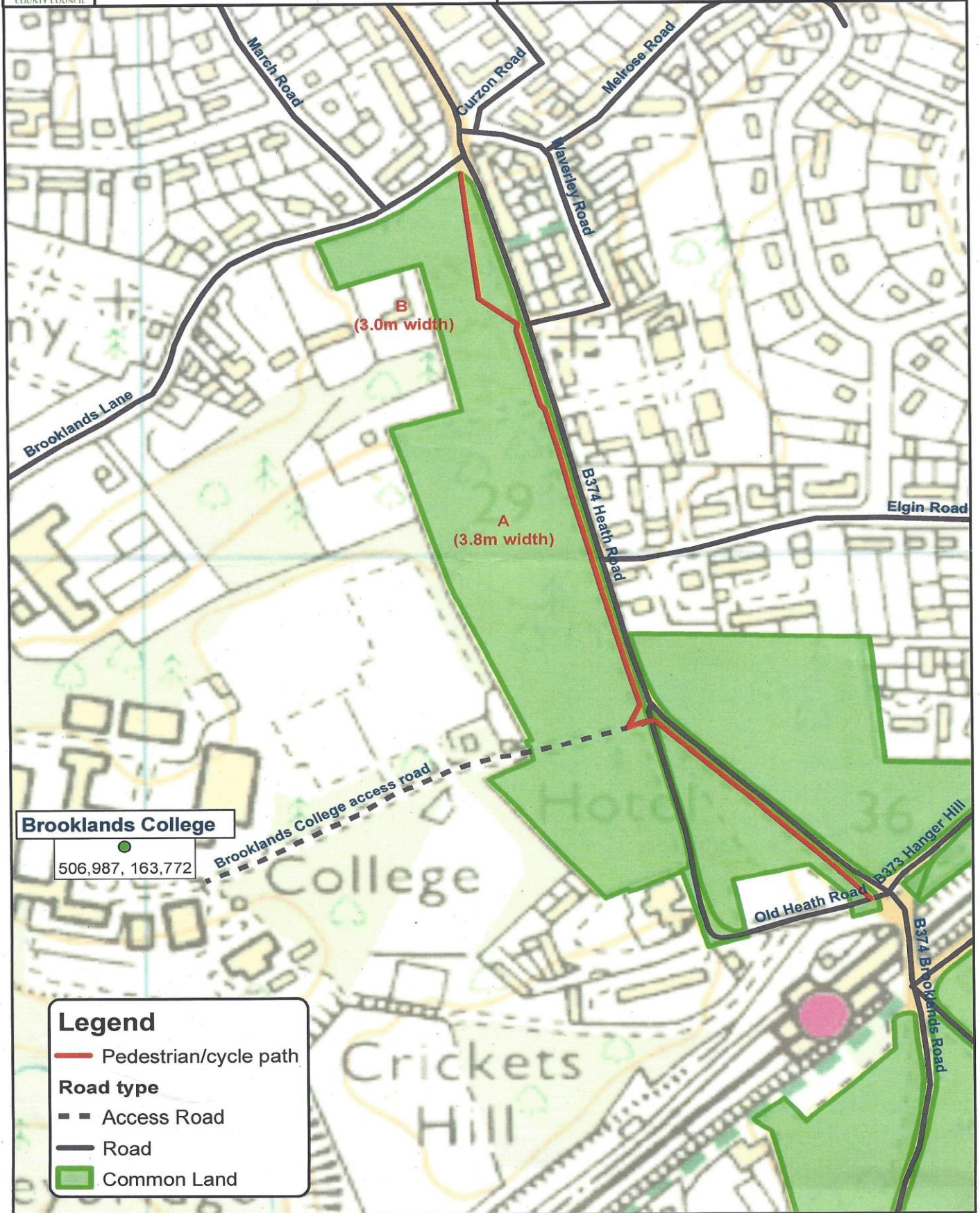
INSPECTOR



# Appendix A - Weybridge Heath Pedestrian/cycle path proposal

Scale (@ A4): 1:3,500  
 Project No.: 4D178001  
 File reference: Common\_Land.Mxd  
 Prepared by: CE 05/10/17

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**Legend**

- Pedestrian/cycle path
- Road type**
- - - Access Road
- Road
- Common Land