



Application Decision

by **Richard Holland**

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

Decision date: 3 April 2012

Application Ref: COM 314 Little Heath, Hertfordshire

Register Unit No: CL 80

Commons Registration Authority: Hertfordshire County Council

- The application, dated 13 December 2011, is made under Section 23 of the National Trust Act 1971 (the 1971 Act) for consent to construct works on common land.
 - The application is made by Mr Bob Davis, Head Forester, The National Trust, Estate Office, Ringshall, Berkhamsted, Hertfordshire HP4 1LT.
 - The works comprise: the erection of 87 metres of fencing around the perimeter of Little Heath Pit, enclosing an area of 360 square metres. A pedestrian gate will maintain access to the pit and an interpretive board will describe the pit's geological interest.
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Decision

1. Consent is granted for the works in accordance with the application dated 13 December 2011 and the plan submitted with it. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

2. I have had regard to Defra's Common Land Consents Policy Guidance¹ in determining this application under section 23 of the 1971 Act, 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
3. This application has been determined solely on the basis of written evidence.
4. I have taken account of the representations made by the Open Spaces Society and Natural England.
5. I am required by section 39 of the 2006 Act to have regard to the following in determining applications under section 23 of the 1971 Act:-
 - 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;

¹ Common Land Consents Policy Guidance (Defra July 2009)

- 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

- 6. Subject to Secretary of State consent (where it is necessary), section 23(1) of the 1971 Act enables the National Trust ("the Trust"), or a third party acting under the Trust's permission, to carry out works on common land that it considers desirable for the purpose of providing or improving opportunities for the enjoyment of the property by the public, and in the interests of persons resorting thereto. The Trust has confirmed that it considers the proposed works desirable for that purpose. Furthermore, since there are no persons having registered rights in relation to the common the danger that the proposed works might adversely affect such rights does not arise.

The interests of the neighbourhood

- 7. The proposed works will enable the re-excavation of the pit and protect it from badger damage, which will make the geological deposits available for future study and educational access for geologists, educational parties and users of the common and I accept that the proposed works are needed to protect local people from the risk of falling accidentally into the re-excavated pit. I consider, therefore, that the outcome intended by the proposed works will positively benefit the neighbourhood.
- 8. Local people will not be denied access as a pedestrian gate will be installed in the fence. I do not consider, therefore, that the proposal will interfere with local people's use and enjoyment of the common either now or in the future.
- 9. I therefore consider that the proposed works accord with 3.9.2 of Defra's guidance.

The public interest

The protection of public rights of access

- 10. The works will facilitate enhanced enjoyment opportunities by providing an additional feature of interest and will, therefore, have a positive effect on those wishing to use the common for recreation. In addition, the provision of a pedestrian gate will mean that public rights of access will be protected. Furthermore, the Open Spaces Society has commented that it has no objection to the application which it believes will be of public benefit. I consider, therefore, that the works will not adversely affect those wishing to use the common for recreation and access, a consideration at 3.9.3 of Defra's guidance.

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.

Nature conservation

11. The site lies within Little Heath Pit Site of Special Scientific Interest (SSSI). The applicant says that the works will restore the SSSI and I note that Natural England supports the erection of the fencing, which ties in with other works it is funding to bring Little Heath Pit SSSI back into favourable condition. Consequently, I consider that the proposed works will help deliver environmental benefits, in accordance with 3.9.3 of Defra's guidance.

Conservation of the landscape

12. The site is densely wooded so the fence is unlikely to be prominent and the wood used in its construction will mitigate its visual impact. I consider, therefore, that any adverse impact on the landscape will be negligible.

Archaeological remains and features of historic interest

13. Although English Heritage was consulted, it had no comment to make in respect of the application, but I am content that there is no evidence that there will be any detrimental effect. I consider that the works will facilitate the re-excavation of the geological profile of the pit, thereby enhancing its features of historic interest. In addition, the works will help to protect this nationally important geological site from being damaged by badger activity. Consequently, I consider that the proposed works accord with 3.9.3 of Defra's guidance.

Other relevant matters

14. There are no other relevant matters.

Conclusion

15. Paragraph 4.6 of Defra's policy guidance advises that commons should be maintained or improved as a result of the works being proposed on them and in paragraph 4.7 that in deciding whether to grant consent to carry out works on common land, the Secretary of State will wish to establish whether the proposed works are consistent with the use of the land as common land. I am satisfied that the proposal is consistent with the policy objectives set out in paragraph 5 above and that therefore consent should be granted for the works.

Richard Holland