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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: 3 August 2022** |
| **Application Ref: COM/3291534****Backside Common, Bushy Common and Broad Street Common, Guildford, Surrey**Register Unit No: CL46Commons Registration Authority: Surrey County Council* The application, dated 25 January 2022, 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 Mr Wayne Mandeville.
* The works comprise the creation of a new 24m long grasscrete surfaced vehicle access covering approximately 90 square metres from New House Farm Lane over the common land to 81 Oak Hill, Wood Street Village, Guildford.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 25 January 2022 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. the land shall be fully reinstated within one month from the completion of the works.
4. For the purposes of identification only, the location of the proposed works is shown in red on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) 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), Surrey County Council Historic Environment Planning Team (HEPT) and the Open Spaces Society (OSS).
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. The application land is owned by Surrey County Council (SCC), with the exception of a small area owned by Mr and Mrs Williams of 77 Oak Hill. Both were consulted about the application.
2. SCC did not comment on the proposals, although correspondence submitted by the applicant indicates that in its email of 20 May 2021 SCC’s Land and Property Team advised the applicant of the need for section 38 consent; SCC was therefore aware of the proposal to carry out works on land it owned. Mr and Mrs Williams were consulted late in the application process as the applicant was initially unaware that a small area of the application land was in their ownership. Mr and Mrs Williams commented but raised no objection to the proposals.
3. Common land register unit CL46 is rather sprawling and encompasses the distinct areas known as Backside, Bushy and Broad Street. The application land lies within a section of grassed roadside verge at the junction of Oak Hill and New House Farm Lane in the Broad Street area. The common land register records various rights of pasture and pannage, some of which apply to the whole of CL46 and some of which apply only to specific areas.
4. The applicant advises that in 40 years he has never seen anyone exercising rights of common over the application land and I consider it unlikely that it is used by rights holders as its roadside position would seem to make it unsuitable for the grazing of animals.
5. 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. The applicant’s property, 81 Oak Hill, has no formal vehicular access. It sits between number 79, which has vehicle access to the side from New House Farm Lane, and number 83, which has vehicle access to the front via an existing driveway from Oak Hill. To assist disabled family members requiring wheelchair access the applicant seeks to establish a vehicle access from New House Farm Lane over an existing narrower footpath, which runs past the front of number 79 and stops at number 81.
2. 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.
3. I consider that neighbourhood and public use of the application land is likely to be limited to general access and dog walking, with the existing footpath being of little interest to anyone other than the occupiers of numbers 79 and 81. Nevertheless, local people and the public alike will continue to be able to walk over the application land once the works are in place should they so wish.
4. NE is concerned that a drawing submitted with the application refers to a shallow grass bank, which could be an impediment to access. The applicant confirms that it is an existing feature and no changes to ground level are proposed.
5. I conclude that the works will not have a significant impact on the interests of the neighbourhood and public rights of access.

***The public interest***

*Nature conservation*

1. NE advises that the site of the proposed works is not subject to any statutory designation for nature conservation but is designated as a Local Wildlife Site (LWS) by the Surrey Wildlife Trust (SWT). NE further advises that the area appears to consist of close mown grassland, which will have limited biological interest, and that it has no concerns about the impact of the works on the site’s biodiversity. I am satisfied that the works will not harm nature conservation interests.

*Conservation of the landscape*

1. The common has no special landscape designation. Photographs submitted by the applicant show the verge to be a well-kept wide green space that contributes to the appearance of Oak Hill. The photographs also show that seeking a vehicle access from the existing driveway at number 83, as an alternative, would be unlikely to reduce the area of common land requiring resurfacing.

1. The proposed works will effectively widen the existing footpath and change its appearance. The applicant proposes to use grasscrete, which he describes as a permeable concrete surface with regular perforated holes to allow grass to grow between. OSS is concerned that frequently where this product is used the grass does not grow back within the concrete mesh cells and if the grass does not regenerate what is left can look worse than a fully surfaced driveway. The applicant contends that if installed correctly the surface will take on a green appearance and will minimise the visual intrusion of the works.
2. OSS contends that whether grass grows through a grasscrete surface depends on the approach to construction and subsequent maintenance; I agree. I conclude that a correctly installed and maintained grasscrete surface will minimise the visual impact of the proposed vehicle access. It is in the applicant’s own interests that the grasscrete is properly constructed and maintained.
3. I am satisfied that the proposed works will not unacceptably harm the appearance of the common.

*Archaeological remains and features of historic interest*

1. HEPT confirms that, having checked the County Historic Environment Record (HER) for the area, there are no Scheduled Monuments on the site and the area does not fall within an identified Area of High Archaeological Potential. HEPT advises that as the proposed works will have a relatively small below ground impact, and there are no recorded assets within the area of the proposal, it has no archaeological concerns.
2. I am satisfied that the works will not harm the above interests.

**Other matters**

1. OSS contends that without easements granted by the owners of the land the applicant would commit an offence under section 193 of the Law of Property Act 1925 in driving across the common to his property. However, section 38 is not concerned with the granting of easements and granting consent under the section does not convey any permission or approval that may be needed under any other legislation. The need for such an easement is therefore not a matter relevant to my consideration of the application.

**Conclusion**

1. The Defra’s policy states that *“where it is proposed to construct or improve a vehicular way across a common, consent will be required under section 38 if the works involve the ‘laying of concrete, tarmacadam, coated roadstone or similar material’ (other than for the purposes of repair of the same material). Such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access, or access for commoners’ animals”.* It also states that *“The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common. Where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable.”*
2. I am satisfied that the works accord with the Defra policy and I conclude that the proposed works will not significantly harm the interests set out in paragraph 5 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

