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| **Application Decision** |
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| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 14 April 2022** |
| **Application Ref: COM/3283311**  **Horsell Common, Woking, Surrey**  Register Unit No: CL100  Commons Registration Authority: Surrey County Council   * The application, dated 10 September 2021, 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 Horsell Common Preservation Society. * The works comprise:  1. sculpting of 3 scrapes extending in total to 17459m²; 2. construction of approximately 400m of boardwalks; and 3. erection of approximately 800m of 2m high temporary Heras security/safety fencing and a contractors’ compound for storage of materials and welfare facilities during the expected three month duration of the works. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 10 September 2021 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than 3 years from the date of this decision; and
3. all temporary fencing shall be removed and the land shall be fully reinstated within one month from the completion of the works.
4. For the purposes of identification only, the locations of the proposed scrapes are shown in red and the proposed boardwalks are shown as striped lines on the attached plans.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 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.
2. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE), Open Spaces Society (OSS), Mr Andrew Halstead and Ms Karen Rowe.
3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
4. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
5. the interests of the neighbourhood;
6. the public interest. (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); and
7. any other matter considered to be relevant.

**Reasons**

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

1. Horsell Common is owned by the applicant, Horsell Common Preservation Society, and it follows that the proposed works are in the owner’s interests. The common land register records that all provisionally registered rights became void. I am satisfied that the works are unlikely to harm the interests of those occupying or having rights over the land.

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

1. Horsell Common is comprised of various areas separated by roads. The proposed works lie wholly within the area known locally as Wheatsheaf Common (Wheatsheaf), situated to the north of the Basingstoke canal and the A30. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access.

1. The applicant advises that although close to the town centre and areas of housing, Wheatsheaf is under-used due to its rather closed environment and the regular saturation of the central area in winter, which leaves existing paths in poor condition and often under water. The scrapes (referred to as flood storage areas on the first attached plan) are proposed to control and centralise the water collection in flood conditions, providing drainage to the remainder of the site and improving the condition of existing paths. The applicant says that sub-soil from the excavation will be used in the creation of the path network, although such works are not included in the application. Installation of 1.5m wide boardwalks will allow access across the scrapes at all times, including for wheelchair and pushchair users.
2. Plans submitted with the application show that Wheatsheaf is extensively wooded. The applicant intends to thin some of the woodland areas to provide a more open environment, which it is hoped will reduce instances of anti-social behaviour and will encourage and increase public use. The scrapes will have no banks, will deepen gradually to a depth of 1m towards the centre and will occupy areas that are already routinely wet. I therefore consider that they will not in themselves create a new impediment to access and the applicant advises that the post-works site will accommodate the same or greater recreational activity as before.
3. Whilst Horsell Common is subject to section 193 of the Law Of Property Act 1925, which gives a right of public access on horseback, the applicant advises that there is no evidence of any equestrian use of Wheatsheaf due to its urban surroundings. Nevertheless, the applicant confirms that the works will not harm any equestrian interests there may be, although the boardwalks are not intended for such use.
4. I conclude that the scrape works and installation of boardwalks will contribute significantly to the opening up of Wheatsheaf and that they are in the interests of the neighbourhood and public rights of access, including the interests of wheelchair and pushchair users.
5. I am satisfied that temporary fencing, which will exclude public access to the enclosed areas for around 3 months, is needed for public health and safety reasons whilst the ground works are carried out and to provide a temporary works compound for storage of materials and contractor welfare facilities.

***The public interest***

*Nature conservation*

1. The applicant says Wheatsheaf contains extensive areas of mixed and coniferous woodland around a large central area of acid grassland, which is former heathland. NE advises that the application land is not subject to any statutory designations for nature conservation, although it is intended to be used as a Suitable Accessible Natural Greenspace (SANG) to divert visitors away from the main area of Horsell Common, which lies within Thames Basin Heaths Special protection Area (SPA) where visitor pressure is harming its nature conservation status with regard to the protection of birds.
2. It is not the stated purpose of the application to create a SANG at Wheatsheaf. However, it is a stated purpose to attract more visitors to the area and if opening up Wheatsheaf diverts some visitors from the main area of Horsell Common I consider that there may be nature conservation benefits to the SPA in doing so.
3. The formation of the scrapes will include the removal of the organic layer, which will be put to one side and reinstated once the subsoil has been extracted. The applicant says this will enable a wet heath habitat to establish in the scrape areas, which will improve biodiversity by attracting insects that are not currently present in the species-poor purple moor grass *(Molinia caerulea)* that dominates the area. The insects will be attracted from the nearby canal and will provide food for bats and vertebrates, including frogs and amphibians, which in turn will be fed on by birds and grass snakes. NE does not dispute the applicants conclusions on these likely biodiversity benefits.
4. I consider that the scrapes are very likely to increase Wheatsheaf’s biodiversity and that the boardwalks will not be detrimental to its nature conservation interests. Indeed, public use of the boardwalks to cross the scrapes will allow the wet heath habitat to remain undisturbed by footfall. I conclude that the proposed works will be of benefit to Wheatsheaf’s nature conservation interests and may also indirectly benefit the interests of the SPA area of Horsell Common.
5. Mrs Rowe raised concerns about how a new length of permanent fencing along the common boundary with the A30, as shown on the second plan attached to this decision, would restrict the movement of deer and would be harmful to wildlife interests. The applicant confirms that the fencing was considered following concerns raised during pre-application consultation about dogs running onto the road. However, on reflection it was noted that 80% of the boundary is hedgerow. The fencing proposal was therefore dropped and does not form part of the application.

*Conservation of the landscape*

1. Wheatsheaf has no particular landscape protection designation. The applicant intends to open it up by thinning woodland, which will have an impact on the landscape. However, such thinning does not need section 38 consent and my consideration in determining this application is limited to the visual impact of the proposed scrapes, boardwalks, temporary fencing and works compound.
2. The scrapes will occupy areas that are seasonally water-logged so their wetland appearance will not be out of character with the current look of the land, especially as no banking is proposed. I am satisfied that the scrapes will not harm landscape interests.
3. Four hundred metres of boardwalks will have much more of a visual impact as they will be raised and will replace some sections of path that may not be visible at all during wet periods of the year. The boardwalks will be formed from recycled plastic, which if not sympathetically finished, could increase their visual impact further. However, a photograph provided by the applicant of the same type of boardwalk in place elsewhere on Horsell Common shows that they are naturally coloured and textured to resemble wooden planks.
4. I consider that such boardwalks will not be entirely out of keeping with the surroundings and I conclude that any visual harm will be outweighed by their benefits to public access over the wetland areas. Furthermore, their plastic structure will extend their life and durability and avoid unsightly deterioration over time.
5. The works compound will be situated in a wooded area to the north of a footpath near a western entrance to Wheatsheaf at The Grove. Whilst the compound and the temporary security/safety fencing around it and the scrapes will cause some visual harm, it will be short term and the land will be re-instated upon completion of the works, which can be ensured by attaching a suitable condition to the consent.

*Archaeological remains and features of historic interest*

1. There is no evidence before me to suggest that the works will harm these interests.

**Other matters**

1. The applicant advises that during major flood conditions the water retained on Wheatsheaf as a result of the scrape works will prevent or substantially reduce flooding in nearby residential areas which have suffered from flooding in the past; thus bringing a wider public benefit. Whilst no evidence has been presented to support this claim, it is clear that parts of Wheatsheaf that are very close to residential areas are saturated at certain times of the year and I consider it likely that the works to control flooding on the common may bring some wider flood risk reduction benefit to those areas.

**Conclusion**

1. I conclude that the proposed works will not seriously harm the interests set out in paragraph 5 above. Indeed, they will improve public access over wet areas of the common, are likely to improve biodiversity and may bring wider public benefits in terms of flood risk reduction. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

First plan referred to in paragraph 2

