
Application Decision

Site visit made on 8 August 2017

By Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 20/09/2017

Application Ref: COM 3169414 Leigh Common, Wimborne, Dorset

Register Unit: CL 1

Registration Authority: Dorset County Council

- The application, dated 7 February 2017 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 on behalf of Gleeson Developments Ltd.
- The works comprise the construction of a new access road joining Leigh Road with associated widening of part of Leigh Road on the southern side. Also the widening of part of the footway on the northern side of Leigh Road to create a combined footway/cycleway.

Decision

1. Consent is granted for the proposed works on the south side of Leigh Road in accordance with the application dated 7 February 2017 and the plans submitted with it subject to the condition that the works shall begin no later than 3 years from the date of this decision. Consent is not granted in respect of all the proposed works included in the application to the north of Leigh Road.

Preliminary Matters

2. I made a visit to the application land on Tuesday 8 August 2017 when I was accompanied by representatives of the applicant, East Dorset Council, Natural England (NE) and local residents. At the site visit the applicant had arranged for the extent of the proposed works on the south side of Leigh Road to be marked on the ground which was helpful.
3. For purposes of identification only the location of the works are shown on the three attached plans.

The Application

4. The application is made on behalf of Gleeson Developments Ltd. It proposes the construction of a new access road and the associated widening of Leigh Road on the south side to create a new signal controlled junction and the widening of the footway on the north side to create a combined footway/cycleway.
5. The total area of common land affected by the proposed works is 870 sq m and the total area of Leigh Common is 9.1Ha.

Main Issues

6. 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;¹
 - (d) any other matter considered to be relevant.
7. I will also have regard to the department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy², which has been published for the guidance of both the Planning Inspectorate and applicants.

Interests of those occupying or having rights over the land

8. The common is owned by Sir William Hanham who has made no objection regarding the effect of the application on his interests. The applicant has stated that he is fully aware of and is supportive of the application.
9. Two rights of common are registered which together provide the right for the grazing of a total of 55 cattle over the whole area of the common. As far as is known these rights are no longer exercised. In any event the application land forms part of the verge of the busy B3073 road (Leigh Road) and some of it lies on the opposite (south) side of the road to the rest of the common. In these circumstances it would not be suitable for the grazing of cattle. No party with the benefit of registered rights of common has objected to the application.
10. The application land is included within the boundary of the highway maintainable at public expense according to the highway records of Dorset County Council, the Highway Authority. The Highway Authority has raised no objection to the application.
11. The public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925 (the 1925 Act). The proposed works are confined to the highway verges of the B3073 (Leigh Road). On the south side of the road there is currently no footway and the land affected by the proposed works is separated from the main area of the common by the road. It therefore seems likely that public access to the common for air and exercise will not be restricted in any significant way by the proposed works and, in any event, public access to the application land would still be available after the works have been carried out.
12. Overall, it is my view that the proposed works will have no significant adverse effect on the interests of those occupying or having rights over the land.

Interests of the Neighbourhood

13. In general terms works should only be permitted on common land if they maintain or improve the condition of the common or where they confer some

¹ 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.

² Defra, Common Land Consents Policy, November 2015

wider public benefit and are either temporary in duration or have no significant or lasting impact³.

14. In this case, the proposed works will have the effect of replacing relatively small areas of grassland adjacent to Leigh Road with paved carriageway or footway/cycleway. Objectors argue that this cannot be seen as maintaining or improving the common in any way although it is argued on behalf of the applicant that the highway improvements proposed, including the provision of a traffic light controlled junction will facilitate access to the common.
15. In my view, the works proposed are clearly not intended to be temporary and will inevitably have a lasting impact on a small peripheral area of the common. However, the questions of whether this impact should be regarded as significant and whether it will be outweighed by some wider public benefit must also be considered.
16. The application land forms parts of the highway verges alongside Leigh Road. I have seen no evidence to suggest that it is part of the common that is currently used for recreational purposes or the exercise of other rights of common. On my visit I noted that in fact it appeared unsuitable for such use, particularly as far as land to the south of the road is concerned, although the existing footway on the northern side of the road might well be used to gain access to the main part of the common to the north. The main impact of the proposed works on the interests of the neighbourhood would therefore appear to be the visual effect of the replacement of a limited area of grass with paved surface.
17. The main reason this application has been made is to enable an access road to be constructed which will allow a large development to take place on land to the south of the common. This development includes the building of up to 305 new houses of which 28% (85) are to be affordable homes, which are needed in the area. It also includes a local centre, school, a new rugby club and public open space. This development is included in the Core Strategy of the Christchurch and East Dorset Local Plan and has been granted planning permission subject to various conditions. It is argued on behalf of the applicant that this development will be of considerable benefit to the neighbourhood as has effectively already been accepted by the local council in preparing its local plan and by an independent inspector at the Examination in Public of the Core Strategy. In connection with that Examination, a Statement of Common Ground regarding the proposed development was agreed between East Dorset District Council, Dorset County Council, Natural England, Wimborne Town Football Club, Wimborne Rugby Club and the developers. This included details of the proposed development.
18. It has also been agreed that the siting of the proposed access road and its junction with Leigh Road which necessitates the works included in the current application is the optimal location on highway safety and other grounds.
19. Specific guidance on works relating to vehicular ways across common land accepts that in some circumstances a paved vehicular way may be the only practical means of achieving access to land adjacent to the common⁴. This would appear to be the situation in this case.

³ Defra, Common Land Consents Policy, para.3.2

⁴ Defra, Common Land Consents Policy, para. 5.9

20. Proposed works to provide a wider footway/cycleway on the north side of Leigh Road are not essential to enable the development to the south but are in accordance with a Dorset County Council policy objective and are considered to improve accessibility to the common. However, only a short section of footway/cycleway is included in the application and I have seen no details of the design of this or of how or when it might form part of a useful new route. In these circumstances it is my view that the works proposed would be of very limited benefit to the neighbourhood.
21. Overall, it is my view that on balance the proposed works will not have a significant adverse effect on the interests of the neighbourhood and that with regard to the works to the south of Leigh Road their impact will be outweighed by the benefits they will bring by enabling housing and other development to take place. However, the proposed works to the north of Leigh Road will not in themselves bring significant benefit to the interests of the neighbourhood.

Public Interest

Nature Conservation

22. A Biodiversity Mitigation Plan prepared in connection with the application for development to the south of the common, including the new access road, noted that the proposed works will result in the loss of some amenity grassland and species poor hedgerow. It also noted that the proposed development included the provision of significant new hedgerows and other planting which would result in a biodiversity net gain.
23. NE has commented that Leigh Common is a Local Nature Reserve and is an area of wet willow woodland and fen with numerous ditches. However, the area affected by the proposed works is separated from the main part of the common and no longer shares the same biodiversity. However, NE and others have also commented that land to the north of Leigh Road affected by proposed works is flower rich grassland.
24. In my view, although the proposed works themselves will not benefit the biodiversity of the common land, they will have limited adverse effect on nature conservation and this will be mitigated to some extent by the provision of new planting and open space as part of development to the south which the works will enable to take place.

Landscape

25. Leigh Road is an arterial route running from the centre of Wimborne to the A31 and as a result the land affected by the proposed works does not share the same landscape character as the rest of the common.
26. A Landscape and Visual Impact Assessment carried out in connection with the application for development to the south of the common considered the landscape effects of that development as a whole. It concluded that the development would have a slight adverse impact which would be largely screened from Leigh Common by vegetation. The impact of the highway improvement works within the area of the common was not specifically considered.
27. In my view the works currently applied for will have a minimal effect on the landscape of the common as they will be screened by vegetation from the main part of the common and will be situated in part of the common of a completely

different character from the rest, an area which is already dominated by Leigh Road itself.

Public access

28. It is not proposed that the works applied for will have the effect of restricting the public's right of access to the common. As previously mentioned, the applicant suggests that the provision of a traffic light controlled junction and an improved footway/cycleway will actually facilitate access. On the other hand, objectors point out that a traffic light controlled junction might not be considered an attractive location for people to exercise their right of access.

Archaeological remains and Features of Historic Interest

29. There is no evidence to suggest that the proposed works would have an adverse effect on any archaeological remains or features of historic interest

Other relevant matters

30. The maintenance of an adequate supply of land for new housing is an important national policy and the proposed works will enable the development of a considerable number of houses in accordance with an approved local plan.
31. The applicant has indicated that a separate application has been made to Dorset County Council, the Commons Registration Authority, under Section 19 of the 2006 Act for the land affected by the proposed works to be de-registered as common land on the grounds that it had been registered in error. This is a separate matter which is not before me for consideration and accordingly I have given it no weight in reaching my decision.
32. Objectors have argued that the works proposed should not have been the subject of an application under Section 38 of the 2006 Act but ought to have been dealt with in an application under Section 16. This would have required an area of replacement land to be offered in exchange for common land lost to the works. Some published guidance relating to works which do not benefit the common but have a potential wider public benefit⁵ suggests that applications might be more likely to be successful under section 16, for example infrastructure works in connection with sustainable energy generation. Such an application might I think have been possible in this case. However, no such application has been made and the current application must be considered on its merits in accordance with the relevant criteria set out in Section 39 of the Act.
33. In this case, the applicant maintains that the application will not result in any loss of common land as the land affected is already part of the public highway and will remain so and public access to it will not be restricted. One objector suggests that it has not been demonstrated that the land is already part of the highway and that works to turn it into paved highway are inimical to its status as common land. However, Dorset County Council, the Highway Authority has provided plans showing the highway boundaries according to its records. These include the land affected by the proposed works. In the absence of any evidence to the contrary, I have no reason not to accept that these plans indicate the true extent of the highway. Also, I note that Section 38 of the 2006 Act states that works on common land which require consent under that

⁵ Defra, Common Land Consents Policy, paras. 5.14-5.16

section include "works for the resurfacing of land"⁶ and further states that "works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material)"⁷. This wording would appear to me to cover the sort of works currently applied for and to suggest that the inclusion of paved highways is not necessarily inimical to the status of common land.

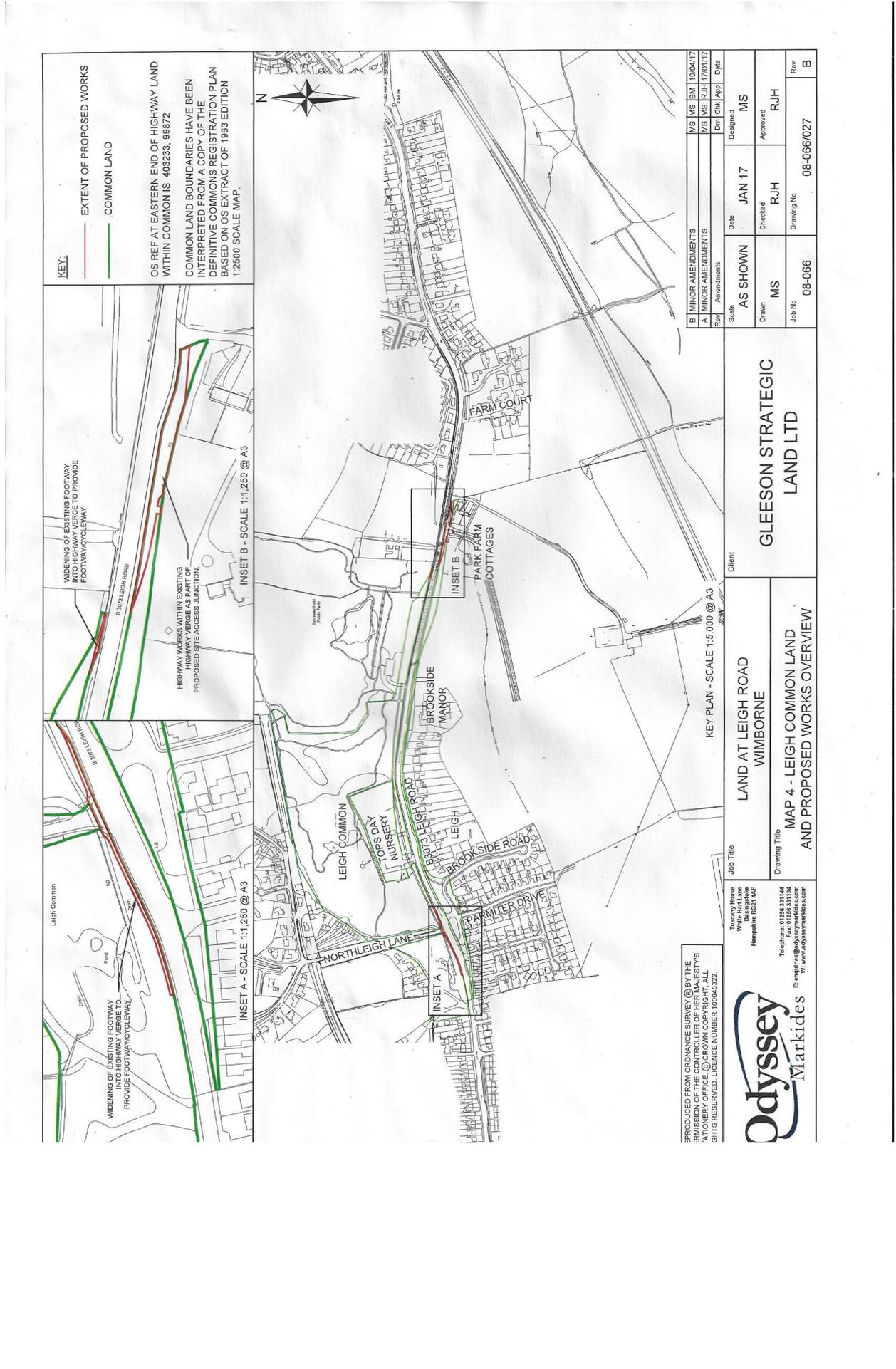
Conclusions

34. Having regard to these and all other matters raised in written representations I conclude that, with regard to the proposed works to the south of Leigh Road, the benefits will outweigh the disadvantages and on this basis all the criteria for approval have been satisfied and the application should therefore be approved subject to the condition that the works shall begin no later than 3 years from the date of this decision. However, with regard to the proposed works to the north of Leigh Road, it is my view that the benefits of the proposed works will not outweigh the possible disadvantages and these works should not be approved.

Barney Grimshaw
INSPECTOR

⁶ Commons Act 2006, S38(2)(B)

⁷ Commons Act 2006, S38(4)



KEY:
 — EXTENT OF PROPOSED WORKS
 — COMMON LAND

OS REF AT EASTERN END OF HIGHWAY LAND WITHIN COMMON IS 403233, 98872
 COMMON LAND BOUNDARIES HAVE BEEN INTERPRETED FROM A COPY OF THE DEFINITIVE COMMONS REGISTRATION PLAN BASED ON OS EXTRACT OF 1983 EDITION 1:2500 SCALE MAP.

WIDENING OF EXISTING FOOTWAY INTO HIGHWAY VERGE TO PROVIDE FOOTWAY/CYCLEWAY
 B 3073 LEIGH ROAD

HIGHWAY VERGE WITHIN EXISTING HIGHWAY VERGE AS PART OF PROPOSED SITE ACCESS JUNCTION.

INSET B - SCALE 1:1,250 @ A3

WIDENING OF EXISTING FOOTWAY INTO HIGHWAY VERGE TO PROVIDE FOOTWAY/CYCLEWAY

INSET A - SCALE 1:1,250 @ A3

Scale	AS SHOWN	Date	JAN 17	MS
Drawn	MS	Checked	RJH	Approved
Job No	08-066	Drawing No	08-066/027	Rev
				B

MINOR AMENDMENTS	MS	BM	1004/17
MINOR AMENDMENTS	MS	RJH	17/01/17
Amendments	MS	MS	17/01/17
Amendments	MS	MS	17/01/17
Amendments	MS	MS	17/01/17

Client
GLEESON STRATEGIC LAND LTD

Job Title
LAND AT LEIGH ROAD WIMBORNE

Drawing Title
MAP 4 - LEIGH COMMON LAND AND PROPOSED WORKS OVERVIEW

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