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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: 31 January 2023** |
| **Application Ref: COM/3304252****Backside Common, Bushy Common and Broad Street Common, Guildford, Surrey**Register Unit No: CL46Commons Registration Authority: Surrey County Council* The application, dated 29 July 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 Miss Louisa Hatcher.
* The works comprise extending the length of an existing a gravel track by 8.25m and the width by 6.45m to serve 56 Oak Hill, Wood Street Village, Guildford GU3 3ER. The extension will be surfaced with pea shingle over compacted hardcore.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 29 July 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. Guildford Borough Council’s planning officer’s report of 18 May 2021, as submitted with the application, recommends granting planning permission for a new front driveway and hardstanding in the front garden of 56 Oak Hill subject to conditions (Application 20/P/02043). The applicant indicates that such planning permission has been given.
3. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE), the Open Spaces Society (OSS) and Worplesdon Parish Council.
4. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
5. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
6. the interests of the neighbourhood;
7. 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
8. any other matter considered to be relevant.

**Reasons**

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

1. The application land forms part of a wide parcel of roadside verge common. It is owned by Surrey County Council (SCC) and leased to Surrey Wildlife Trust (SWT). Neither commented on the proposals, although correspondence submitted by the applicant includes an email dated 25 May 2022 from SCC’s Countryside Estate Operations Team to the applicant advising that SWT had raised no concerns about the proposed works. SCC did not raise any concerns in the email and I am satisfied that the works will not harm the above interests. Indeed, the applicant confirms that SCC has agreed a deed of easement to allow vehicular access over the application land.
2. Common land register unit CL46 is rather sprawling and encompasses the distinct areas known as Backside, Bushy and Broad Street. The application land is on the north side of Oak Hill 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.
3. The applicant identifies two rights holders with grazing rights over the application land and advises that the rights are not exercised. I consider it unlikely that this part of the common is used by rights holders as its position immediately outside residential properties would seem to make it unsuitable for the grazing of animals. I am satisfied that the works are unlikely to harm the interests of those having rights over the land.

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

1. 56 Oak Hill is in a row of residential properties. The property currently has no surfaced vehicular access. A gravel track wide enough for pedestrians and vehicles serves the front of neighbouring properties in the row but stops at the property immediately to the east of No. 56, leaving only a narrow gravel footpath to serve No. 56 and the remaining four properties in the row. The properties in the row have no vehicular access to the rear.
2. The applicant seeks to improve mobility scooter access to the property, which is especially difficult in muddy and slippery conditions and is made worse by a raised heavy duty manhole cover that interferes with access. Extending the existing vehicular track by 8.25m to cover an additional 53.21 square metres will allow the area around the raised cover to be levelled and will provide an even surface more suitable for mobility scooter use.
3. 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.
4. The application land forms part of the pedestrian route along the row of properties, which extends along the whole parcel of common land. Local people and the public alike will therefore continue to be able to walk over the application land once the works are in place should they so wish. 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, conservation of the landscape and archaeological remains and features of historic interest*

1. NE advises that it has no objection to the proposed works subject to the carrying out of the ecological mitigation measures recommended in the Preliminary Ecological Appraisal (Greenwood Arboriculture 6 November 2020) submitted in support of the planning permission application.
2. The applicant has confirmed that she will carry out the ecological mitigation measures, which include planting five new trees (in conjunction with SWT), installing a bird and a bat box and checking for and moving any affected reptiles from the application land. The Appraisal also makes recommendations relating to the removal of a hedgerow from the applicant’s front garden, although I consider it likely that the hedgerow is outside the common land boundary.
3. Notwithstanding the above, the application land is a small area of grass outside a residential property and abuts an existing gravel track used for neighbours’ vehicular access. There is no evidence to suggest that it is of particular nature conservation value and I am satisfied that the proposed works will not harm conservation interests.
4. The common has no special landscape designation. The works are small scale and seek only to extend an existing track across the width of a single dwelling. I am satisfied that the proposed works will not unacceptably harm the appearance of the common.
5. There is no evidence before me to suggest that any archaeological remains and features of historic interest will be harmed by the proposed works.

**Other matters**

1. OSS contends that the works do not appear to comprise restricted works for the purposes of Section 38 and do not therefore need consent. However, applicants should satisfy themselves that Secretary of State consent is needed for the works they propose. An application for consent has been made and it has been decided on its own merits.

**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”.* The policy 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. Whilst the application does not include the laying of materials described above, I am satisfied that the principle of the policy applies (all the more so as only loose surface material is proposed) and that the works accord with it. In particular, the levelling of the land with the gravel material proposed may be the only practical way of achieving mobility scooter access to No. 56 over the raised cover.
3. I conclude that the proposed works will cause little or no harm to the interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

