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| **Application Decision** |
| Site visit made on 19 January 2021 |
| **by R J Perrins MA**  |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 February 2021** |

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| **Appeal Ref: COM/3261105****Blackheath Common, Surrey** |
| * The application, dated 30 September 2020, 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 The Hon. Peter Herbert.
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| * The works are described as: A length of 5 metres long of “post and panel” fencing (photographed attached) with a control gate. Not more than 1.2 metres high, using high quality oak. The gate will allow us to provide access when required for locals to use.
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Decision

1. Consent is refused.

Preliminary Matters

1. The application was initially made by Paul Brodie for the Blackheath Village Society. That was subsequently amended to the landowner, The Hon. Peter Herbert, and the consultation period was extended by two weeks from 31 October 2020.
2. Following advertisement of the application, 28 objections were made. Representation was received from Surrey County Council’s Archaeological Officer who has no objections, and three parties submitted comments in support of the proposal.
3. I carried out an unaccompanied site visit on 19 January 2021. The weather on the day was overcast but dry. I walked extensively around the area of Blackheath to familiarise myself with the general area and the location, including other car parks, mentioned in the correspondence.
4. This application has been determined on the basis of the written evidence, the comments submitted and my own observation of the site and surrounds.

Main Issues

1. 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]](#footnote-1); and

d. any other matter considered to be relevant.

1. Section 39(3) provides that consent may be given under Section 38(1) in relation to all or part of the proposed works, and subject to such modifications and conditions relating to the proposed works as are thought to be fit.
2. In determining this application, I have had regard to the latest edition of Defra’s Common Land Consents Policy[[2]](#footnote-2) (‘the 2015 Policy’) 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.

Reasons

***The interests of those occupying or having rights over the land***

1. Nothing has been provided to show that anyone occupying or having rights over the land in question would be adversely affected by the proposed works.

***The interests of the neighbourhood and public rights of access***

1. The interests of the neighbourhood test relates to whether the works would unacceptably interfere with the way the common is used by local people and is closely linked with public rights of access.
2. The area of the common concerned is traditionally used for walking, horse riding and other informal recreation. The car park was until recently used by the now closed public house. Although from representations it is clear that the pub use may be reinstated at some point. The common can be accessed at various vantage points in the local surrounds and it seems to me that those living within the neighbourhood are likely to walk to the common or could use the established car parks on Blackheath including the one at the end of the lane.
3. However, even on a mid-morning weekday, I could see the main car parks were at capacity. Cars were also parked in lay-bys and other less formal places. Those less formal places, near to footpath and un-mettled road junctions, appear to have arisen from pressure on existing car parks. I am in no doubt that Covid-19 and lockdown has added to pressure upon and demand for parking in the locality.
4. Against that background I accept some local people will have historically used the car park subject of this application, it is referred to by some as ‘the villagers’ car park’. Others set out that they have used it, or seen it being used, for more than 40 years. During my visit there were some 20 cars parked and from the toing and froing I observed, it is reasonable to assume the majority were there for informal recreation. The car park plays an even more important part in access to the common in the current times due to the pressures being experienced elsewhere.
5. Save for the public bridleway discussed below, I am not aware of any rights that exist in respect of the public use of the car park. Furthermore, if the pub is reopened, it may well be that access would be restricted to customers in any event. The fence and gates would restrict all parking but leave access either end for pedestrians. The car park would remain available for village events, reflecting the “long-standing arrangements”. I also accept that some nearby residents are concerned about traffic in this part of the village along with noise and dogs from users of the car park. In addition, there have been some issues regarding fly tipping, use by heavy vehicles and occasions where vehicles, appearing to be lived in, have been parked on the land.
6. However, from the evidence before me, those incursions appear to be minor and the car park may well need to remain open in the future for the public house use in any event. The use by vehicles in conjunction with the redevelopment of the public house is not permanent and there is nothing before me to suggest that there is a high risk of incursion by gypsy and travellers. The noise and disturbance created by the current situation is likely to be compatible with any future use related to the public house. Moreover, the cars using the car park and their users will, if the car park is closed, simply be displaced elsewhere in the locality. In addition, the new signage regarding the responsibilities of users, are not reliant on the fencing and any benefits in that regard do not weigh in favour of the proposal.
7. Furthermore, the details of the fencing and gate do not show the pedestrian access or how Bridleway 301 would not be impeded. The bridleway runs from a position toward the centre of the current access, where it abuts the road, across the car park and into the woodland near to the south-west corner of the car park. The fencing and gates would be positioned across the bridleway. The works therefore would inevitably have an unacceptable or lasting impact on local and public access rights over the common.

***The public interest***

*Nature conservation* *and archaeological remains and features of historic interest*

1. The site is abutted to the north and west by the Blackheath SSSI and there would be no benefits to nature conservation. The car park would still exist and no remedial works to reinstate any part of the car park to enhance nature conservation are proposed. There would inevitably be some reduction in parking and subsequent footfall in the immediate location but that would be displaced onto other locations around Blackheath. Natural England have made no adverse comments.
2. The County Council’s Archaeological Officer raises no objection and there is no evidence before me to suggest that the works would harm archaeological/historic interests. Thus, there would be no adverse implications in respect of nature conservation or historic interest.

*Conservation of the landscape*

1. I accept the fencing and gate would be simple in design and reflect similar boundary treatments found in the countryside. However, in this part of Blackheath there is very little post and rail fencing of a similar nature abutting the road frontage. Whilst the proposal would not look out of place in some parts of the countryside, in this specific location it would be an odd addition to the open aspect of this rural lane. Whilst not at odds with the natural beauty of the Surrey Hills Area of Outstanding Natural Beauty (AONB) within which the site is found, it would be an intrusion into the street scene. That would result in some harm to the local landscape. Whilst that harm would be minimal it does not weigh in favour of the proposal.

**Conclusion**

1. Having regard to the criteria set out above, and all the written representations, I conclude that consent for the works applied for should not be granted because of the potential harm to the local neighbourhood, public rights of access and the landscape, and because the alleged benefits have not been adequately demonstrated.

Richard Perrins

Inspector

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. [↑](#footnote-ref-1)
2. Common Land Consents Policy (Defra November 2015) [↑](#footnote-ref-2)