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# Application Decision

**by Richard Holland**

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

**Decision date: 21 May 2018**

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**Application Ref: COM/3196557**

**Royal Common, Waverley, Surrey**

Register Unit No: CL225

Commons Registration Authority: Surrey County Council

- The application, dated 19 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 Trowers & Hamblins LLP on behalf of Latimer Developments Limited.
  - The works comprise:
    - i. underground installation of electricity, cable tv and telecommunications cables and gas and water pipes (the services) on the western side of the carriageway from Shackleton Road into the former Weyburn Works; and
    - ii. erection of temporary safety barriers up to 2m in height for the duration of the works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 19 February 2018 and the plan submitted with it subject to the following conditions:
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. all temporary fencing shall be removed on completion of the works.
2. For the purposes of identification only the location of the works is shown labelled 'PROPOSED LOCATION FOR NEW SERVICES' on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> 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.

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the Surrey Hills Area of Outstanding Natural Beauty (AONB) Board, Historic England (HE) and the Open Spaces Society (OSS), none of which raised any objections to the works.
6. The proposed services works are supplemental to the footway and access way works subject of application COM 707, for which consent under section 38 of the Commons Act 2006 was given on 1 December 2015 (the 2015 consent).
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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

8. The land is owned by the applicant, Latimer Developments Limited. The common land register indicates that there are no registered rights of common over CL225 but that two parties claim a right of vehicular access across the common land for farming purposes. Both parties were consulted about the application and offered no comments on the proposals. I therefore consider that the proposed works are unlikely to 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 applicant wishes to incorporate the services works into the already consented works, which have yet to commence. This includes use of the same temporary safety barriers covered by the 2015 consent. The service works will take place within the same area of the common as the works given consent in 2015.
10. 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 the interests of public rights of access. The applicant has said that the combined works are expected to take about 2 months to complete. Whilst this will cause some harm to the above interests by excluding public access to the part of the common affected, it will not be unacceptable given the short duration.

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<sup>2</sup>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.

### *Nature conservation*

11. There is no evidence before me to suggest that the services works will harm nature conservation interests.

### *Conservation of the landscape*

12. The site lies within the Surrey Hills AONB. The AONB Board has advised that it does not consider the proposal to have any implications for the AONB. The services will be underground and will not be visible. The land above will be re-instated inasmuch as the 2015 consented new hard surfaced footway will replace part of the existing hard surfaced vehicular access way. No green space will be affected by the services works. I conclude that the services works will not harm the interests of conserving and enhancing the natural beauty of the AONB.

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

13. Surrey Archaeological Society was consulted on the proposals and made no comments. HE advised that it did not wish to comment other than to point out that any works affecting the nearby Somerset Bridge scheduled monument may be subject to Scheduled Monument Consent. I am satisfied that Somerset Bridge is sufficiently far away from the application site so as to be in no danger from the proposed works. There is no evidence before me of any archaeological features within the application site and I am satisfied that the proposed works are unlikely to harm any archaeological remains or features of historic interest.

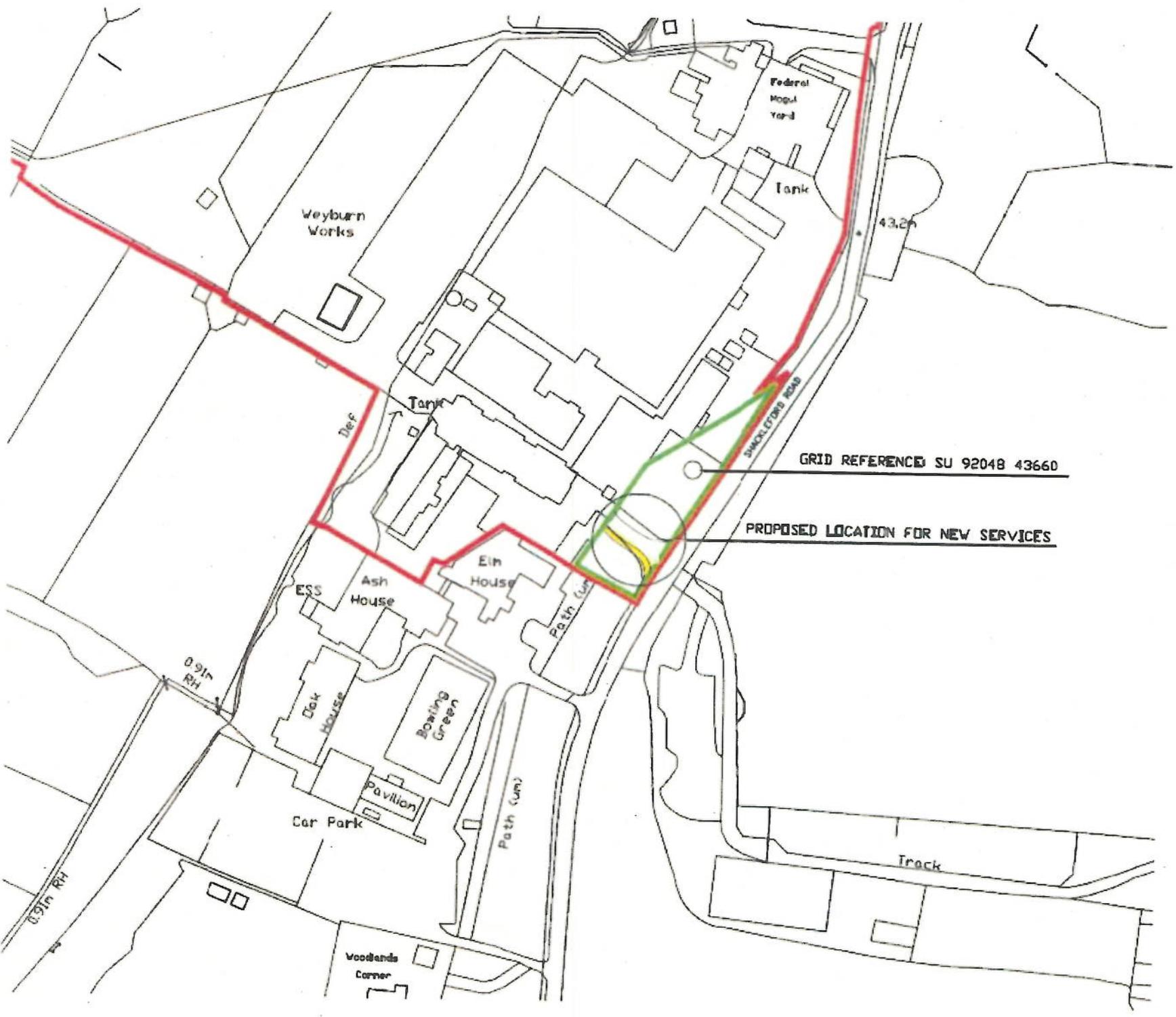
### **Other relevant matters**

14. The services works are necessary to provide utilities and telecommunication media to a 60-bed care home and 69 residential dwellings to be built outside the common land boundary on the former Weyburn Works site. Defra's policy guidance advises that that *"works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses..... consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit"*. I am satisfied that the works accord with this policy objective.

### **Conclusion**

15. Having regard to the interests set out in paragraph 7 above, I conclude that the works will provide a wider benefit to the local community by providing necessary utilities to new residential properties without seriously harming the other interests and that consent should therefore be granted subject to the conditions in paragraph 1 above.

**Richard Holland**



GRID REFERENCE SU 92048 43660

PROPOSED LOCATION FOR NEW SERVICES

Weyburn Works

Federal Magd Yard

Tank

43.2m

Tank

Def

0.9th RD

GRID REFERENCE SU 92048 43660

PROPOSED LOCATION FOR NEW SERVICES

Ein House

Ash House

ESS

Dak House

Boating Green

Pavilion

Car Park

Path (un)

Path (un)

Woodlands Corner

Track

0.9th RH