

SURREY COUNTY COUNCIL**CABINET**

DATE: 25 OCTOBER 2022

REPORT OF CABINET MEMBER: MATT FURNISS – CABINET MEMBER FOR TRANSPORT, INFRASTRUCTURE AND GROWTH

LEAD OFFICER: KATIE STEWART – EXECUTIVE DIRECTOR FOR ENVIRONMENT, TRANSPORT AND INFRASTRUCTURE

SUBJECT: DE-REGISTRATION OF LAND AT STRINGERS COMMON AND DESIGNATION OF REPLACEMENT LAND TO FACILITATE JUNCTION IMPROVEMENT WORKS FOR WEYSIDE URBAN VILLAGE

ORGANISATION STRATEGY PRIORITY AREA: GROWING A SUSTAINABLE ECONOMY SO EVERYONE CAN BENEFIT, ENABLING A GREENER FUTURE, EMPOWERING COMMUNITIES AND TACKLING HEALTH INEQUALITY

12

SUMMARY OF ISSUE

The development of Weyside Urban Village requires widening of the Moorfield Road / Woking Road junction onto a part of Stringers Common. The proposed junction improvements include the widening of Woking Road and associated works on its west side which is on County Council land (within common land parcel CL 281) and outside of the existing highway. Some widening is also required on the east side of Woking Road (within parcel CL 352), owned by Guildford Borough Council (GBC).

The consent of the Secretary of State (SoS) under section 38 of the Commons Act 2006 is required for works which impede access to or over common land or involve its resurfacing.

The owner of common land may apply to the SoS for it to be released under section 16 of the Act, that is, to cease to be registered. Suitable replacement common land is also required, which has been identified off Jacobs Well Rd, which will be considered as part of the application process.

This Cabinet report is seeking approval to undertake a public consultation exercise, review representations and whether revisions to the mitigation measures or to the applications themselves, are needed and decide in the light of such representations, whether or not to proceed with submission of the Commons Act 2006 applications.

If following completion of the public consultation exercise it is decided to pursue submission of the Commons Act applications as consulted upon, approval is sought from Cabinet to delegate authority to the appropriate Executive Director in consultation with the Cabinet Member for Transport, Infrastructure and Growth and Cabinet Member for Environment, to prepare and submit such applications jointly (where applicable) with GBC to the SoS. These decisions will enable GBC to continue to deliver this significant programme of work.

RECOMMENDATIONS:

Subject to the agreement of the matters arising in paragraph 57 of this report with GBC, it is recommended that Cabinet delegate authority to the Executive Director of Environment, Transport and Infrastructure, in consultation with the Cabinet Member for Transport, Infrastructure and Growth and Cabinet Member for Environment, to:

1. Undertake a public consultation exercise into the proposed de-registration of land at Stringers Common and related works;
2. Finalise the exact plot boundaries for the Commons Act applications in light of matters arising from public consultation, completion of the junction design and agreement of suitable mitigation measures.
3. Further to such consultation and subject to consideration of responses, prepare and submit a joint application with GBC under section 16 of the Commons Act to the Secretary of State seeking to:
 - de-register land at Stringers Common to facilitate junction improvement works at Moorfield Rd / Woking Rd – shown on the indicative accompanying plan (Annex A); and
 - register suitable replacement common land at Jacobs Well Road - shown on the indicative accompanying plan (Annex A).

REASON FOR RECOMMENDATIONS:

- Planning permission was issued by GBC in March 2022 for the Housing Infrastructure Fund-enabled Weyside Urban Village (WUV), a major mixed used scheme including the construction of 1,550 dwellings, a local centre, employment uses, replacement Council depot and replacement traveller's site at Slyfield Green.
- In order to facilitate that scheme, road and junction improvement works will be required at the Woking Rd junction with Moorfield Rd, for which Surrey are the highway authority. These improvement works are proposed to be undertaken on land which is currently registered common land at Stringers Common, where SCC is the landowner.

DETAILS:

Background

1. To accommodate the WUV scheme, it is proposed to widen the Moorfield Road / Woking Road junction, much of which would need to be undertaken on registered common land.
2. Parts of the existing public highway at the Woking / Moorfield Rd junctions are within the registered common area. To the west of Woking Road is Stringers Common, registered common land as parcel CL 281 which is owned by the County Council. Land parcel CL 352 - part of Stringers Common - lies to the eastern side of Woking Rd which is outside of the existing highway and is owned by GBC. As such, the junction

works will require applications to be made under sections 16 and 38 of the Commons Act 2006 to the Secretary of State (SoS).

3. Currently, there is traffic queueing along Woking Road between Bellfields Road and Jacobs Well Road. This queueing is primarily caused by capacity issues at the junction of Woking Road / Moorfield Road, with resulting queues stemming back through other nearby junctions which creates 'exit blocking', whereby users cannot enter the junction because the exit is blocked by a queue downstream. The Moorfield Road junction is already at capacity, with background growth likely to tip the junction above capacity without factoring in the WUV traffic. Therefore, upgrade improvement works are required here for traffic capacity reasons to facilitate the WUV project.
4. Various options have been considered seeking to minimise impacts of the junction works on the common. However, as the carriageway is surrounded by common land on both sides there were no options which involved taking less land from the Common. Unfortunately, every option took a similar or larger area from the common, either to the east or the west. The proposed junction design has already been reviewed by the County in its role as highway authority.
5. The land to be permanently de-registered will be appropriated as highway land once it has been de-registered.
6. The replacement land is at least of equal quality and accessibility to the portions of land at Stringer's Common to be de-registered.

ANALYSIS AND COMMENTARY

7. SCC are the Commons Registration Authority (CRA) under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. It is also the landowner of the affected common land at Stringers Common.
8. It is anticipated that the following applications will need to be made to the SoS:
 - (a) an application will be made by SCC, jointly with GBC, under section 16 of the 2006 Act for an order to de-register common land outside the limits of the adopted highway (part of parcel CL 281) and to provide suitable replacement land. As SCC are the owner of the release land but not the replacement land (which is owned by GBC) then a joint application between both landowners is required;
 - (b) an application will be made by GBC under section 16 to de-register part of parcel CL352 (it may be that these two section 16 applications are joined into a single one); and
 - (c) an application will be made by GBC under section 38 of the 2006 Act for consent to undertake restricted works on common land.

9. Approximately 1,700 sqm at Stringers Common will be permanently de-registered as common land and approximately 2,000 sqm will be designated as suitable replacement land of land at Jacobs Well Rd.
10. That replacement land is in the ownership of GBC and is contiguous with the Common. SCC considers that the proposed replacement land is suitable, and that it is at least of equal quality and accessibility to the land to be de-registered. It is currently used as grazing land, is open in character, comprising wooded and grassland areas. This replacement land will be retained and managed by GBC, which SCC's Countryside Team supports.
11. An indicative plan showing the areas of land concerned is included in Annex A. The precise boundaries of the land subject to the Commons Act applications will be subject to refinement and finalisation in the coming weeks, subject to junction design finalisation and possible changes arising as a result of consultation. The decision on the exact and final boundaries for the Commons Act applications should therefore be delegated to the Executive Director of Environment, Transport and Infrastructure, in consultation with the Cabinet Member for Transport, Infrastructure and Growth and Cabinet Member for Environment.
12. In addition to the permanent land take from the Common referred to above, a further area of approx. 600 sqm will be required temporarily to support construction works which will be restored and returned to common use once work is completed. GBC will be required to provide a scheme for restoration of that land for SCC's agreement under a licence needed to undertake temporary works on the Common, including arrangements for its implementation, monitoring and maintenance. SCC will work with GBC to ensure that all opportunities for betterment, enhancement, or improvement of the site further to its restoration are considered and progressed.

Mitigation of impacts associated with junction works

13. The area of common land to be de-registered will need tree felling and site clearance. Therefore, in addition to the mitigation incorporated into the scheme to provide suitable replacement common land, it is intended to provide a range of other mitigation measures including landscape, replacement tree planting and ecological mitigation works, including delivery of biodiversity net gain and measures to ensure no net loss of carbon. These measures will help to offset impacts associated with the junction works. Baseline ecological and arboriculture studies have already been prepared. Those mitigation measures – in the process of being developed by GBC - will form part of the proposed consultation exercise and form part of the Commons Act application (see also paras 21 - 23).

Other Approvals and Authorisations

14. **Planning consent.** It is likely that the junction improvement works would be undertaken using SCC's permitted development rights (PDR) as highway authority, although this will be subject to confirmation as to whether the scheme requires an Environmental Impact Assessment (EIA), which will be determined by a screening

exercise. If that screening exercise determines that an EIA is required, SCC will defer informal consultation and submission of the Commons Act applications until an EIA is prepared and planning permission for the works issued.

15. **Highways Act.** A s278 agreement under the Highways Act will be required once the land has been de-registered and appropriated.

CONSULTATION AND PUBLICITY

16. Government guidance strongly recommends informal public consultation prior to submitting applications under s38 or s16 of the Commons Act 2006 and therefore SCC and GBC will undertake a joint informal public consultation exercise as to the proposed temporary works, the proposed de-registration, the impacts of the de-registration and how any impacts can be suitably mitigated. This good practice will ensure that local views and insights on the area are understood and help uncover any active commoners prior to finalising the proposals. The consultation will engage with relevant stakeholders with an interest in the scheme.
17. Results of the consultation exercise will be carefully reviewed and considered by officers to inform the proposal for the Commons Act application and proposed mitigation measures before making a final decision as to whether or not to proceed with the scheme and submit the Commons Act applications.
18. If the decision is taken to submit the Commons Act applications to the SoS, a further statutory consultation with the public and interested stakeholders will be undertaken as part of their determination.

ENVIRONMENTAL IMPLICATIONS

19. As previously indicated, once the land is de-registered, it will be necessary to clear the site and fell several trees to construct the new junction. To mitigate and compensate for the impacts arising from these works, GBC are leading on a mitigation study which is currently in development. This will ensure that the scheme fully complies with all wildlife and habitat protection legislation and has a suitable landscape and ecological plan, including replacement tree planting and results in a net gain in biodiversity and no net increase in carbon emissions arising from the loss of trees.
20. Under the Commons Act, in addition to landscape and ecological issues which will be subject to the mitigation study mentioned above, the SoS will also give consideration to impacts on rights of way and to archaeological and drainage issues arising from the de-registration. There are no known rights of way on the land to be de-registered, and the new junction scheme will include the provision of public footpaths. Further, SCC archaeology have advised that there are no known archaeological remains in this area and it is not an archaeological priority area. Drainage measures for the residual parts of the Common will be included in designs for the junction improvement works with no further drainage measures required.

21. GBC are leading on the mitigation study and SCC officers are working closely with Guildford to finalise the brief, the draft report and approval of the proposed detailed mitigation arrangements – including their implementation, monitoring, maintenance, carbon budgets and cost considerations.

RISK MANAGEMENT AND IMPLICATIONS:

22. Consultation and stakeholder concerns are likely to be risks requiring careful management. To help mitigate these risks, a consultation scope document is being produced by GBC which SCC have reviewed and a robust informal consultation exercise will be delivered. While opposition to the scheme is anticipated, suitable mitigation measures are intended to be delivered and the anticipated outcomes - a major brownfield regeneration scheme creating new employment, economic and housing opportunities – will deliver significant benefits.
23. Further, there are risks associated with not proceeding with the Commons Act applications (a 'do nothing' option). The principal risk of not delivering the applications proposed would be the severe jeopardy in which it would place GBC's delivery of the WUV brownfield regeneration scheme and significant housing and employment opportunities.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

24. GBC have agreed to cover SCC's costs for this workstream and a draft Memorandum of Understanding (MoU) is in the process of being agreed between GBC and SCC on this matter. Although the exact costs are as yet unknown, payment for SCC services will be sought in advance of works being undertaken. Costs are likely to be incurred by the County Council with regards to legal advice, public consultation, employment of a part time project manager, Commons Act application fees, preparation and determination (including costs associated with a possible public inquiry).
25. SCC will proceed once a MoU has been agreed with GBC ensuring SCC's costs are recovered. The potential need for some other form of written agreement will be kept under regular review, as well as the "up front" payment issue mentioned in paragraph 26. All such costs will also be logged, reviewed and monitored to ensure prompt repayment.
26. Other costs will relate to the required mitigation study and to its implementation and ongoing maintenance (see paragraphs 21 - 23). It is estimated SCC could incur professional and associated costs totalling £0.2m which will be met by GBC.
27. There will also be incidental costs – such as officer time dealing with some elements of the scheme - which will be met from existing business as usual budgets.
28. The professional costs of approving and inspecting the new highway works and any commuted sums will be covered by an agreement under s278 and s.38 of the Highways Act.

29. Any costs associated with the ongoing maintenance of the replacement land will be offset by the need to no longer maintain the de-registered land (there will be a like for like replacement in terms of any maintenance costs).
30. The replacement land (off Jacobs Well Rd) will remain in the ownership of GBC, and therefore costs associated with the maintenance of that land will be with GBC.

SECTION 151 OFFICER COMMENTARY

31. Although significant progress has been made to improve the Council's financial position, the financial environment remains challenging. The UK is experiencing the highest levels of inflation for decades, putting significant pressure on the cost of delivering our services. Coupled with continued increasing demand and fixed Government funding this requires an increased focus on financial management to ensure we can continue to deliver services within available funding. In addition to these immediate challenges, the medium term financial outlook beyond 2022/23 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.
32. The proposals in this report will result in the Council's costs incurred through the work set out being covered by GBC under the terms of a joint Memorandum of Understanding. As such, the Section 151 Officer supports the recommendation.

LEGAL IMPLICATIONS – MONITORING OFFICER

33. **Commons and Highways.** Provisional registration of the commons took place following an application by Guildford Rural District Council in 1968. The registration became final without modification on 8th April 1980. The registered commons include all of the land needed for the proposed works (widening, drainage and embankments). By section 22(1) of the Commons Registration Act 1965:
- “In this Act, unless the context otherwise requires, “*common land*” means—
- (a) land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods;
- (b) waste land of a manor not subject to rights of common;
- but does not include a town or village green or any land which forms part of a highway;”** (our emphasis).
34. While the County is advised that it appears that the roads should not therefore have been included in the registered commons, they were, and the commons registration was continued under the Commons Act 2006.

35. If a Commons Registration Authority is satisfied that any land registered as common land was wrongly registered, the authority shall remove the land from its register of common land. Two options appear to be available:
- 1) to investigate the circumstances behind registration of the roads and if found to be wrongly registered remove the roads from the register of common land (thereby removing any need to deregister and provide alternative land) or
 - 2) to pursue deregistration on the basis that there is no evidence that registration was wrongful.
36. Following preliminary investigation, no evidence has been found of wrongful registration.
37. **Consultation.** Government guidance strongly recommends extensive informal public consultation prior to submitting any applications under s38 or s16 of the Commons Act 2006. Such public consultation will therefore be required. Those to be consulted should include those who will be consulted formally if s38 and s16 applications are subsequently made i.e.;
- the commons council
 - a commoners' association
 - all active commoners
 - other commoners reasonably able to be identified
 - others with an interest in the land, e.g. tenants, or those with easements or other rights over the land
 - any relevant parish, district, city or county council
 - Open Spaces Society
 - other bodies with a specific interest in the land, for its flora or fauna (e.g. Wildlife Trusts, Local Access Forum)
 - other bodies with an interest in access to the land (Ramblers' Association, British Horse Society, Cyclists' Touring Club, local walking and riding groups)
 - local residents and civic amenity groups.
38. **County Council powers to carry out highway works.** The County Council have extensive powers to carry improvements to existing highways, including works to non-highway land in their or another person's ownership. Those are suitable in this case. Widening of the highway may take place under the Highways Act 1980, s 72(1):
- “A highway authority may widen any highway for which they are the highway authority and may for that purpose agree with a person having power in that behalf for the dedication of adjoining land as part of a highway.”

39. The provision of embankments are necessarily part of the widening power and otherwise within the general power of improvement of the highway (Highways Act 1980, s 62(2)). The County Council may also 'construct or lay, in the highway or in land adjoining or lying near to the highway, such drains as they consider necessary' (Highways Act s100(1)). Works within the existing highway may be improvements under these powers or maintenance (Highways Act s41).
40. The improvement works comprise new highway roadway and verge, drainage for the road at the top of the embankment and a new embankment on the west side of the road. These are not compatible with the commons status of the land and the exercise of any rights of common. Since the use would be for highways purposes, it would need to be appropriated for such purposes and that could not be done for the County Council land whilst it remained a common. Consequently it would be necessary to apply for deregistration of the County Council land from the common (see below).
41. **S278 Highways Act 1980 agreement with Guildford Borough Council.** The works could all be carried out by the County Council. It is, however, proposed that the Borough Council, as developer, carries out the works as the works are necessary for the development. That is most obviously done by a section 278 agreement under the Highways Act 1980 between the County Council and the Borough Council. By section 278(1):
- “A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person—
- (a) for the execution by the authority of any works which the authority are or may be authorised to execute, or
- (b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,
- on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.”
42. The c13 sqm on the east side of Woking Road belonging to the Borough may be dedicated or transferred within any s278 / s38 Highways Act agreement. The Borough Council will be required to pay all costs associated with the s278 agreement.
43. **s38 Commons Act 2006.** The consent of the Secretary of State is required for works which impede access to or over common land or involve its resurfacing, see section 38, Commons Act 2006. Such works will include:
- (a) the erection of fencing;
- (b) the construction of buildings and other structures;
- (c) the digging of ditches and trenches and the building of embankments.
44. For the purposes of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on

the land (but not if they consist only of the repair of an existing surface of the land made of such material).

45. This section applies to – (a) any land registered as common land. Land subject to a section 38 consent will remain common land.
46. **s16 Commons Act 2006.** The owner of common land may apply to the Secretary of State for it to be released, that is, to cease to be registered. If the land to be deregistered exceeds 200sqm then s16 requires replacement land to be proposed. If the owner of the release land does not own the replacement land, the owner of the replacement land must join in the application. Hence the Borough Council will need to join in any application.
47. (6) In determining the deregistration application, the appropriate national authority shall have regard to -
- (a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest;
 - (d) any other matter considered to be relevant. ...
- (8) The reference in subsection (6)(c) to 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.
- (9) An application under this section may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over–
- (a) the release land;
 - (b) any replacement land.
48. Formal consultation is required for both s38 and s16 Commons Act 2006 applications .
49. **Appropriation.** As the status of the land is common land, once deregistered it will need to formally become highway. This may be achieved by way of appropriation as provided for by s122 of the Local Government Act 1972. Before appropriating the land, the County must cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the

area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.”

50. The necessary agreements, applications and appropriation are executive functions.

EQUALITIES AND DIVERSITY

51. The need to ensure an inclusive consultation exercise is stressed. All efforts will be made to target hard to reach groups or those with different protected characteristics as part of the consultation (paragraphs 18 - 20).

52. Another relevant point is access to the common land and whether any equalities issues arise from that. The project will in effect result in the permanent removal of part of the Common, although it is a strip of land alongside Woking Rd, and ultimately therefore, will not fundamentally change access to the Common overall. Suitable mitigation is proposed in the form of replacement land elsewhere, which is contiguous with the Common. Other mitigation measures to enhance the Common are proposed including landscape and ecological enhancements.

53. The de-registration will facilitate the junction improvement scheme, which will help unlock a major brownfield development project, creating many new jobs and homes for residents. Journeys in the area will be easier. The junction works propose pedestrian footpaths and cycling provision which will benefit some sections of the community.

OTHER IMPLICATIONS:

54. None.

PUBLIC HEALTH IMPLICATIONS

55. None.

WHAT HAPPENS NEXT:

56. An indicative outline of the next stages is given below, although that will be subject to refinement as the scope of the project develops.

Project stage	Anticipated Date
Cabinet approval	October 2022
Mitigation Study	September – October 2022
Informal consultation by SCC / GBC into proposals to de-register and designate suitable replacement common land.	November – December 2022
Consultation responses reviewed and analysed. Consider whether modifications are needed. Decision point on whether to proceed with the applications.	December 2022 – January 2023
If decision is taken to proceed with applications following consultation, application preparation to Secretary of State.	January – February 2023

In parallel to one another: <ul style="list-style-type: none"> • SCC submit s16 Commons Act applications to SoS seeking to de-register and designate suitable replacement land; and • GBC submit s38 Commons Act application to SoS for works which have the effect of preventing or impeding access. 	February – March 2023
Statutory consultation period by SoS - duration 28 days	February – March 2023
Commons Act applications determination period (that process will either be via written representations, a hearing or a public inquiry - depending upon the level and nature of representations made following statutory consultation).	Late spring / early summer 2023
SoS decision	Summer 2023

57. The indicative programme for this project is subject to a number of steps to be completed at various stages of the project by GBC for Surrey's agreement, namely:
- That the County agrees the detailed arrangements proposed by GBC for the joint informal consultation exercise, including a role in the review of consultation responses and agreement of the next steps following that.
 - That before proceeding with the informal public consultation exercise, a Memorandum of Understanding (or other signed agreement) between GBC and SCC is completed regarding reimbursement arrangements from Guildford Borough Council for Surrey's costs incurred.
 - As the Mitigation Study is being developed by GBC, its approval by SCC is required prior to commencement of the informal consultation exercise. A side agreement between SCC and GBC is in development to cover the design, implementation, establishment, monitoring and maintenance issues for required mitigation works plus associated cost issues.

CONCLUSIONS:

58. Subject to the essential informal consultation, suitable replacement land has been identified to off-set land which needs to be de-registered at Stringers Common. De-registration will enable junction improvement works which are required to facilitate the Weyside Urban Village scheme. A range of suitable mitigation measures are in development to offset impacts to the Common, such as replacement planting, bio-diversity net gain and carbon offsetting.

Report Contact:

Lee Parker, Director of Infrastructure, Planning & Major Projects, ETI Directorate, 07816 089527, lee.parker@surreycc.gov.uk

Consulted:

Legal, Finance, Land and Property, Transport Development Planning, Countryside Access & Commons Registration Service, Countryside Officer, Greener Futures Group, Guildford Borough Council.

Annexes:

Annex A: Plan showing de-registered and replacement land at Stringers Common

Annex A – Plan showing de-registered and replacement land at Stringers Common

