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| **Application Decision** |
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| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 May 2024** |
| **Application Ref: COM/3326946****Harpenden Common, Hertfordshire**Register Unit No: CL16Commons Registration Authority: Hertfordshire County Council* The application, dated 28 July 2023, 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 Harpenden Town Council (HTC).
* The works comprise the surfacing with a crushed concrete/fines dressing mix of a section of an equestrian path (‘permissive horseride’) and a section of footway totalling 280m in length and 560m².
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**Decision**

1. Consent is granted for the works in accordance with the application dated 28 July 2023 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.

REASON: To provide certainty to users of Harpenden Common.

1. The land shall be fully reinstated within one month from the completion of the works.

REASON: To retain access for the public across Harpenden Common.

1. 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 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.
3. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS).
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**

1. HTC advises that most of the horseride and existing footways on the common are unsurfaced, although some similar crushed concrete/fines surfacing was carried out on the horseride following previous consents (Application Decisions COM 240 of 2 November 2011, COM 3226908 of 24 July 2019 and COM/3283887 of 13 January 2022). HTC now wishes to surface a further section of the horseride and a section of footway where there is a problem with compaction and where muddiness has caused the route to become unsafe and unusable at times.

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

1. HTC is both applicant and landowner, and it follows that the proposals are in the landowner’s interests. There is one right of grazing registered over the common. The rights holder was consulted by HTC but has not commented. HTC advises that the right is not exercised and that there has been no grazing over the common since 1962.
2. I am satisfied that the works will not 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 whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access.
2. The common is subject to section 193 of the Law of Property Act 1925, whereby members of the public have a right of access for air and exercise, including on horseback. HTC consulted the British Horse Society about the proposals but they did not comment.
3. The application land is at the northern end of the common adjacent to the woodlands near Southdown Ponds. HTC advises that the area is frequented by visitors using the clearly waymarked horserides and nature trails. The footways in this area are also regularly used by parents and children as a route to the nearby St Dominic’s School. The surfacing works will connect two sections of previously surfaced horseride and the footway between Southdown Ponds and the previously surfaced footway opposite the school.

1. The material to be used for surfacing is recycled and can be sourced locally. It will be screened to remove any nail, glass and tile fragments and I am satisfied that it will be suitable for use by horse riders and pedestrians.
2. The works will cause some disruption to public access whilst they are being carried out. However, no temporary fencing is proposed and a two-person team will be on site for less than seven days. I am satisfied that the works process will cause only minor interference to public access and that it is outweighed by the benefits to access that the new surface will bring.
3. I consider the works to be in the interests of the neighbourhood and public rights of access. They will remedy surface degradation and provide a more hardwearing and durable surface to allow the horseride and footways to remain open for their intended use.

*Nature conservation and conservation of the landscape*

1. NE advises that the application land is not subject to any statutory designations for nature conservation for which NE assent for works is required and confirms that that it has no objection to the proposed works. Whilst the common is subject to a Higher Level Countryside Stewardship agreement, the proposed works are some distance away from the grassland areas to which the agreement applies.
2. I am satisfied that the works will not harm nature conservation interests.
3. The common has no particular landscape interest designation. HTC accepts that the newly applied surface will initially look at odds with the natural environment but that over time the colour will fade and blend in with existing soil and leaf litter, as was the case with previous consented surfacing.
4. I am satisfied that whilst the surfacing will have some visual impact on the common, the impact will diminish over time and will not seriously harm landscape interests.

*Archaeological remains and features of historic interest*

1. Historic England and St Albans District Archaeologist were consulted about the proposals but did not comment. I am satisfied that the works will not involve significant excavation of the soil and there is no evidence to suggest they will harm any archaeological remains and features of historic interest.

**Other relevant matters**

1. OSS questions whether the proposed surface is one which requires consent under section 38 and contends that such consent is only needed where surfacing works comprise a solid, sealed surface. Consent is required under section 38 for the laying of concrete, tarmacadam, coated roadstone or similar material. Neither section 38 nor published guidance make specific reference to ‘sealed’ and it is for the person carrying out the works to be satisfied as to whether consent is needed. In this case an application has been made and has been considered on its merits.

**Conclusion**

1. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will benefit pedestrians and equestrians by providing a more hardwearing and durable surface to sections of the existing horseride and footway network. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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