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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: 2July 2024** |

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| **Application Ref: COM/3323299**  **Ditton Common, Portsmouth Road, Thames Ditton, Surrey.**  Register Unit Number: CL 267  Commons Registration Authority: Surrey County Council |
| * The application, dated 30 May 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 Elmbridge Borough Council. * The works comprise:  1. The resurfacing of an existing access track from a loose surface to a permanent tarmac underlay and gravel topping measing approximately 160m long and covering approximately 675m². |

**Decision**

1. Consent is granted for the works in accordance with the application dated 30 May 2023 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than three years from the date of this decision;

REASON: To provide certainty to users of Ditton Common.

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

REASON: To retain access for commoners, public and livestock across Ditton Common.

1. For the purposes of identification only the location of the track is shown in red on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy Guidance (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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
2. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by the Open Spaces Society (OSS) and Paula & Gary Ayres.
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;
7. any other matter considered to be relevant.

**Reasons**

The applicant explains that the purpose of the works is to provide a safer access track with a consolidated surface, thereby reducing incidents of damage to vehicles, as well as falls by members of the public, when accessing the common.

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

1. Elmbridge Borough Council are the owner of the land and the applicant. The common land register records rights of pasture for 10 horses, 50 sheep, 20 cows, 30 poultry 12 ducks and 4 geese as well as rights of estovers and piscary over the whole of the land know as Ditton Common.
2. The applicants advise that they are not aware of any rights being carried out over the land.
3. I am satisfied that all consultation required by the applicants has been completed and no comments were received.

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

1. The interests of the neighbourhood relate 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 resurfacing of the access way would have no negative affect on access to the common. It is planned to be a permanent surface made of tarmac “lase” with gravel surface which would not offer impediment to or across the common.

1. Additionally, images provided by the applicant and the application form detail that currently the surface of the access track is uneven and that there are several potholes present. The resurfacing of the track will help to level out its surface and fill these potholes which will improve access across the common.
2. The works proposed in this application are for the resurfacing of an existing track and therefore will have no negative effect on the recreational value of the common and could offer improvement as a route for walking or other recreational activities.
3. OSS have commented that they note that the track has long had a hard surface, and they have no objection to the proposed resurfacing according to the proposed specification. However, they wished to confirm that there is no intention by the applicant to include the loop of access drive on Leigh Hill which gives access to numbers 5 and 7.
4. In response the applicant has stated that the council only plans to surface the track as shown in the maps submitted with their application.
5. Paula & Gary Ayres have stated their support for the application noting that the current track has many potholes and becomes a “muddy quagmire” after periods of rain.
6. In this case the track is an existing permanent feature on the common and the works will not introduce any new permanent features. I believe the works will offer improvement to the common by providing a better walking surface for the accessway and will not unacceptably interfere with the interests of the neighbourhood or public rights of access.

***The public interest***

1. As well as the public interest in the protection of public rights of access, the Guidance (November 2015) outlines the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

***Nature conservation and Conservation of the landscape***

1. Natural England has not provided comment on the application.
2. The common has no special designated landscape value.
3. The proposed works will not introduce any new permanent artificial features as the they are for the resurfacing of an existing track.
4. The current track appears to be in a state of ill-repair and the proposed works seek to address this which will improve the visuals of the common.
5. I am satisfied that nature conservation interests will not be harmed by the proposed works and I consider that overall the works will benefit the landscape interests of the common.

***Protection of archaeological remains and features of historic interest.***

1. The applicant has stated that there are no archaeological features within the proposed works area. Historic England and the local authority archaeological service have been consulted and did not comment.
2. There is no evidence before me to suggest that these interests will be harmed by the proposed works.

***Other relevant matters***

1. OSS have further noted that Ditton Common is a Metropolitan common to which s.5 of the Metropolitan Commons Act 1866 applies. The Planning Inspectorate must therefore be satisfied that the application is not for ‘inclosure’. As the application is for the resurfacing of an existing track and there is no intention to enclose the land or make alteration to the legal ownership of the land, we take the view that there are no concerns of inclosure.

***Conclusion***

1. Defra’s Common Land Consents Policy advises that ‘where it is proposed to construct or improve an access way across a common, such an application may be consistent with the continuing use of the land as common land, even where the access way is entirely for private benefit, because the construction will not in itself prevent public access, or access for commoners’ animals. The Secretary of State takes the view that, in some circumstances, a paved access way may be the only practical means of achieving access to land adjacent to the common and I am satisfied that the policy is relevant in this case.
2. I conclude that the proposed works will enable the required access to and across the common without unacceptably harming the interests set out in paragraph 5 above.  Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Harry Wood

Figure 1 – Location of accessway.

