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## Application Decision

Site visit made on 29 November 2016

**by Alison Lea MA (Cantab) Solicitor**

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

**Decision date: 11 January 2017**

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### **Application Ref: COM/3154098**

#### **Land to east of Dunsfold Common Road, Dunsfold, Surrey**

Register Unit No: CL162

Registration Authority: Surrey County Council

- The application, dated 31 May 2016, is made under Section 38 of the Commons Act 2006 for consent to construct works on common land.
  - The application is made by Ben Crozier on behalf of Kitewood investment Ltd.
  - The works comprise the upgrading of a vehicular access strip to adopted standards, including scraping leaf litter from the soil surface, laying geotextile and Cellweb and laying a road surface constructed of tarmac with a buff colour anti-skid surface or similar.
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### **Decision**

1. Consent is granted for the works set out in the application dated 31 May 2016 and the plan submitted with it subject to the condition that the works shall not take place until planning permission has been granted in accordance with application reference WA/2016/1766 and the development thereby permitted has been implemented.

### **Preliminary Matters**

2. CL162 is a linear common running through the village of Dunsfold. It is crossed by a number of accesses to residential properties, some of which are metalled. The land is wooded in the vicinity of the application site.
3. Section 38 of the Commons Act 2006 (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 to or over the land, including new solid surfaces, such as for an access road.
4. The application would introduce a 5m wide private access road to serve a proposed development of 42 new homes (the Development). Waverley Borough Council resolved to grant planning permission for the Development on 16 November 2016 and I have been provided with a draft of the permission and a draft agreement which will be made under Section 106 of the Town and Country Planning Act 1990 (the Section 106 Agreement).
5. The access road would have an adopted bellmouth which would be finished in tarmac with granite kerbs to match those on Dunsfold Common Road. The remainder of the access road would be private and finished in buff colour

antiskid with granite kerbs which would be flush with the road surface. It would have a 1.5m wide black tarmac footpath along its southern edge which would connect with the existing pavement along Dunsfold Common Road. No street lighting is proposed. The access would be constructed in the location of an existing unsurfaced track which leads to a field gate (the Existing Track).

6. Following advertisement of the proposal an objection was received from the Open Spaces Society (OSS). The OSS stated that an application should have been made under S16 of the Commons Act 2006 (the 2006 Act) rather than under Section 38. However, although I note that the application plan refers to land being offered as common land, the application has been made under Section 38 and I must determine the application that is before me against the relevant criteria. I note that the objection from the OSS does not contain any comments with regard to those criteria.
7. I carried out a site visit accompanied by representatives of the applicant and the objector. The application has been determined on the basis of the written evidence, the comments submitted, and my observations of the site.

### **Main Issues**

8. I am required by Section 39 of the 2006 Act to have regard to the following in determining the 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; and
  - (d) any other matter considered to be relevant.
9. Section 39(2) of the 2006 Act provides that the public interest includes the public interest in:
  - (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.
10. I have also had regard to the 2015 Common Land Consents Policy issued by Defra in 2015 (the 2015 Policy). However, the application will be determined on its merits and a determination will depart from the published guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

## **Reasons**

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

11. There are no rights of common registered over CL162. The land is owned by Waverley Borough Council and is let to Dunsfold Parish Council. There is nothing to indicate that the proposed works would be either directly beneficial to either the Borough or Parish Council or against their interests as landowners. I am informed that the owner of adjoining land has a right of way over the Existing Track. However as no details have been provided and the owner has not expressed any views on the application I am unable to conclude whether the proposed works would be of any benefit to him.

### ***The interests of the neighbourhood***

12. There are a number of tracks through the woodland in the vicinity of the proposed access. At my site visit it was apparent from footprints in the ground that some use is made of the tracks, but that such use did not appear to be extensive. The introduction of a hard surface would not prevent use of the tracks and although the access road would be visible for a short distance within the woodland the proposed materials would mitigate any urbanising effect.

13. People walking in the woodland would need to be aware of the possibility of vehicles when approaching and crossing the access road. However, given that the access road would serve only 42 houses I consider that any interference with the future use or enjoyment of the common would be small.

## **The public interest**

### ***Nature conservation***

14. The proposal would result in the loss of a few trees and other vegetation. The arboricultural assessment submitted with the application found that no high category trees would be removed and I note that new tree and shrub planting is proposed to either side of the access. An ecological assessment submitted with the application (the Ecological Assessment) notes the presence of commuting and foraging bats, but finds that the removal of the trees would not have a significant impact on the bat populations present at the site.

15. The Ecological Assessment also records the presence of Great Crested Newts within 500m of the site and notes the potential of the proposals to kill or injure them. A licence would be required prior to the works commencing and the track would be constructed flush with the surrounding habitat, without kerbs, drainage gates or other barriers to newt movement.

### ***Conservation of the landscape***

16. The application site consists of the Existing Track within an area of woodland. At the time of my site visit the Existing Track was covered in leaves and did not appear to be in regular use. The proposal would introduce hard surfacing and increased vehicular movements into this area. The bellmouth junction with Dunsfold Common Road would be visible from some viewpoints, in particular from the area of The Common directly to the west of it, and from

some parts of Dunsfold Common Road. However it would be seen in a woodland context. Overall I consider that, although introducing an urban feature, it would not have a significant impact on the landscape, which is punctuated by a number of other accesses.

17. The rest of the access road would be less intrusive due to its materials and colour and would be largely screened from view due to its location within woodland. From the woodland track which crosses the application site the buff coloured access road and tarmac pavement would be clearly visible for a short distance, but would be screened by trees and shrubs in longer views.

#### *Public Access*

18. In its pre submission consultation response the OSS suggested that the access road would split the common in two and interfere with the right of users to enjoy the common. However, the application site would remain common land and the surfaced road, which would be constructed flush to its surroundings, would not present a barrier to access.

19. Those using the track which crosses the application site, which may include horse riders<sup>1</sup>, would have to cross a surfaced road and on occasion may have to wait for a vehicle to pass before crossing. However, given that the access would serve 42 houses only, I consider that the volume of traffic would not have a significant adverse impact on public access to and enjoyment of the common land.

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

20. An archaeological desk-based assessment was submitted with the application. It found that the potential for the site to contain significant pre-medieval archaeological resources was low and the potential for medieval or post medieval resources was moderate. The draft planning permission includes a condition which would ensure that a scheme of archaeological work is approved and implemented.

21. There is no suggestion that there are any features of historic interest which would be affected by the proposal.

#### **Other matters considered to be relevant**

22. The access is required to serve a development of 42 houses, 17 of which would be affordable. Waverley Borough Council state that affordable housing is a key corporate priority for the Council and that the proposed affordable housing mix would contribute to meeting local needs in line with guidance in the National Planning Policy Framework.

23. A Transport Statement submitted with the application considers various possible means of accessing the Development. Two options which did not involve crossing common land were assessed but were both found to have significant drawbacks and considered unlikely to be deliverable. The planning application was made on the basis of the access the subject of this application and I have no reason to believe that a suitable alternative access could be

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<sup>1</sup> At the time of my site visit there was no evidence of any use of the tracks by horse riders

found. I am therefore satisfied that the works the subject of this application are necessary in order for the Development to proceed.

24. The planning application shows an area of land within the Development which it is intended would be offered as open space for use by the general public. Although it has been referred to as replacement land it is not the subject of an application for deregistration and exchange under S16 of the 2006 Act. However, the Section 106 Agreement, which will be entered into prior to planning permission being issued, will ensure that the open space is provided as part of the Development.

25. I consider that the Development, which will provide affordable housing, public open space and various other benefits, is in the wider public interest and that the works applied for are necessary to enable that Development to proceed.

### **Conclusions**

26. I note the advice in the 2015 Policy that a S38 application to construct a vehicular way across a common "may be consistent with the continuing use of the land as common land.....because the construction will not in itself prevent public access" and that "in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common". In this case, access to the land will not be prevented and although the works would have some impact on nature conservation, the character of the landscape and public access, none of the impacts would be significant. The works are the only practical means of providing access to the Development.

27. Taking all of these matters into account I consider that it is expedient that consent should be granted, conditional upon the grant and implementation of the planning permission.

28. For the purposes of identification only, the location of the works is shown hatched red on the attached plan.

*Alison Lea*

**Inspector**