



## Application Decision

Site visit made on 5 April 2017

**by Alan Beckett BA MSc MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 9 June 2017**

---

### **Application Ref: COM 3162638**

### **Smithwood Common, Cranleigh, Surrey**

Register Unit: CL 218

Commons Registration Authority: Surrey County Council

- The application, dated 4 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 Mr J P Alexander, the owner of the part of Smithwood Common at issue.
  - The works comprise the laying out of an additional area of grasscrete hardstanding (59.7m<sup>2</sup>) to the east of Smithwood Barn to provide parking space for an additional vehicle.
- 

### **Preliminary Matters**

1. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land, including the erection of fencing; the construction of buildings and other structures; the digging of ditches, trenches and the building of embankments; and, the resurfacing of land if this consists of laying concrete, tarmacadam, coated roadstone or similar material.
2. The application is made by Mr J P Alexander, Smithwood Barn, Smithwood Common, Cranleigh, Surrey, GU6 8QY.
3. Smithwood Common covers an area of 32.98 hectares and is registered as common land (CL218) under the Commons Registration Act 1965. The common includes verges on the western extension of Smithwood Common Road which crosses the common in a generally north-westerly to south-easterly direction, and on Alderbrook Road which runs north-east from a junction with Smithwood Common Road opposite Smithwood Barn.
4. A small number of residential properties are located on Smithwood Common Road where it runs north-west from the main bulk of the common with Smithwood Barn being the easternmost of these. The main area of the common is managed grassland with trees and hedges sub-dividing the common.
5. The Land section of the Commons register notes that part of the registered common is in private ownership and part is subject to the protection of the local authority in whose area it lies in accordance with the provisions of Section 9 of the Commons Registration Act 1965. Correspondence on the file shows

that the land which is subject to this application is owned by Mr Alexander, being the successor in title to Mr Charles Noble who had purchased a strip of the common adjacent to Smithwood Barn from Allied Finance S.A and / or a Mr Chandris.

6. No rights of common are registered in respect of Smithwood Common. The applicant has indicated that section 193 of the Law of Property Act 1925 applies to the common although it is not clear from the records submitted that this is the case. The public may therefore have a right to air and exercise under the 1925 Act; in the alternative, the public has a right of access to the common on foot under the provisions of the Countryside and Rights of Way Act 2000.
7. I carried out a site inspection on 5 April 2016 in the company of Mr Alexander. My decision has been made on the basis of my observations on this visit, taking account of the application and representations received in response to the advertisement of the application.

### **Reasons**

8. This is the second application for consent to works on the land to the east of Smithwood Barn. The first application was made in 2009 following the grant of planning permission for the change of use of the land to provide for the parking of cars connected with Smithwood Barn. The works for which consent was sought in 2009 included the laying of an area of grasscrete approximately 9500mm x 8300mm to provide parking for three cars, together with an access from Smithwood Common Road and the erection of gates to provide access to the parking area and to the common.
9. The current application seeks consent to extend the area of grasscrete by a further 59.7m<sup>2</sup> metres to provide a further parking space. The applicant submits that the area of grasscrete for which consent had been granted previously provides for 2 cars to be parked, to turn and exit onto Smithwood Common Road in a forward gear and that it is impossible for a visitor to the property to turn and exit in a forward gear if there are already two cars parked.
10. In August 2016 the applicant applied to Waverley District Council for planning permission for the addition of a further parking space and additional manoeuvring space. Planning permission was granted by the local planning authority on 26 October 2016. It is the works proposed in connection with this planning permission for which consent is sought.
11. In its comments on the application, Natural England estimated that the area of the common subject to the proposal would amount to 14m x 30m or 420m<sup>2</sup>. In Natural England's view an application to de-register and exchange land under section 16 of the 2006 Act would be more appropriate than the application under section 38 for consent to restricted works.
12. I am uncertain as to the source from which Natural England have determined that 420m<sup>2</sup> of the common would be affected by Mr Alexander's proposals. The approved plan for planning permission WA/2016/1686 shows the grasscrete to extend to 11m x 12.8m in total which would result in only 140.8m<sup>2</sup> of the common being affected, a figure which includes the area of grasscrete for which consent was granted in 2009. Although Natural England considers that a section 16 application to de-register and exchange common land would be

more appropriate, this submission is irrelevant to my determination of this section 38 application which must be considered on its merits.

### **The Main Issues**

13. 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 which includes the interest in nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest;
  - (d) any other matters considered to be relevant.
14. I will also have regard to the Department for the Environment, Food and Rural Affairs Common Land Consents Policy, published in November 2015, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
15. Objections to the application were received from the Open Spaces Society ('OSS') and from Natural England. The OSS objected on the grounds that the conditions upon which the 2009 consent had been granted had not been implemented by the then applicant; that the existing parking arrangements could accommodate three cars and that the part of the common at issue had been unlawfully enclosed with a hedge and trees which had the effect of making this part of the common appear to be a private garden. It is the OSS's case that the proposed works were purely for private benefit and did not maintain or improve the condition of the common nor confer any public benefit. The OSS submitted that if an additional parking space was required it should be provided within the non-common curtilage of Smithwood Barn.
16. Natural England objected to the application as the screen of trees and shrubs which the previous applicant planted on the boundary of that part of the common they had purchased now gave the visual impression of a private space and not common land; as consent was sought for works which were for a purely private benefit an application under section 16 would be more appropriate. The current application was part of the 'gardenisation' of Smithwood Common and was of no benefit to nature conservation.

### **Assessment**

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

17. There are no recorded rights of common over Smithwood Common.

18. The proposal is for the area of grasscrete currently installed to be extended to provide for an additional parking space and to provide additional space for a vehicle to turn and leave the property in a forward gear. It is submitted that as Smithwood Common Road has a speed limit of 50mph and is well-trafficked particularly during the rush hour period, leaving the property in reverse entails a significant risk.
19. The OSS note that the original planning permission granted to Mr Noble was for the provision of three parking spaces and submits that it was plain that the existing arrangements could accommodate three cars with room to turn.
20. The approved plans for the original planning permission suggest that it would be possible to park three cars on the existing grasscrete as the OSS claim. However, this assumes that parking would be carried out with the cars adhering to the allocated space in the same way as would be found in a formal car park. The reality of parking cars associated with domestic property is however somewhat different and the two cars parked at Smithwood Barn at the time of my site visit occupied the majority of the space which had been allocated to three cars as this allowed the doors to be opened fully. Parking of a third car on the existing grasscrete without having to reverse out into the road was not therefore possible.
21. The common has a heavy clay soil which during the winter months is prone to waterlogging. At the time of my site visit, the area beyond the existing grasscrete was marked by road pins, tape and sleepers. Mr Alexander said that these materials were aids to show the limit of vehicular access during the winter months. Although it was possible to park and turn elsewhere on the land in the summer months when the land had dried out, the additional grasscrete would allow the parking and manoeuvring of three cars all year round.
22. In practical terms, I consider that the extension of the grasscrete to the south and to the east of the existing area would provide additional space in which to park a third car and would also provide sufficient space for any car parked to be able to reverse out of its space and leave in a forward gear. Mr Alexander is the owner of the part of the common at issue and the granting of consent to the proposed works would be of benefit to him. I consider that the interests of those occupying or having rights over the land would not be adversely affected if consent to the proposed works were to be given.

### ***Interest of the neighbourhood***

23. The OSS noted that the conditions attached to the previous consent had not been carried out by the previous owner of Smithwood Barn. In particular, that public access had not been made available either side of the gates which had been consented to. At my site visit, I noted that there was a means of access adjacent to the slip rail barriers used by the local authority to access the common for maintenance and that although there was no separate means of access adjacent to the gate leading into Mr Alexander's section of the common, the entrance gate was open. Mr Alexander informed me that although the gate which had been installed by Mr Noble was electrically operated, the mechanism had been disabled and the gate stood permanently in the open position. In Mr Alexander's view, it would not be possible to make an entrance point to the west of the access gate due to the presence of a 'pond' on the verge belonging

to Waverley District Council which is used to divert and hold water running off Smithwood Common Road.

24. I note that with the de-activation of the access gate it is possible for members of the public to have unimpeded access to Mr Alexander's section of the common. In addition to the open gate, a notice attached to the eastern gatepost informs the public that access to the common is available through the gateway. I do not consider that the absence of a separate means of access adjacent to the gate has prevented or will prevent those resident in the area or other members of the public from using the common in the way they are accustomed to doing.
25. Objections were raised by both Natural England and the OSS with regard to the shrub planting which the previous owner had undertaken; Natural England referred to the shrub line as being part of the 'gardenisation' of the common. OSS described this line of shrubs as trees or a hedge which prevented access to this part of the common. However, the line of shrubs which marks the boundary between the land owned by Mr Alexander and the remainder of the common is not in fact a continuous line; there are two points within the shrub line where the grass surface of the common is unbroken which provide a means of access between the two parts of the common. In this respect the shrub line is no different to the lines of hedges and ditches which sub-divide the common to the south-east of Smithwood Barn and through which there are a number of gaps which provide access from one part of the common to another.
26. Having visited the site and made my way between the various parts of the common including that part at issue, I am not persuaded that the presence of the shrub line marking the boundary of Mr Alexander's part of the common serves to prevent residents in the neighbourhood or other members of the public from accessing the common or using it in the manner to which they are accustomed.
27. The applicant has consulted with his immediate neighbours, with Cranleigh Parish Council and with Waverley Borough Council (the body responsible for the maintenance of the common). No representations or objections to the proposal were made in response to the consultation. I consider it unlikely that the proposed works would have a significant adverse effect upon the ability of residents in the neighbourhood to enjoy the area for informal outdoor recreation or that the interests of the neighbourhood would be harmed by the proposed works.

### ***The public interest***

#### *The protection of public rights of access*

28. In relation to public rights of way, the preferred means of access through any boundary is a gap. In the absence of the possibility of a gap (because of the need for stock control) a gate is preferable to a stile in the light of the requirements of the Equality Act 2010. There is no reason why the same principles cannot apply to access to common land.
29. As noted above, the gate leading into Mr Alexander's part of the common is permanently open and there is a notice on the gatepost advising that access to

the common is through the gateway. Furthermore, there are two gaps within the line of shrubs which mark the boundary between Mr Alexander's part of the common and the remainder which allows free access between these parts of the common. The proposed installation of an additional area of grasscrete would not adversely impact upon the ability of the public to access the common. I consider that the proposed works would not restrict access to the common on foot.

#### *Nature conservation*

30. Although Natural England submit that there are no benefits to nature conservation arising from the proposal, equally there is no evidence before me from which it could be reasonably concluded that the proposal would have an adverse effect upon the nature conservation interest of the common.

#### *Conservation of the landscape*

31. Grasscrete comprises a latticework of open cells which can be filled with soil and planted with grass to provide a hardstanding area which can blend with the surrounding land. Once established, the grasscrete would not have the appearance of having had an entirely different surface treatment to the remainder of the common. The proposed extension of the grasscrete is unlikely to have an adverse impact upon the appearance of the common as part of the landscape.
32. The proposed works are intended to provide an all-year, all-weather parking space for an additional motor vehicle. In terms of the impact of the proposed works on the landscape, it is likely that the presence of a vehicle on the common will be more intrusive than the grasscrete on which the vehicle will be parked. Mitigating this intrusion is the tree and shrub planting which marks the boundary between that part of the common belonging to Mr Alexander and the remainder of the Common. As noted above, Smithwood Common is not a single piece of open land but is divided into a number of fields by hedges and ditches. The planting on Mr Alexander's boundary is in keeping with the common's other internal boundaries and will effectively screen from view Mr Alexander's motor vehicles.

#### *Protection of Archaeological remains and features of historic interest*

33. No evidence has been submitted from which it could be concluded that there are any designated heritage assets within the area subject to the proposed works. I am satisfied that the proposed works would not have a negative impact upon the site and that the proposed works would not harm any archaeological remains or features of historic interest.
34. I conclude that the public interest will not be adversely affected by the proposed works.

#### ***Other relevant matters***

35. Although the proposed works would not maintain or improve the common as such, they would be consistent with the use to which the common is currently put. The extension of the area of grasscrete would not prevent the public from using the land for access and recreation other than at those times when a

motor vehicle was present. The parking of three cars on this section of the common adjacent to Smithwood Barn is unlikely to have any adverse effect on the way that the public currently make use of the common. The proposed works would have some wider public benefit in that it would prevent Mr Alexander, his family and guests from having to reverse out into oncoming traffic.

### **Conclusions**

36. Having regard to the interests set out in paragraph 13 above, I conclude that the works would not adversely affect those interests and that it is expedient that consent to the proposed works should be given.

### **Decision**

37. In exercise of the powers conferred by section 38 of the 2006 Act, I hereby give consent to the works described in the application and shown on the plan appended to this decision.

38. For the purposes of identification only, the location of the works is shown edged red on the appended plan.

*Alan Beckett*

Inspector

APPENDIX – location of the proposed works (not to scale)

