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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: 30 June 2025** |
| **Application Ref: COM/3363510****Lammas Grounds, Eton, Berkshire**Register Unit No: CL164Commons Registration Authority: Royal Borough of Windsor & Maidenhead Council* The application dated 28 March 2025 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 Charles Russell Speechlys LLP for Eton College.
* The works comprise (all measurements are approximate):
1. excavation of a shallow basin area and connecting ditch covering 2825m²;
2. installation of a footbridge (6.14m long x 2.5m wide), with 1.1m high timber post and rail balustrade and granular all-weather surface, constructed over the ditch using a 0.6m diameter culvert and concrete bagwork headwall;
3. planting of a new 10m long species-rich roadside hedgerow; and
4. erection of 700m of temporary 2m high Heras fencing enclosing a working area of 6788m² for the duration of the works (approximately 5 weeks).
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**Decision**

1. Consent is granted for the works described in the application dated 28 March 2025 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 the common land.

1. All temporary fencing shall be removed and any common land impacted by the works shall be fully reinstated within one month from the completion of the works (note that this does not apply to any physical changes or permanent features introduced as part of the works for which consent is granted).

REASON: To retain access for the public over the common land.

1. 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 (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. Planning permission has been granted by Windsor & Maidenhead Council for Flood Storage Compensation (Decision 22/03335 of 24 July 2023).
3. The application has been determined solely on the basis of written evidence. I have taken account of representations made by Natural England (NE), Historic England (HE) and 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. The applicant advises that the creation of a ditch and shallow basin, over which meadow grass will be seeded, will improve flood mitigation in the interests of both Eton College and the wider neighbourhood. The applicant adds that the Borough of Eton is susceptible to flooding and the scheme seeks to reduce the risk by providing support to the wider floodplain strategy. Alternative locations were considered by the applicant but none were deemed suitable following consultation with statutory bodies, including the Environment Agency, as regards to the local area’s flood alleviation strategy.
2. The footbridge will provide public access over the ditch from Eton Wick Road. The temporary fencing is required to ensure that the landscaping and biodiversity works can be carried out safely.
3. Condition 6 of the planning permission mandates provision of at least 10% uplift in biodiversity units, which the applicant intends to achieve by the creation of new habitat, including the proposed 10 metres of new hedgerow.

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

1. The applicant owns the land the subject of the application and it follows that the proposed works are in the landowner’s interests.
2. The common land register for unit CL164 records a number of rights to annually graze various numbers of beasts and sheep over the whole of the register unit between 1 August and 31 October, although this is qualified in some cases by the addition of a note recording that the right does not apply to land in the ownership of Eton College. In any case, the applicant advises that none of the rights are exercised over the application land and there is no evidence to suggest otherwise. I am satisfied that the proposed 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. 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. There is no evidence to suggest the land is used for purposes other than general access, such as dog walking.
2. The ditch will run south/north along a section of the application land’s eastern boundary with a railway line. The application plan shows there is public access over/under the railway line into the application land at a point to the south of the ditch route so the ditch will not interfere with current access. At its northern point the ditch will turn west along the south side of Eton Wick Road and will separate the road from the common. There is one existing point of access onto the common from the road along the ditch route and the footbridge will be placed there to ensure continued public access. The basin will have sloping sides and be shallow enough to ensure that local people and the public alike will be able to walk over the area it covers much as they may do now.
3. A second point of access onto the common from Eton Wick Road lies to the west of the ditch route and basin and is unaffected by them. The 10m long hedgerow will be placed either side of this entrance and there is no evidence to suggest that it will be an impediment to public access onto or over the common.
4. The common is subject to section 193 of the Law of Property Act 1925 (s193), which gives the public a right of access for air and exercise on foot and on horseback. The temporary fencing is intended to exclude public access from the entire working area for the duration of the works, which is expected to be around five weeks. I consider it reasonable on grounds of public health and safety to exclude public access in this way and to give consent under section 38 of the 2006 Act for fencing that will temporarily prevent the exercising of s193 access rights.
5. The applicant confirms that public access to areas of the common outside of the works area will be unchanged and I am satisfied that the overall impact of the works on public access will be limited and short term.

***The public interest***

*Nature conservation and conservation of the landscape*

1. NE advises that the land consists of open semi natural grassland with occasional trees and shrubs occurring on the site boundaries, which will be protected during the works. NE further advises that the common is not subject to any statutory designations for nature conservation and does not envisage any adverse impacts on such sites.
2. I am satisfied that the works will not harm nature conservation interests and that the planning permission requirement to provide an uplift of at least 10% in biodiversity units will be beneficial to those interests.
3. I consider that the impact of the works on the landscape will be minimal as the proposed basin is shallow and the ditch will follow the boundary of the common. Whilst the footbridge over the ditch will be a more noticeable addition to the landscape, the side railings will be of natural wooden post and rail construction to minimise the visual impact and I am satisfied that landscape interests will not be unduly harmed.

*Archaeological remains and features of historic interest*

1. Condition 4 of the planning permission requires a programme of archaeological works, including a Written Scheme of Investigation (WSI), to be submitted and approved in writing by the Local Planning Authority before any development takes place. At the time of receipt of the application before me the condition is partially discharged pending completion of the archaeological programme of works.
2. HE was consulted about the application and confirmed it had no comments to make. There is no evidence of any specific risk to archaeological remains and features of historic interest and I am satisfied that measures are in place through the planning permission process to ensure that these interests will not be harmed by the works.

**Other matters**

1. OSS notes from the planning permission referred to at paragraph 4 above that the proposed works are required in relation to a condition attached to a separate planning permission to construct a 55-bedroom boarding house for Eton College at Eton Wick Road. OSS contends that the true driver for the works is not to improve flood mitigation in the borough, but to fulfil a planning obligation in order to enable development on a nearby site.

OSS has nevertheless advised that it is not objecting to the granting of consent and the application has been determined on its merits.

**Conclusion**

1. I conclude that the proposed works are unlikely to harm the interests of those occupying or having rights over the land or harm the public interests in archaeological remains and features of historic interest. I further conclude that the works will not unacceptably interfere with public rights of access or unacceptably impact on landscape interests. Furthermore, the works are likely to be of flood mitigation benefit to the borough and may bring habitat improvements through re-seeding and introduction of a new hedgerow.
2. Consent is therefore granted for the proposed works subject to the conditions set out in paragraph 1.

**Harry Wood**

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