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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: 10 May 2023** |
| **Application Ref: COM/3290856****Kingsmead, Ware, Hertfordshire**Register Unit No: CL256Commons Registration Authority: Hertfordshire County Council* The application, dated 11 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 Sustrans.
* The works comprise laying 66m² of asphalt to resurface a 22m long section of walking and cycling path and to widen it in places from 2.5m to 3m.
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**Decision**

1. Consent is granted for the works in accordance with the application dated 11 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 on the attached plan.

**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. The application, as originally made, included proposals to replace the current fence along the section of path the subject of the application. The applicant subsequently removed the fencing proposals from the application and they are not considered in this application decision.
3. This application has been determined solely on the basis of written evidence.
4. I have taken account of the representations made by Natural England (NE) and Historic England (HE).
5. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
6. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
7. the interests of the neighbourhood;
8. 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
9. any other matter considered to be relevant.

**Reasons**

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

1. The applicant, Sustrans, is a charity concerned with promoting walking and cycling and holds a licence for a 5m corridor at the site. It advises that the land is owned by Herts & Middlesex Wildlife Trust (HMWT), which was consulted about the application and did not comment on the resurfacing proposals. In support of the application the applicant and HMWT agreed and submitted a joint statement about the fencing element and I am satisfied that HMWT had the opportunity to also comment on the resurfacing works if it had wished to.
2. The applicant confirms that there is no Rights section to the common land register for CL256 and I am satisfied that the register records no rights of common.
3. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

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

1. The interests of the neighbourhood test relates to how the works will impact on the way the common land is used by local people and is closely linked with interests of public access.
2. NE advises that the path forms part of National Cycle Route 61, which runs from Maidenhead to Hatfield, Welwyn Garden City and Hertford before joining National Cycle Route 1 at Hoddesden. The section where the resurfacing is proposed also links into the River Lea tow path, which supports the route of the Hertfordshire Way.
3. The applicant advises that the section of path concerned is part of a key route for commuting, school journeys and leisure trips and is well used in good weather. The path has fallen into disrepair as much of the existing surface has worn away, leaving potholes and cracks. The path is muddy and has sections that are impassable in winter months. The applicant says the proposed resurfacing will, along with some vegetation clearance, create an all-season path that will be accessible for a wider range of members of the public to access local green spaces and common land.

1. I consider that the proposed improvements to the path will benefit those wishing to use it for cycling and walking. I conclude that the works are in the interests of the neighbourhood and public rights of access.

***The public interest***

*Nature conservation and conservation of the landscape*

1. The application land is not subject to any statutory designations for which NE consent/assent is required but NE understands that the common has been identified by HMWT as a Local Wildlife Site (LWS). The applicant confirms that the path runs through the Kings Mead Nature Reserve and that discussions with Reserve Officers about the proposals have been ongoing from the outset.
2. No concerns have been raised by NE, HMWT or Reserve Officers about the impact of the resurfacing works on nature conservation interests and I am satisfied that these interests will not be harmed.
3. NE suggests that black asphalt is likely to initially look quite stark but that the immediate impact is likely to reduce over time as the path becomes worn and covered in debris, which will help it merge into the semi natural surroundings. I agree that this is likely to be the case and I am satisfied that the short section of resurfacing proposed will not seriously harm landscape interests.

*Archaeological remains and features of historic interest*

1. HE advised that depending on the extent and depth of the groundworks required there is potential for encountering undesignated archaeological remains at the location and that a programme of archaeological mitigation may therefore be required in consultation with Hertfordshire County Council Historic Environment Team (HCCHET).

1. The applicant consulted HCCHET about the proposals and no comments were received. I am satisfied that HCCHET had the opportunity to engage with the applicant about archaeological mitigation if they considered it to be necessary and there is no evidence before me to suggest that the works will harm the above interests.

**Conclusion**

1. I conclude that the proposed works will benefit neighbourhood and public access interests by improving the surface of a well-used path and cycle route without seriously harming the other interests set out in paragraph 7 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

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