
Application Decision

by Richard Holland

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 7 July 2016

Application Ref: COM 785

Port Meadow, Oxford

Register Unit No: CL1

Commons Registration Authority: Oxfordshire County Council

- The application, dated 4 April 2016, 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 Network Rail.
 - The works are at the western approach ramp to Aristotle Lane footbridge and comprise:
 - (i) raising the support slopes by 0.5m over the 92m length of the ramp;
 - (ii) creating a new side span bridge to provide access from the ramp to the adjacent Trap Ground Allotments; and
 - (iii) use of temporary Heras safety fencing at the toe of the ramp during the works period.
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Decision

1. Consent is granted for the works in accordance with the application dated 4 April 2016 and the plan submitted with it subject to the following conditions:-
 - i) the works shall begin no later than three years from the date of this decision;
 - ii) the temporary fencing shall be removed within one month of completion of the works; and
 - iii) the common shall be restored within three months of the completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land consents policy¹ 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.
4. Planning permission for the works was granted by Oxford City Council, which also owns the land, on 8 May 2015 (Application No. 14/01348/FUL).
5. This application has been determined solely on the basis of written evidence.
6. No representations were received about the application.

¹ Common Land Consents policy (Defra November 2015)

7. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - b. the interests of the neighbourhood;
 - c. the public interest;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land, the interests of the neighbourhood, and the protection of public rights of access

8. The southernmost section of the common abuts the Oxford to London Paddington railway line to the east and the Trap Grounds allotments to the north. The Aristotle Lane footbridge crosses above the railway at a point just south of the allotments, linking Port Meadow common on the west side of the line with the Walton Manor area of Oxford on the east side. Access to the railway footbridge (the footbridge) from the Port Meadow side is via a pathway on an upward sloping raised grassy bank (the ramp), which runs parallel to the allotments' southern boundary. This arrangement leaves a corridor of land abutting the railway line between the allotments boundary and the ramp.
9. The footbridge, which lies outside of the common land boundary, is to be raised to achieve sufficient height for rail electrification and track realignment works. It follows that if access to it from the common land side is to continue it is necessary to raise the ramp accordingly to the new footbridge level. The raising work proposals also include the construction of a new side span bridge (the allotment bridge) approximately half way along the ramp to serve direct access from the footbridge to the allotments. This will allow use of the level crossing situated just to the north of the footbridge, which leads directly to the allotments, to be discontinued. Taking the level crossing out of use is integral to the electrification plans.
10. Oxford City Council, as owner of the common, has confirmed its support for the works, which it considers beneficial to the use of the common land. Ancient and registered grazing rights exist over the common and they are exercised by some rights holders. However, neither individual commoners nor the Wolvercote Commoners Committee (the relevant Commoners Association), which were consulted as part of the planning and common land application processes, have commented on the proposed works.
11. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. The area of common land concerned is used as a means to access the footbridge and the proposed works will allow this use to continue; indeed, without such works this access will not be able to continue. Section 193 of the Law of Property Act 1925 gives a public right of access for air and exercise over the whole of the land and the rights apply generally to access on horseback as well as on foot. The proposed allotment bridge will cross the corridor of land, which is closed to public access on its other three sides where it abuts the allotments to the north, the railway line to the east and the raised end of the ramp to the south. Whilst this may create the impression of an enclosed rectangular island of land, access to it by passing under the allotment bridge will be maintained.
12. The works will not seriously reduce the amount of land available for grazing and I am satisfied that the interests of persons occupying or having rights over the land will not be harmed and that the primary neighbourhood use of the area of common land concerned as a means to access the footbridge will be preserved. I am also satisfied that whilst the presence of the allotment bridge may perhaps discourage public access to the corridor of land it will not prevent such access.

²Section 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.

Nature conservation

13. The land falls within the Port Meadow with Wolvercote Common and Green Site of Special Scientific Interest (SSSI) and Oxford Meadows Special Area of Conservation (SAC). Although consulted about this application Natural England (NE) has not commented on it. However, NE was previously consulted on the works through the planning application process and it is a condition of the planning permission that in order to ensure that there is no negative impact on the SAC all works on the common land side of the footbridge will be undertaken from the footpath or allotments. Furthermore, no materials or machinery shall be stored on, or use, the grassed areas of the SAC. I am satisfied that suitable measures are in place to prevent any harm to this statutorily protected site and any other nature conservation interests.

Conservation of the landscape

14. The works will impact only a small area in the south eastern corner of the common near the boundary with the railway line. Nevertheless, the proposed works will have a short-term detrimental impact on the landscape during construction. The allotment bridge will also have an impact on the appearance of the common. Aerial photographs and plans submitted with the application show that the ramp is currently partially screened by tall trees, which lessens its visual impact when viewed from the south and would, if they remained, lessen the impact of the allotment bridge. However, it is proposed that some of these trees will be removed during the construction. However, it is a condition of the planning permission that a landscape plan, indicating which trees are proposed to be removed and details of tree and shrub planting is to be submitted to, and agreed by, the local planning authority before any works begin. I am satisfied that suitable measures are in place to ensure the conservation of the landscape and that in the long term the works are unlikely to have a significant detrimental visual impact on the common.

Archaeological remains and features of historic interest

15. Much of Port Meadow is designated as a Scheduled Ancient Monument for its ring ditches, barrows and associated enclosures. The site of the proposed works lies outside, but close to, the designated area. Historic England has not commented on this application but, as a statutory consultee to the planning permission application, raised no objection to the works. I am therefore content that the works are unlikely to harm any such remains or features.

Other matters

16. Defra's policy guidance advises that "*works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community*". The allotment bridge will directly benefit only authorised allotment users with no wider benefit to the community. However, the allotment bridge is central to the proposed works as it will provide a means of access to the allotments and thus allow for the removal of the level crossing. The use of level crossings poses a significant safety risk to the public and the works therefore support Network Rail's commitment to rail safety. I consider that removal of the level crossing is of wider benefit to the community in terms of public safety; the works therefore accord with Defra's policy objective.

Conclusion

17. I conclude that the proposed works will not unacceptably harm any of the interests set out in paragraph 7 above. Indeed, they are necessary to allow continued access to the footbridge and will serve wider community safety interests through the removal of the level crossing. Consent is therefore granted for the works subject to the conditions set out at paragraph 1.

Richard Holland

