
Application Decision

by **Richard Holland**

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

Decision date: **23 April 2018**

Application Ref: COM/3195163

Fishers Green, Stevenage, Hertfordshire

Register Unit No: CL15

Commons Registration Authority: Hertfordshire County Council

- The application, dated 2 February 2018, 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 Craig Scudder.
 - The works comprise a tarmac surfaced vehicular driveway covering 6 square metres (6 metres wide x 1 metres long) at No. 4 Fishers Green, Stevenage SG1 2JA.
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Decision

1. Consent is granted for the works in accordance with the application dated 2 February 2018 and the plan submitted with it subject to the condition that the works shall begin no later than 3 years from the date of this decision.
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. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by the Open Spaces Society (OSS) and Historic England (HE), neither of which raised objections to the proposed works.
5. 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.

¹ Common Land Consents policy (Defra November 2015)

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.

Reasons

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

6. The application land is owned by Hertfordshire County Council, which was consulted by the applicant but has not commented on the application. The commons registration authority has confirmed that there are no registered rights of common over the land. There is no evidence before me to suggest that the works will harm the interests of those having rights in relation to, or occupying, the land.
7. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people and is closely linked with public rights of access. Photographs submitted by the applicant show that the 1 metre wide roadside strip of common land over which the driveway is proposed is neither grassed verge nor pedestrian pavement. The strip appears to be too narrow to have any recreational value and is not wide enough to be safely used as a pedestrian walkway. In any case, the proposed driveway will introduce no impediment to any limited use the land may offer as local people and the wider public will continue to be able to walk across it.
8. No. 4 Fishers Green is to be developed, subject to planning permission being granted by Stevenage District Council (SDC), and the proposals include moving the existing driveway up to 5 metres to the north so that it will be central to a new parking area. Plans submitted by the applicant show that the new driveway will be moved so slightly that the new footprint will overlap with the old. The remainder of the old footprint will be returned to grass. I am satisfied that the proposed driveway will have no greater impact on the above interests than the existing one.

Conservation of nature and the landscape, and archaeological remains and features of historic interest

9. There is no evidence before me that leads me to think the works will harm any statutorily protected sites or other nature conservation interests.
10. The driveway will replace an existing one at the same location and be sited almost opposite the junction with Corton Close. It will therefore not be a wholly new or alien feature in the already urbanised landscape and will be finished with tarmac to match the adjacent highway surface. I am satisfied that the proposed driveway will not have a significant impact on the landscape.
11. HE advised that the works will not harm any highly designated assets but the applicant should consult SDC's archaeological staff about any undesignated assets. However, there is no evidence to suggest that any remains or features will be affected by the driveway proposals and I am satisfied that any concerns SDC may have can be dealt with through the planning application process.

Other matters

12. 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*'. I am satisfied that the construction of the driveway is consistent with Defra's policy objectives.

Conclusion

13. I conclude that the works will not harm the interests set out in paragraph 5 above and that consent should therefore be granted.

Richard Holland

