



Application Decision

Site visit made on 8 July 2020

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 25 August 2020

Application Ref: COM/324 3472

Wisley Common and Chatley Heath, Chobham, Surrey KT11

Register Units Nos: CL 350, CL 447 and CL 446

Commons Registration Authority: Surrey County Council

- The application dated 10 December 2019 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 Highways England Company Limited (Highways England).
 - The works comprise the erection of temporary fencing, temporary soil storage, temporary roads and temporary construction compounds including temporary buildings and associated works for construction works in association with proposals for the M25 Junction 10 highway improvement works.
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Decision

1. Consent is granted for the works in accordance with the application dated 10 December 2019 and the accompanying plans subject to the condition that the works shall begin no later than three years from the date of this decision.

Preliminary Matters

2. In determining this application, I have had regard to the Department for Environment, Food and Rural Affairs (Defra's) Common Land Consents Policy November 2015 (the Consents Policy), which has been published for the benefit of the Planning Inspectorate, applicants for consent, and others with an interest in applications (such as objectors). The Consents Policy explains that every application must be considered on its merits, and a determination may depart from the policy if it appears appropriate to do so. In such cases, the Inspectorate will explain why it has decided not to follow the policy.
3. The application has been considered on the basis of written evidence and an unaccompanied site visit carried out on 8 July 2020. An accompanied site visit was originally arranged for 31 March 2020 but was cancelled due to the imposition of the Coronavirus (COVID-19) restrictions.
4. Following a relaxation in the COVID-19 restriction measures, the Planning Inspectorate wrote to the applicant and the two other parties who would have wished to attend the original accompanied site visit, namely, Natural England (NE) and Ripley Parish Council, to advise them that an unaccompanied site visit would instead be carried out. They were also invited to submit a plan highlighting any particular locations to be drawn to my attention. In response, the applicant provided a plan which identified a potential walking route

accessible by foot and noting key location points. Neither NE nor Ripley Parish Council sought to submit such a plan.

5. There have been a number of representations received about the application. I have taken all these representations into account including that made on behalf of Ripley Parish Council opposing the application. I have also taken into account the two representations made by NE which confirms that it no longer has any outstanding concerns regarding the application.
6. 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 interest¹; and
 - d. Any other matter considered to be relevant.

Reasons

Background matters

7. The application indicates that the carrying out of the proposed works would be conditional upon the M25 Junction 10/A3 Wisley interchange highway improvement works (the Scheme) being granted development consent by the Secretary of State for Transport. The current application seeks consent to carry out 'restricted works' on common land within the boundary of the Scheme over which temporary possession powers are sought by the Development Consent Order (DCO) application.
8. The areas of common land that would be enclosed by the proposed safety fence would provide for the establishment of temporary construction compounds and working sites, temporary storage areas, temporary vehicle parking, temporary site hoarding, fencing and perimeter enclosure, security fencing, construction-related buildings, welfare facilities, construction lighting, haul roads, apparatus, works and conveniences. In addition, there would be temporary earthworks and construction of site accesses and other associated works.
9. The proposed works would occupy an area of about 64.35ha. The temporary fencing would typically be some 2m high and comprise metal mesh panels connected by clips and secured by rubber block feet. The fencing would be about 5,216m in length.
10. The applicant anticipates that construction works would commence in Winter 2020, with the reinstatement of the areas enclosed temporarily and the removal of the fencing in late 2023 or early 2024.
11. The application also provides information relating to proposals, if consent is granted, for restoration of the common once works are complete. Following completion of the works, restoration would be undertaken in accordance with

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.

the made DCO. Requirement 17 of the revised draft DCO requires that within 3 months of the authorised development being completed a scheme for restoration and/or landscaping of any land used temporarily for construction purposes must be submitted to and approved in writing by the Secretary of State and subsequently carried out, maintained, managed and where relevant monitored in accordance with that restoration scheme.

Alternatives

12. The Consents Policy indicates that the Secretary of State will wish to know what alternatives to the application proposal have been considered.
13. The matter of alternatives is also raised by objectors in their representations. They assert that there are other nearby sites available that would not involve the use of common land, such as the redundant Wisley Airfield and unused land adjacent to the Wisley Golf Club entrance.
14. In response, the applicant explains that land with open public access that is also designated for its biodiversity abuts the M25 Junction 10 on all sides. Therefore, some temporary use of these areas to provide the proposed improvements to the junction would be unavoidable. The DCO application document HRA Stage 3-5: Assessment of alternatives² states that a list of 21 options were originally considered. The land on the former Wisley Airfield has already been included within the DCO boundary to allow storage of materials from the southern part of the Scheme and to provide a structure compound for the proposed Wisley Lane diversion bridge.
15. The applicant submits that using additional land within Wisley Airfield, or adjacent to Wisley Golf Club, would not provide any further benefit to the Scheme overall. It would result in substantially increased travel distances between compounds in these locations and the related construction activities that they would serve. The consequence of this would be to increase disturbance to local residents, and to users and wildlife of the open spaces as well as prolonging the construction period and hence the period of disturbance.
16. In the light of the DCO documentation, NE accepts that the locations for these uses have been carefully considered, alternative locations explored, and the means of minimising the extent of temporary land-take investigated.
17. I consider that the applicant has taken all reasonable steps to avoid or minimise temporary land-take of registered common land for the purposes of the Scheme. Where the use of common land would be unavoidable, I believe that it has selected areas where the impact on public access and biodiversity would be minimised.

The interests of those occupying or having rights over the land

18. The land is owned by Surrey County Council which has been consulted and has not raised any objection to the application.
19. There are no common rights registered over the relevant areas of common land, Wisley Common and Chatley Heath.
20. Surrey Wildlife Trust are leaseholders of the Wisley and Ockham Common Site of Special Scientific Interest (SSSI) and associated land and maintain it on

² DCO application [APP-044] section 3.4.6; 3.4.11; 3.6.1

behalf of Surrey County Council. The Trust has been consulted on the suitability and practicability of the proposal and subsequent aftercare. No objection has been raised on behalf of the Trust.

21. The application sets out details of any other relevant leaseholders, other occupiers, those holding any relevant charges, or those with rights of access over the land. No objection has been raised by any such bodies, companies or persons. I conclude that the proposed works would not harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood

22. The Consents Policy requires consideration of any positive benefits, loss of existing use and the future use and enjoyment of the land.
23. There are no specific neighbourhood benefits that would result from the current application. I shall consider the wider public benefit that would be derived from the associated Scheme below when I turn to 'other relevant matters'.
24. The relevant Consents Policy test for the future use and enjoyment of the land relates to whether the proposed works would interfere with future use and enjoyment (whether by commoners, the public or others) of the land as a whole.
25. The purpose of the temporary fencing would be to ensure public safety during the construction works for the Scheme and to prevent the public entering areas of unstable ground or where large vehicles would be in use. The applicant has confirmed that the application does not include any proposal for temporary fencing for environmental enhancement works.
26. In the event that development consent is granted for the Scheme, there can be no doubt as to the necessity of the temporary fencing for health and safety reasons. The fencing and construction works would have the effect of excluding local people from the part of the common that would be utilised for a temporary period. However, the fenced area would represent a relatively small part of the common as a whole and the period of exclusion would be of fairly short duration. In those circumstances, I do not believe that the exclusion of users from those parts of the common would unduly interfere with either their existing use or the future use and enjoyment of the land as a whole. Nonetheless, there would be a degree of temporary interference that falls to be weighed in the overall balance of considerations.

The public interest

Nature conservation

27. Ripley Parish Council objects to the proposed use of the land due to the sensitive nature of the site. There are also objections raised by others on nature conservation grounds including that it would take many years for the land to recover from these works and for the habitats to be reinstated.
28. The applicant draws attention to the interaction between the current application and the Scheme. The Environmental Statement (ES) Biodiversity chapter³ is included as part of the application documentation for the Scheme. This

³ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m25-junction-10a3-wisley-interchange-improvement/?ipcsection=docs>

- considers the impacts on the Special Protection Area (SPA), SSSI, and on flora and fauna. In addition, the impact of the works on designated sites is reported in the Habitats Regulation Assessment⁴ (HRA) submitted with the DCO application. This provides details of a suite of compensatory measures which have been designed in consultation with NE, RSPB, Forestry Commission, Surrey Wildlife Trust, and Surrey County Council.
29. The applicant contends that the Scheme design and identification of areas for construction use have sought to minimise the extent of soil removal and tarmac that would be needed. The proposals for the management of the areas of temporary possession and environmental enhancement are also set out in the ES⁵.
30. Major site compounds and storage areas have been located outside special category land and SSSI wherever practicable. The applicant contends that the Scheme would provide suitable areas of compensation, enhancement and replacement land, as appropriate, to compensate for the loss from and effects on SPA, SSSI and common land. The areas for the construction compounds within the SPA/ SSSI boundary would be restored back to their original condition and reinstatement of temporary land-take areas would be monitored for a duration of 5 years.
31. The applicant points out that the largest areas of temporary possession of common land sought by the Scheme would be for environmental works to enhance the biodiversity value of the land as part of the compensation package for the SPA. Prior to and following completion of the enhancement works, these areas would be open to public access. They would not be fenced to undertake the enhancement works but the public would be excluded from them for short periods, to ensure their safety.
32. The Consents Policy indicates that it will be relevant to consider whether NE or any other competent person agrees with the assessment of any proposed benefits. The initial response from NE identified a lack of clarity over the proposed use of temporary fencing 'to allow new or improved habitat areas to become established'.
33. As indicated above, the applicant has clarified that the application does not include any proposal for temporary fencing for environmental enhancement works. In the light of that clarification, NE has no outstanding objections to the application including on nature conservation grounds. Having regard to the absence of objection from NE and the mitigation, restoration and monitoring that would be required by the DCO, if granted, I am satisfied that no material harm would result to nature conservation.

Conservation of the landscape

34. There have been objections raised as regards the anticipated visual impact upon the landscape in this location. The Consents Policy draws attention to the prospect of impacts including an adverse impact on the remaining part of the common, for example, by spoiling the view.

⁴ See DCO application document [APP-044] Section 5

⁵ See DCO application document Appendix 7.19 SPA management and monitoring plan [AS-015] and the Landscape and Ecology Management Plan [APP-106]

35. The applicant refers to the DCO application ES Landscape chapter⁶ which considers mitigation measures, impacts on landscape and visual amenity during construction. It sets out the measures that would be taken to reduce any such adverse landscape impacts. The current application explains that the DCO, if made, would impose certain obligations on Highways England relating to the carrying out of the works. The Outline Construction Environmental Management Plan⁷ for the Scheme states that there will be landscape input into the fencing design and the Principal Contractor's implementation programme to ensure a suitable security fence around sensitive locations.
36. The applicant accepts that there would be some changes to the landscape character of parts of the common. However, permanent losses of vegetation and trees would principally be alongside the existing road corridors. The woodland perimeter of the common would be largely reinstated and in due course the works would enhance the character of the commons as a series of open heathland spaces and diverse woodland.
37. The landscape aspect has been considered by NE. It recognises that for the most part the temporary fencing and other works would be located in heavily wooded areas and so would largely be screened from the surrounding area. However, some aspects of the Scheme would have the potential to result in an adverse visual impact on the landscape. For example, in locations which are more open. NE refers to the link between this application and the ES Landscape chapter for the Scheme. Where there is a potential risk of adverse landscape amenity impacts arising from the use of temporary fencing in more open locations, it is satisfied that such matters could be overcome through further discussions with the applicant at detailed design stage.
38. I conclude that the mitigation measures proposed for the Scheme that are likely to be secured by any DCO granted, represent reasonable steps that would be taken to protect the landscape character of the common. I do not consider that the temporary works envisaged would have a significant or long-term adverse impact on the landscape of the common which would be conserved.

Protection of public rights of access

39. The Consents Policy requires consideration of the effect that the proposal would have on those wishing to use the common for recreation and access. The representations made include strong objections on the grounds that the proposed fencing would exclude the public from those parts of the common for a substantial period of time.
40. The applicant indicates that the areas required to provide space for construction machinery and compounds would need to be fenced-off to protect public safety and for site security during construction. The relevant areas are along or near the edges of the common land. The SPA enhancement areas would not be fenced-off and the public would only be excluded from these areas for limited periods. In addition, the SPA enhancement works would be phased over a three year period. Therefore, any restriction of public access would be localised and temporary.

⁶ DCO application ES [APP-054] sections 9.9.4 and 9.9.5

⁷ DCO application document APP-134

41. NE is satisfied with the measures proposed by the applicant to reduce potential impacts on public rights of access. The applicant has provided assurance that all public rights of way and principal routes to bridges would remain open for public use, albeit subject to temporary closure to ensure public safety. The applicant would provide information in advance to users of the common whenever temporary closure was required and where possible alternative routes would be provided and signposted. Furthermore, the works would be phased as far as possible to minimise impacts on public access.
42. The proposal would have the effect of restricting access to parts of the common by those wishing to use it for recreation and access. However, this would be for a temporary period. This relatively short-term restriction on public rights of access to these specific areas falls to be weighed in the overall balance of considerations.

Protection of archaeological remains and features of historic interest

43. There is no evidence before me to indicate that the proposed works would harm any archaeological remains or features of historic interest.

Other relevant matters

The wider public interest

44. The application includes works such as use for soil storage and site compounds which would not benefit the common.
45. The Consents Policy advises that: *"This criterion allows other issues to be taken into account when assessing an application. It may include looking at the wider public interest, which may arise, for example in relation to a major infrastructure project."*
46. The applicant contends that the works would be in the public interest as they are an important part of delivering a nationally significant infrastructure project to reduce congestion and to improve safety at a critical junction on the strategic road network. I am satisfied that such a benefit to the wider public interests would result from the Scheme. The 'restricted works' for which consent is now sought would be associated with and facilitate that project. In the light of the applicant's careful consideration of alternatives to the use of the common land to achieve that purpose, this is a factor to which I attribute substantial weight.

Conclusions

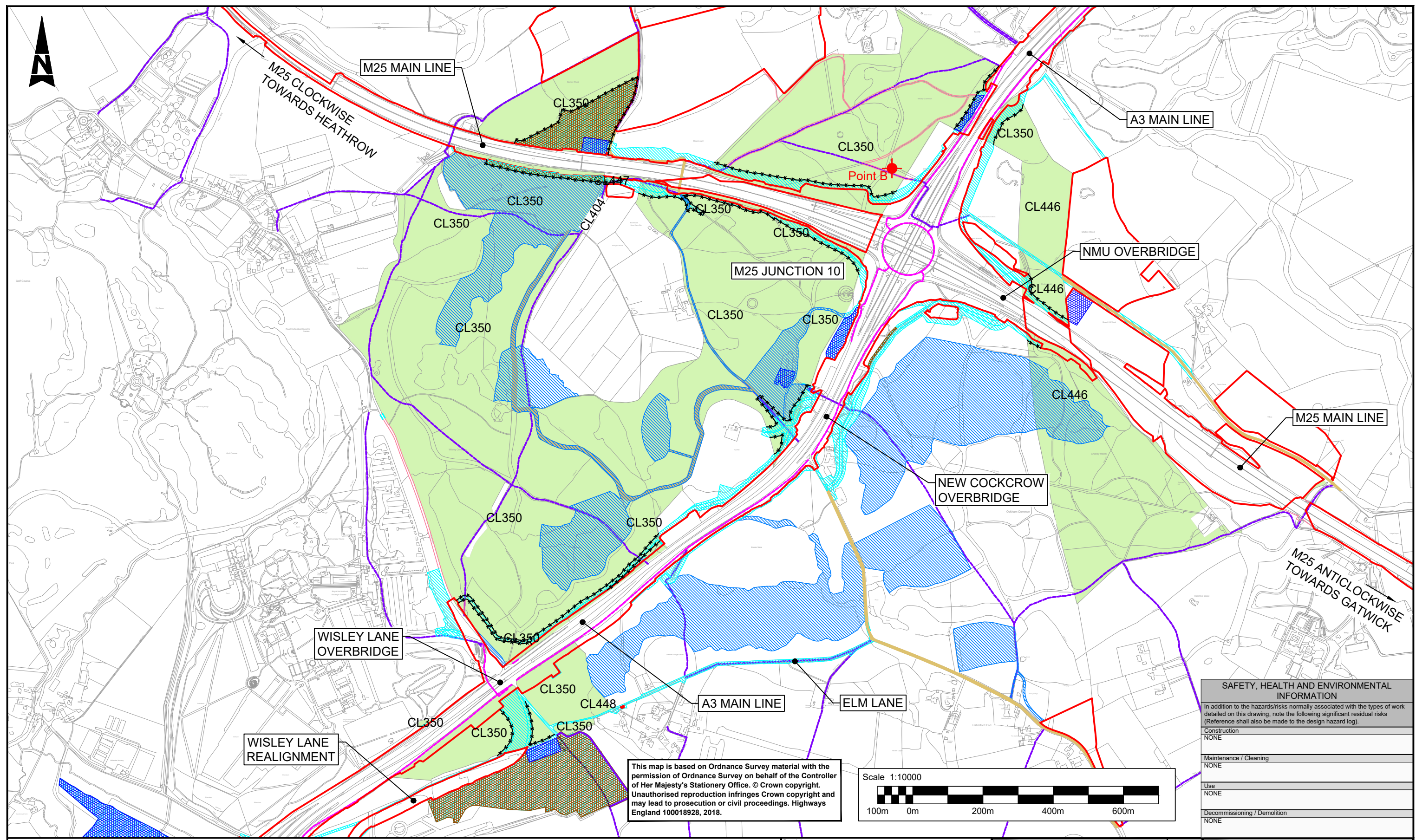
47. I conclude that the proposed temporary works would have no significant or lasting impact on the commons and would not materially harm the interests set out in paragraph 6 above. The construction works would be carried out in the wider public interest in association with the M25 Junction 10 highway improvement works should those works be granted development consent. That benefit strongly outweighs the limited harm resulting from the various factors identified above. Consent is therefore granted for the works subject to the condition set out in paragraph 1.
48. Since the Scheme, if granted development consent, would impose certain obligations on the applicant relating to the carrying out of the proposed works and the reinstatement and restoration of the common land, I do not consider

that the imposition of any additional conditions to that effect are necessary or reasonable in this case.

Wendy McKay

Wendy McKay LLB Solicitor (Non-practising)

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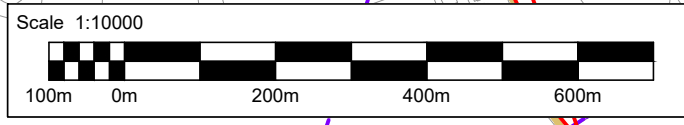
SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION	
In addition to the hazards/risks normally associated with the types of work detailed on this drawing, note the following significant residual risks (Reference shall also be made to the design hazard log).	
Construction	NONE
Maintenance / Cleaning	NONE
Use	NONE
Decommissioning / Demolition	NONE

- NOTES:
- This drawing is for reference only to show the proposed temporary works within Surrey County Council's Common Land Boundary
 - The drawing remains the property of Highways England.

- LEGEND:
- Registered Common Land
 - Existing Public Right of Way (PRoW)
 - Existing footway/cyclepath
 - Extent of permanent land take in proposed DCO
 - Temporary possession of land with safety perimeter fence
 - Temporary possession of land without safety perimeter fence
 - Site compound with safety perimeter fence
 - Soil storage area with safety perimeter fence
 - Environmental mitigation access
 - Temporary fencing on common land

Grid reference TQ 080594
'CL...' Refers to 'registered common unit'

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