
Application Decision

by **Richard Holland**

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

Decision date: 7 December 2017

Application Ref: COM/3176259

Westmore Green, Tatsfield, Surrey

Register Unit No: CL 56

Commons Registration Authority: Surrey County Council.

- The application, dated 10 May 2017, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Mr Andrew Bond, The Bakery, Westmore Road, Tatsfield TN16 2AG.
 - The works comprise the construction of a 24m² brick and stone built level camber patio area for tables and chairs to be located adjacent to the footpath at the side of The Bakery restaurant, as shown as 'Proposed Patio Area' on the 'Map 1' plan.
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Decision

1. Consent is granted for the works in accordance with the application dated 10 May 2017 and accompanying plans, subject to the following conditions:
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. before the patio is first used a sign shall be permanently placed in a prominent position near it advising the public that the patio area is located on common land and it, and any tables and chairs placed on it, are therefore freely available for use by all members of the public as well as customers of The Bakery.
2. For the purposes of identification only the location of the works is shown by a red triangle on the attached 'Map 2' plan.

Preliminary Matters

3. The application form gives the patio area as 24m² with dimensions of 8m x 6m. As its shape is broadly triangular the area is halved and 24m² is the correct measurement. The application notice gives slightly different dimensions of 8m x 5.5m resulting in a patio area slightly less than 24m². I do not consider this to be a significant variation. However, the notice also states that the total area is 10m². This is clearly wrong and the applicant has confirmed that it is an error. No party to have made a representation has referred to the error and, as the dimensions amounting to approximately 24m² are broadly consistent across the application form and the notice, I do not consider that any party has been prejudiced by the error.
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.

¹ Common Land Consents Policy (Defra November 2015)

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS), Ms Linda Bennett, Mr D G Gibbons and Mr Nigel Shaw.
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 applicant has advised that Tatsfield Parish Council, the owner of the common, supports the proposal. However, although the Parish Council was consulted about the application it has not commented.
9. The common land register records a right in favour of 2 Pond Cottages, Westmore Green to allow six ducks to range over the common land unit. The applicant has advised that the current owners of the property do not exercise the right and that, in any case, the proposals would not interfere with the exercising of the right. I agree and 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

10. The works are proposed to provide a solid and even surface onto which restaurant tables and chairs can be placed. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with the interests of public rights of access. The application site is a triangle of land bounded on two sides by roads and by The Bakery restaurant on the other. A footpath runs between The Bakery and the edge of the common. The triangle is thus separated and distinct from the wider common land unit lying to the west. The proposed patio will take up roughly 10% of the triangle's area but only a very small proportion of the common as a whole.
11. The triangle is tended by a group of villagers, described by the applicant as 'Tatsfield In Bloom' volunteers, for horticultural displays and is redesigned each year for the Britain in Bloom competition. Two rows of vines donated by Tatsfield's twinned French village have been planted as a feature in recent years. I consider the area to have a distinct horticultural and verdant character, although it is also currently used by The Bakery as an outside dining area with tables and chairs placed directly onto the grass on the site of the proposed patio. There is no evidence that the current table and seating arrangements are opposed by local people.
12. The proposed patio will effectively formalise a part of the common as an outside dining area for customers of The Bakery restaurant and could be seen as serving only the private interests of the applicant. However, the applicant accepts that the patio area may be used by the whole community and the visiting public (not just The Bakery's customers); this can be ensured by attaching a suitable condition to the consent requiring a clear sign to that effect to be displayed. The patio itself will not introduce a new physical impediment to public access as, in the absence of tables and chairs

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.

which do not require consent, it would be possible to walk over it just as it would be possible to walk over the grass.

13. I consider that the proposed works are consistent with the use of the land as a common and will not interfere with, or detract from, the continued use of the triangle by the public or those wishing to use it for horticultural displays.

Nature conservation

14. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

15. Local people are concerned that a patio will detract from a grassed area in the centre of the village that is a focal point for horticultural displays. However, these concerns are partly about the presence of tables and chairs, which is not dependent on a patio area being created. I also consider that tables and chairs placed on a level hard surface may have a tidier appearance than those placed directly onto an uneven grass surface. I find the arguments finely balanced but conclude that, as the triangle is within an urbanised village setting bounded, as I have said, on two sides by roads and by The Bakery restaurant on the other, the patio area is unlikely to appear as an unduly alien feature on this part of the common, especially as it will be built using brick and local stone. The works will not therefore unacceptably harm the character and appearance of the landscape.

Archaeological remains and features of historic interest

16. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

Other matters

17. Representations have been made that granting consent for the application will set a precedent and give the applicant an unfair commercial advantage. However, all applications are decided on their individual merits and decisions do not set precedents. Commercial advantage is not a relevant issue in my consideration of the application.

Conclusion

18. I conclude that the proposed works will not seriously harm the interests set out in paragraph 7 above so long as a sign is installed making clear that the area may be used by the local community as well as customers of The Bakery. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

Map 2

