
Application Decision

by Richard Holland

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

Decision date: 1 March 2017

Application Ref: COM/3163996

Waste of the Manor, Hemel Hempstead, Hertfordshire

Register Unit No: CL33

Commons Registration Authority: Hertfordshire County Council

- The application, dated 23 November 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 Hightown Housing Association Ltd, Hightown House, Maylands Avenue, Hemel Hempstead HP2 4XH.
 - The works of up to 12 weeks duration comprise:
 - i. a 14m long hard surfaced vehicular access road covering an area of 125 square metres from Redbourn Road to a residential development at Viking House; and
 - ii. temporary 2m high safety/security Heras fencing or 2.4m high plywood hoarding around the working area.
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Decision

1. Consent is granted for the works in accordance with the application dated 23 November 2016 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision;
 - ii. all temporary fencing and hoarding shall be removed no later than 1 month after 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. Planning permission for the residential development of the Viking House site, including the access road subject of this application, was granted by Dacorum Borough Council (the Council) on 8 November 2016 (Application 4/02772/15/MFA).
4. 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations from Natural England (NE) and the Open Spaces Society (OSS), neither of which raised any objections to 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

8. The common land is owned by the Council, which was consulted about the application but did not comment. There are no registered rights of common. 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 the protection of public rights of access

9. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people. The common land is a grass verge alongside Redbourn Road (the highway) and appears to have little recreational value other than for general access. The proposed access road (the road) will provide a vehicular link from the highway to the Viking House site across the verge, which is approximately 14 metres wide at that point. The road will interrupt the path of anyone wishing to walk along the verge inasmuch as they might need to wait for vehicles to pass before continuing. However, I do not consider that the road will actually prevent local people, or indeed the wider public, from continuing to walk on the common as they may currently do to such an extent that consent for the works should be withheld.
10. The application includes proposals to erect safety/security fencing or hoarding around the road during its construction. The applicant has confirmed that an area will be left unfenced at all times to allow public access to continue across the site throughout the period of works. As the fencing will be removed on completion of the works, which is expected to be in around 12 weeks, and it will not prevent access across the site, I am satisfied that it will not seriously harm the interests of the neighbourhood or public rights of access.

Nature conservation

11. Natural England advised that it did not wish to comment on the application. There is no evidence before me that leads me to think the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

12. The common land has no special designated landscape value and sits beside a busy highway in a built up area. It is nevertheless a green space that will be visually interrupted by the road. However, it is a condition of the planning permission that trees are planted on the verge to screen both the Viking House development and the road. I conclude that the impact of the works on the landscape will be lessened by the planting of screening trees and that on balance the works will not cause serious harm to the landscape.

Archaeological remains and features of historic interest

13. There is no evidence before me of any archaeological features within the application site or nearby. I am content, therefore, that the works are unlikely to harm any such remains or features.

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.

Other matters

14. Defra's policy advises that *'where it is proposed to construct or improve a vehicular way across a common... such an application may be consistent with the continuing use of the land as common land, even where the vehicular 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 vehicular way may be the only practical means of achieving access to land adjacent to the common'*.
15. The proposed road will enter the Viking House site from the west via Redbourn Road and I have considered whether there is a practical alternative means of achieving access to the site without the need for works on common land. There is existing access to the Viking House site from the south via Swallowdale Lane. It is a 'left turn in, left turn out' only arrangement but no reason has been given as to why it could not be adapted to allow traffic to enter from both the left and the right. However, the Swallowdale Lane access is not exclusively for the use of the Viking House site as it also serves an adjacent industrial unit. The applicant has said that, to enhance the living conditions of future residents, it wishes to detach the Viking House site development from the industrial unit by forming a new access from Redbourn Road and I accept that sharing the existing access would not achieve this.
16. I consider it reasonable for the residential development to have an independent means of access to the highway and I accept that this can only be practically achieved by crossing the common land. I give significant weight to this and accept that a shared access arrangement would be unsatisfactory. I conclude that the proposals are consistent with Defra's policy objectives in this regard.
17. The works will help facilitate the provision of 87 dwellings at the Viking House site, 35% of which will be affordable housing. The provision of much needed affordable housing is in the public interest and this has added weight to my decision.

Conclusion

18. I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above. There will be some impact on public rights of access and some visual harm to the landscape but not to such a degree that consent should be refused for these reasons alone. Consent is therefore granted for the works subject to the conditions at paragraph 1 above.

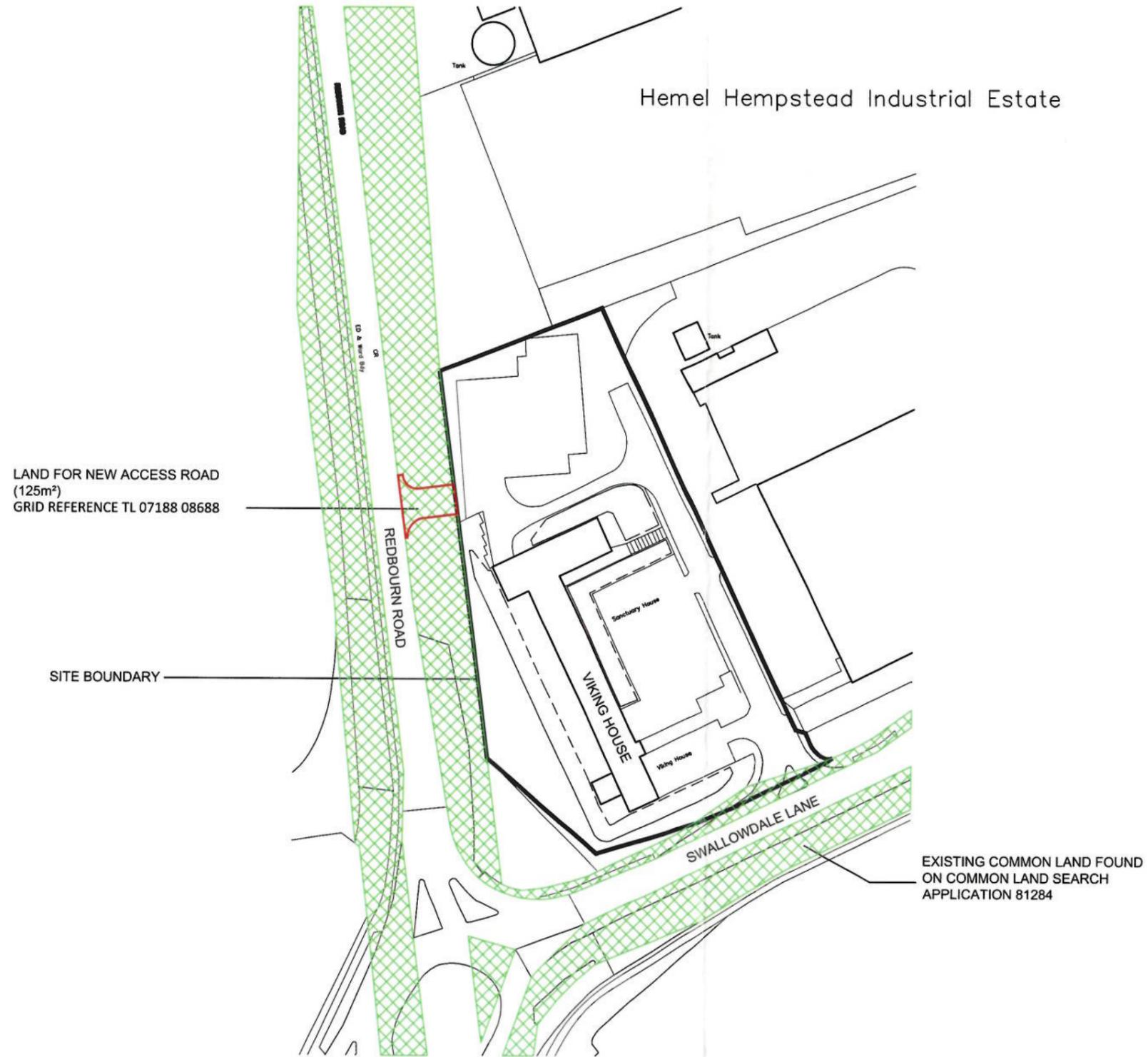
Richard Holland

CDM Regulations 2015

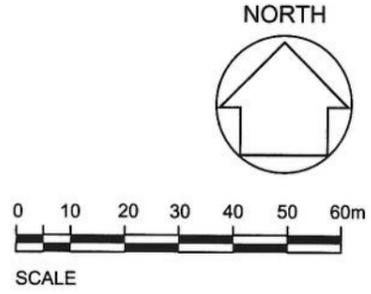
ALL current drawings and specifications for the project must be read in conjunction with the Designer's Hazard and Environmental Assessment Record.

notes

- The contractor is responsible for checking dimensions, tolerances and references. Any discrepancy to be verified with the Architect before proceeding with the works.
- Where an item is covered by drawings to different scales the larger scale drawing is to be worked to.
- Do not scale drawing. Figured dimensions to be worked to in all cases.



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e	rev	revision/author/checker	Client Hightown Housing Association	drawn JDC	project SWALLOWDALE LANE HEMEL HEMPSTEAD	purpose of issue		
	0	First Issue JDC/IBB		checked IBB		SECTION 38 - PLANNING		
	1.15	A Section 16 boundary line amended following common land search JDC/IBB		scale @ A3 1:1250		drawing no	AA5111 / 2009	rev
	1.16	D Drawing amended following comments from client JDC/IBB		date June 2015		drawing no		D
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