

Executive Report

Ward(s) affected Shalford

Report of Director of Environment

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Shalford Common Land Management

Executive Summary

Guildford Borough Council is the freehold owner of Shalford Common (“the Common”) which is registered common land. The statutory regulation of common land is set out in the Commons Act 2006.

There have been ongoing problems with parking on the Common for many years, which are increasing. The Council receives complaints on a regular basis about cars being parked on the Common, (including on access tracks) which is in breach of commons legislation.

This report outlines:

- i) the issues at Shalford Common,
- ii) the legal context and
- iii) ways in which to address the issues by a series of measures intended to reduce encroachments on Shalford Common from un-authorized vehicles. The measures also include necessary works to improve authorised access that complies with commons legislation.

The Council is seeking to draw up an action plan setting out measures to be implemented in respect of car parking, access onto the Common, leisure activities and highway improvements. The purpose of these measures is to:

- i. ensure that the Council as landowner complies with its statutory duty to protect the Common
- ii. reduce the number of conflicts and complaints regarding parking on the Common and the Council's management of the Common
- iii. achieve better management of the Common

The proposed measures will be applied to seven priority areas and consist of a combination of

- i. Designation of car parking areas on the Common in compliance with the

Commons Act 2006

- ii. Physical measures to prevent unauthorised access
- iii. Enforcement through new byelaws

The proposals will be subject to a public consultation to obtain representations and opinion to assist in achieving the intended outcomes. Public consultation will also be a statutory requirement to introduce new byelaws and the proposed changes to registered Common Land.

Recommendation to Executive

That the Executive

- 1) consider the issues and options in managing the increased demand for car parking at Shalford Common
- 2) decide and agree on the options for seven priority areas on the Common to be put forward for public consultation
- 3) agree to implement an action plan to comply with commons legislation for car parking, access, leisure activities and highway improvements.
- 4) agree to carry out a public consultation as part of the action plan
- 5) agree to introduce new byelaws for Shalford Common to support the proposed actions

Reason(s) for Recommendation:

- i. Compliance with Guildford Borough Council's statutory obligations as land owner to protect Shalford Common from encroachments in line with the Commons Act 2006 including the prevention of unauthorised parking
- ii. Reduction of conflicts and complaints regarding un-authorized car parking
- iii. Provision of car parking areas compliant with the Commons Act 2006
- iv. Protection of biodiversity on Shalford Common which is a designated SNCI

1. Purpose of Report

1.1. The Executive is asked to

- consider the issues and options in managing the increased demand for car parking at Shalford Common
- decide and agree on the options for seven priority areas on the Common to be put forward for public consultation
- agree an action plan to put measures in place to comply with commons legislation for car parking, access, leisure activities and highway improvements
- agree to carry out a public consultation as part of the action plan
- agree to introduce new byelaws for Shalford Common to support the proposed actions

2. Strategic Priorities

2.1. The proposals support the following strategic priorities:

- Protecting our environment

- Enhancing sporting, cultural, community and recreational facilities
- 2.2. The key outcome from the project will be compliance with commons legislation by Guildford Borough Council.
 - 2.3. It will improve Shalford Common as a community facility by managing the increased demand of car parking and restricting encroachments from traffic onto the Common.
 - 2.4. It will improve safety for site users and residents, improve access for recreation and protect the site's biodiversity.

3. Background

3.1. Issues at Shalford Common

- 3.1.1. Shalford Common ("the Common") is a registered common in the ownership of Guildford Borough Council. The management of registered common land is governed by the Commons Act 2006 (that replaces the Commons Act 1899 and partially replaces the Commons Act 1965)
- 3.1.2. The Commons Act 2006 places restrictions/obligations on the landowner for the maintenance of the Common, which are mainly concerned with the preservation of the landscape character, free public access and prevention of encroachments.
- 3.1.3. There is an increasing amount of unauthorised parking on Shalford Common and frequent encroachments occur.
- 3.1.4. Over the years, several hard-surfaced access tracks were constructed on the Common, without obtaining consent under the commons legislation and therefore do not comply with existing legislation.
- 3.1.5. A number of areas have become established areas for road traffic and car parking and are therefore effectively removed from recreational use.
- 3.1.6. There are areas where the Council has actively developed parking areas, for example the Parrot Pub car park, which would have required consent from the Planning Inspectorate who carries out the functions of the Secretary of State for DEFRA. Consent was not applied for.
- 3.1.7. The Council regularly receives complaints regarding cars parked on the Common, including cars parked on grassed areas, laybys and access tracks.
- 3.1.8. Whilst the commons legislation states that common land requires protection from encroachments, it does not provide for effective enforcement mechanisms.
- 3.1.9. This means that the Countryside section receives a large number of complaints around car parking and unauthorised access on Shalford Common without having effective means to address the issues.
- 3.1.10. This situation leads to continued complaints and long processes to gather evidence and issue notices in order to address encroachments from car parking.
- 3.1.11. The Countryside section is currently using the following approaches:

- i. For cars parked off track on grassed areas: Warning stickers and, for repeat offenders, enforcement under S41 of the Local Government (Miscellaneous Provisions) Act 1982.
- ii. Cars parked anywhere on the Common and declared SORN: Enforcement under S41 of the Local Government (Miscellaneous Provisions) Act 1982.
- iii. Parking on access tracks:
 - Tolerate parking in areas with few complaints.
 - Install physical barriers to limit opportunities for parking where this is possible.

3.1.12. The most efficient tool to restrict encroachments is the installation of physical barriers.

3.1.13. Over the past year, the Council has installed barriers such as earth bunds and bollards that prevent unauthorised access to parts of the Common.

3.1.14. Some of these barriers have been damaged and required replacement within a short time scale. This includes the height barrier at the Scout Hut car park and the access track to the Huber Garage.

3.1.15. The legal enforcement mechanisms where physical barriers cannot be installed, for example the access tracks, are lengthy and ineffective as deterrent. The current approach continues to attract complaints.

3.1.16. There is strong local opposition to the restriction or removal of long-established car parking in areas that have been encroached on.

3.1.17. This situation makes it difficult for the Countryside section to maintain the Common to a satisfactory standard whilst at the same time aiming to adhere to and enforce legislation under the Commons Act 2006.

3.1.18. Some residents in Shalford object to the development of any infrastructure on the Common that is in breach of commons legislation or promotes urbanisation of the area.

3.2. Legal Situation

3.2.1. Common land legislation means that certain management activities and installation of infrastructure that affects access to and enjoyment of the Common require the approval of the Secretary of State under S38 of the Commons Act 2006. Activities include installation of permanent structures, surfacing and fencing.

3.2.2. The management of the Common is supported by a Scheme of Regulation dated 14th April 1939 made under the Commons Act 1899. It grants further powers to Guildford Borough Council (as successor of Guildford Rural District Council) to carry out activities that would otherwise require consent under S38 and states amongst others:

- i. The Council may execute works for the protection of the Common.

- ii. The Council shall maintain the Common free from all encroachments.
 - iii. Subject to [S38 consent], the Council may set aside areas for parking and charge... provided that this does not create any nuisance to a dwelling house.
- 3.2.3. Legislation (Road Traffic Act 1988 s34 and S193(4) of the Law of Property Act 1925) does not allow unauthorised parking on the Common. However, there are limited powers for the Local Authority to enforce this legislation.
- 3.2.4. Residents can, through easements obtain the right to drive over common land in order to access car parking within their property.
- 3.2.5. A proportion of properties adjacent to the Common have either been granted easements or have acquired easements by prescription, which allow them to drive legitimately over the Common. Most properties do not have sufficient car parking space for the number of cars at that property.
- 3.2.6. The Countryside section has sought Counsel advice regarding options to regularise existing infrastructure and options to enforce against unauthorised parking on the Common.
- 3.2.7. Possible legal enforcement mechanisms to prevent parking on the Common are:
 - i. Road Traffic Act 1988 s34: driving over common land including over any public footpath or bridleway crossing it is illegal. The enforcing authority is the police, and carries a maximum fine of £1,000.
 - ii. S193(4) of the Law of Property Act 1925 makes it an offence, without lawful authority, to draw or drive upon any common land any ... vehicle. The enforcing authority is the Council, and carries a maximum fine of £200.
 - iii. The Council currently has byelaws in effect in respect of the Common, however as they were made in 1947 these are considered outdated and ineffective. Byelaw number 7 prohibits a person, without lawful authority, to drive or place any vehicle on the Common. Byelaw 20 allows an officer of the Council, after due warning, to remove any vehicle driven or placed on the Common in breach of the scheme of management or any byelaws. This is enforceable through the Magistrates' Court, punishable by a fine of £2.
- 3.2.8. Certain works, including the creation of car parking areas, can be carried out with consent from the Secretary of State, provided these works are for the benefit of the Common.
- 3.2.9. Works that have been carried out without consent prior to the Commons Act 2006 remain unlawful. It is not possible to apply for retrospective consent for works carried out on the Common before 1st October 2007. There is also no enforcement power in respect of works carried out before 1st October 2007, and so these works are immune from enforcement. However, alterations and repairs to such unlawful works would require consent.

- 3.2.10. The provision of car parks on the Common for inhabitants at large would likely be inconsistent with the Open Spaces Act 1906 or the Public Health Act 1875, since these car parks would not be reasonably necessary to enable the public to enjoy the Common as an open space or for the Common to be used as public walks or pleasure grounds.
- 3.2.11. Similarly, the provision of the car park at the Parrot Pub is not consistent with commons legislation as it is situated on the Common. To regularise the position the Council would need to deregister this part of the Common.
- 3.2.12. The Recycling Car Park at the Scout Hut would be consistent with commons legislation provided it is largely used to enable visits to Shalford Common.
- 3.2.13. Deregistration of common land requires the provision of exchange land. There is no guarantee that an application for deregistration is successful.

3.3. Proposed measures to address the parking issues

- 3.3.1. We are proposing a set of measures that aim at resolving the parking and common land issues in a consistent way across Shalford Common.
- 3.3.2. The proposed measures recognise a need for parking in Shalford and aim to achieve the following outcomes
- i. Provision of car parking areas compliant with the Commons Act 2006
 - ii. Minimise loss of common land that remains accessible for recreational purposes
 - iii. Prevention of encroachments onto the Common
 - iv. Reduction of complaints regarding un-authorized car parking
 - v. Protection of biodiversity on Shalford Common which is a designated SNCI (Site of Nature Conservation Interest)
- 3.3.3. Surrey Police have previously stated that dealing with vehicles on common land should be a Council matter rather than the Police.
- 3.3.4. Whilst the proposals include installation of physical measures where possible to prevent unauthorised access on the Common, enforcement would be required in the areas that need to remain accessible.
- 3.3.5. New or updated byelaws would be required to allow enforcement against short-term parking on access tracks. This would ensure that one single piece of legislation can be applied and publicised in order to provide a consistent approach, as well as allowing for a more effective deterrent than the current byelaws.
- 3.3.6. Deregistration of common land would be necessary to facilitate the provision of the existing car park at the Parrot Pub under existing agreements.
- 3.3.7. Common land deregistration requires the provision of “exchange land” to be registered as common land that provides new public access.
- 3.3.8. Suitable land to provide as “exchange land” is available adjacent to Shalford Common, locally known as Coronation Nursery Land.

3.3.9. The main areas that attract consistent complaints are listed in Table 1 below.

3.3.10. We are proposing to prioritise implementing solutions in those areas in order to allow for a consistent approach across the Common.

3.3.11. Maps and photos of the priority areas listed below are provided in appendix 1.

Table 1 Priority Areas		
1A)	<p>Huber’s Garage/ Mitchell’s Row:</p> <p>There is a patch of land which forms part of the Common, which sits outside Huber’s Garage and next to Mitchell’s Row. An access track runs along this land, allowing access for those who visit the garage. Parking on access track and on the land by garage business and residents in Mitchell’s Row.</p> <p>The access licence to Huber’s Garage contains the condition “Not to park or allow to park vehicles on the access track.” The existing easement held by Huber’s Garage does not allow physical measures such as narrowing the track.</p> <p>Two properties on the access track have parking within their property. Cars parked on the access track restrict access to these properties.</p> <p>Easements cannot be offered to residents in Mitchell’s Row, as it is not practical to do so because there is no available space for people to park on their property.</p> <p>Officers propose to consult on implementation of the following options:</p> <ol style="list-style-type: none"> a. Officers preferred option: Create designated parking areas adjacent to access track but as in b) to enforce against parking on the track through new/ reviewed byelaws b. Enforce no parking zones through new/ reviewed byelaws for effective control and deterrent. c. Prosecuting unlawful parking under the existing byelaws or s193(4) of the Law of Property Act 1925. d. Tolerate. 	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Local opposition to parking enforcement or installation of physical measures due to loss of parking. • Local opposition to designated parking areas or tolerating approach due to loss of common land. • Enforcement under current legislation is resource intensive and an ineffective deterrent. • There would be a need to enforce widely across the Common to achieve consistency. This could significantly stretch resources. • Available parking areas may be reduced due to the presence of long term parked cars.

<p>1B)</p>	<p>Cricket Club Parking</p> <p>The grassed area next to the cricket clubhouse is used for parking during cricket matches.</p> <p>Officers propose offering an access licence to Shalford Cricket Club, subject to an agreement on reasonable levels of use in line with the spirit of the commons legislation.</p> <p>Officers propose to replace the drop down bollards on access track with a low gate to reduce damage.</p> <p>The Council would apply for consent from the Secretary of State for this car parking area and access gate.</p>	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Levels of use may not be agreed with the Cricket Club. • The system could be open for abuse by allowing additional car parking on non-match days. • Physical barriers may require continued replacement due criminal damage. • Secretary of State consent may not be obtained.
<p>2</p>	<p>Kings Road Shop front:</p> <p>Cars are regularly parked on the Common opposite official parking spaces.</p> <p>Officers propose to consult on implementation of the following options:</p> <ol style="list-style-type: none"> a. Preferred Option: Install curb to prevent access to Common. Introduce parking restrictions as part of adopted Highway. b. Designate parking areas, remove from Common and provide exchange land. Introduce parking restrictions as part of adopted Highway. <p>Parking services are proposing to introduce double yellow lines in this location as part of an on street parking review. Implementation would support option a.</p>	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Application to de-register approx. 75m² of common land may be unsuccessful. • Land may not be adopted as public highway. • Parking in this location may create traffic safety issues. • Preventing parking in this location is likely to displace the problem elsewhere. • Major cost implication for both options as this requires a retaining wall to be built to highway standard. • Further alterations to this junction may be required to improve the highway in this area.
<p>3</p>	<p>Pound Place</p> <p>Cars are parked adjacent to existing access track. There are issues with parked cars obstructing access for emergency services.</p> <p>Officers propose to consult on implementation of the following options:</p>	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Local opposition to parking enforcement or installation of physical measures due to loss of parking. • Local opposition to designated

	<p>a. Remove the parking bays on the Common adjacent properties and offer easements as it is practical to do so as people have available space in their properties to park. Anyone granted an easement would then need planning permission for car parking areas at their property.</p> <p>b. Create designated parking areas adjacent to access track, enforce against parking on the track through new/ reviewed byelaws</p> <p>c. Tolerate</p>	<p>parking areas or tolerating approach due to loss of common land.</p> <ul style="list-style-type: none"> • Enforcement: Resource intensive and impacts on the wider common. There would be a need to enforce widely across the Common to achieve consistency. • Available parking areas may be reduced due to the presence of long term parked cars. • There would be a need to take the same approach across the Common to achieve consistency, for example Dagley Lane
4	<p>Parrot Pub Car Park</p> <p>This car park is currently licensed to the Parrot Pub, although it is on the Common.</p> <p>Preferred option: removal from registered Common and provide exchange land to regulate the area in line with commons legislation.</p> <p>Asset Management advised that this land would remain the responsibility of Parks.</p>	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Application to de-register approx. 670m² of Common Land may be unsuccessful at a cost of £6,900. Public consultation will mitigate this risk. • Pub business and existing requirement for a licence may not continue in the future. • Further measures (such as byelaws) are required should it be necessary to control car parking.
5A)	<p>Access track to Dagley Lane Caravan Park</p> <p>Cars are parked adjacent to existing access track. There are issues with parked cars obstructing access for emergency services.</p> <p>Officers propose to:</p> <p>Narrow track to prevent parking and obstruction to Caravan Park.</p> <p>Designate car parking area that is outside the Common Land boundary adjacent to caravan park.</p>	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Cost • May create further obstructions to the caravan park initially • Local opposition to tolerating of car parking on any Common Land. • Parking control may be required in this area, but risk that introduction of controlled parking zone would be seen as

	<p>Enforce against parking on the track through new/ reviewed byelaws.</p> <p>Replace the drop down bollards on access track for the Shalford Fair with a low gate to reduce damage.</p> <p>Apply for Planning Inspectorate consent for this car parking area and access gate.</p>	<p>urbanisation of the Countryside.</p>
5B)	<p>Recycling Car Park</p> <p>The car park is on the Common, and does not have consent from the Planning Inspectorate.</p> <p>Officers propose to establish options for charging/control through byelaws or through Parking services. S 38 retrospective consent cannot be applied for, but as it was constructed before 1 October 2007, it is immune from enforcement.</p> <p>Agree improvement scheme and apply for Planning Inspectorate consent for new scheme.</p>	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • S38 consent may not be obtained • Resources may not be available in Parking Services. • Local opposition to parking restrictions. • Vandalism to car parking infrastructure. • Local opposition to tolerating of car parking on any common land.
6	<p>Dagley Lane/ Juniper Terraces</p> <p>Cars are parked adjacent to existing access track.</p> <p>Currently not an area of complaints. Included to provide consistency across the Common.</p> <p>Officers propose to consult on implementation of the following options:</p> <ol style="list-style-type: none"> a. Officers preferred option: Create designated parking areas adjacent to access track but as in b) to enforce against parking on the track through new/ reviewed byelaws b. Enforce no parking through new/ reviewed byelaws for effective control and deterrent. c. Enforce no parking zones or enforce under the existing byelaws or s193(4) of the Law of Property Act 1925. d. Tolerate. 	<p>Risks/ Issues:</p> <ul style="list-style-type: none"> • Local opposition to parking enforcement or installation of physical measures. • Local opposition to designated parking areas or tolerating approach due to loss of common land. • Enforcement: Resource intensive and impacts on the wider common. There would be a need to enforce widely across the Common to achieve consistency.

7	<p>Approaches to Ashley Gardens and Christmas Hill</p> <p>Cars are parked adjacent to existing access track. There are issues with parked cars obstructing access for emergency services.</p> <p>Review Byelaws – change or introduce new byelaws for effective control and deterrent.</p>	<p>Risks/ Issues</p> <ul style="list-style-type: none"> Enforcement: Resource intensive and impacts on the wider common. There would be a need to enforce widely across the Common to achieve consistency.
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3.4. Recommendations/ actions required

3.4.1. Officers recommend carrying out the actions listed in Table 2 below to resolve the major issues around car parking on Shalford Common.

3.4.2. The delivery of this action plan should be subject to a full public consultation to obtain representations, assist in achieving the intended outcomes, and satisfy the requirements to obtain Planning Inspectorate consents where necessary.

3.4.3. Table 2: Action Plan for delivery and approximate timescales.

What	When	Who
Engage consultant to develop displays for public consultation	January 2020	Countryside
Develop draft byelaws.	February – March 2020	Legal
Public consultation, 12 weeks, including information event on the options proposed for priority areas in Table 1.	February – April 2020	Countryside/ Consultant
Executive Committee to agree options to be implemented following consultation.	May 2020	Executive
Detailed development of proposals, including local engagement of residents whose individual easements are affected.	May - August 2020	Countryside/ Consultant
Obtain consents and permission, including Common land, Planning and Highways	May – August 2020	Countryside/ Consultant
Statutory consultation on byelaws and	September –	Legal/

approval by DEFRA	October 2020	Countryside/ Consultant
Delivery of work (Please note some elements of the proposals do not require consents and can be delivered early on)	June 2020 – March 2021	Countryside/ Contractors

3.4.4. The Executive is asked to

- i. consider the issues and options in managing the increased demand for car parking at Shalford Common
- ii. decide and agree on the options outlined in table 1 for the priority areas on the Common to be put forward for public consultation
- iii. agree to implement an action plan to comply with commons legislation for car parking, access, leisure activities and highway improvements as outlined in Table 2.
- iv. agree to introduce new byelaws for Shalford Common to support the proposed actions

4. Consultations

- 4.1. Offers propose to consult on the options for the seven priority areas outlined in table 1.
- 4.2. Officers propose to work with Shalford Parish Council when carrying out the consultation.
- 4.3. This consultation should include identifying a site user profile.
- 4.4. Guildford Borough Council's Countryside Team holds regular meetings with Shalford Parish Council regarding works and issues at Shalford Common that informed the identification of and proposals for the priority areas.
- 4.5. A public meeting was held on 8 August 2017 with residents affected by parking issues around priority area 1 Huber's Garage/ Mitchell's Row. Follow up work from this meeting has resolved some of the parking issues on the grassed area that fronts Huber's Garage.
- 4.6. In addition, the Countryside Manager has held a number of meetings with Ward Councillors and residents in order to resolve car parking issues in identified priority areas.
- 4.7. Consultation is also required in order to achieve consent from the Planning Inspectorate and to achieve the adoption of a legal framework.
- 4.8. Planning Inspectorate consent for works and de-registration of common land requires notifying a range of stakeholders so that they can submit representations to the Planning Inspectorate. Stakeholders include amongst others Commoners, Parish Council, Natural England, Historic England and the Open Spaces Society.

5. Executive Advisory Board Comment

5.1. The Executive Advisory Board made the following recommendations to the Executive.

- The people who parked on Shalford Common needed to be profiled to ensure that any parking restrictions applied was adequately married to the type of parking usage.
- The consultation needed to clearly define a range of options in relation to the proposed parking restrictions recommended for implementation.
- The public needed to be clearly signposted to alternative modes of transport such as public transport, car club and bicycle hire schemes.

6. Equality and Diversity Implications

6.1. The proposals aim to provide a consistent approach to regulate car parking on Shalford Common across all areas of the Common.

6.2. An Equalities Impact Assessment has been carried out.

7. Financial Implications

7.1. Officers have submitted a Capital Bid to provide sufficient resources for fees, consultation and implementation of works, which is on the approved capital programme (scheme reference PL58)

7.2. The total estimated cost is £120,960, broken down as follows:

- 1) Surface repairs: £30,000 (approx. 1,500m², this cost will be covered by the existing path repairs budget held by parks)
- 2) Access restrictions (Bunds, bollards, planting etc.): £10,000 (approx. 500m)
- 3) Signage: £5,000
- 4) Clearance and preparation of Commons exchange land: £3,000 (4,000m², future maintenance will be by existing revenue)
- 5) Highway Edge repairs at Snooty Fox: £30,000
- 6) Legal Fees: £15,000
- 7) Costs for externally lead consultation: £8,000
- 8) Production of consultation documents and visual displays: £6,000
- 9) Publishing costs for statutory notices: £1,200
- 10) Common Land application to PINS: £7,000
- 11) Contingency 5%: £5,760

8. Legal Implications

8.1. The aim of the proposals is provision of car parking areas compliant with the Commons Act 2006.

- 8.2. In order to provide legal clarification to residents and ability to enforce against offenders, officers propose to introduce new byelaws that regulate activities on Shalford Common in accordance with the Scheme of Regulation dated 14th April 1939.
- 8.3. Should new byelaws be created, the Council will have another means of enforcement by prosecuting those who contravene them. Byelaws generally should cover gaps in existing legislation, not to re-create an already-existing offence.
- 8.4. The revocation and making of any new byelaws are subject to the approval of the Secretary of State (DEFRA). The government have produced a set of model byelaws that can be downloaded and adapted as appropriate.
- 8.5. The revocation of the existing byelaws and creation of new, more modern byelaws would be a more effective deterrent.
- 8.6. A number of statutory notices and applications will be required to implement the proposals, such as de-registration of common land.
- 8.7. Although there is no legislation specifically prohibiting parking on common land, driving over it is an offence. The police have powers to prosecute under section 34 of the Road Traffic Act 1988 for an offence similar to the Council's powers under section 193(4) of the Law of Property Act 1925. Any prosecution would have to be in the public interest.
- 8.8. Prosecution under either the existing byelaws or the Law of Property Act, or by the police under the Road Traffic Act, would require a significant amount of evidence gathering in order to make out the offence.
- 8.9. Section 41 of the Commons Act 2006 provides a power of enforcement for works carried out on common land after 1 October 2007. There is no power to enforce for works carried out prior to that date (the power to enforce works before this date was repealed by the Commons Act 2006), and therefore such works (such as the car parks at the Parrot Pub or the Recycling Centre) are immune from enforcement.
- 8.10. Despite the fact that the pre-existing works are immune from enforcement, further works, including maintenance works, would require consent from the Planning Inspectorate.
- 8.11. Building car parks on the common without deregistering those sections first, would require those car parks to be reasonably necessary to enable the public to enjoy the Common. To enable the parking spaces to be used by the public at large, they must be deregistered.
- 8.12. For those developments which are immune from enforcement and/or cause few complaints from residents, Counsel has suggested leaving historic issues to lie. Going forward, the Council should look to create sensible car parking areas, and ensuring the proper maintenance and repair of the access tracks.

9. Human Resource Implications

9.1. There are no Human Resource implications as result of the proposals.

10. Summary of Options

10.1. Officers have proposed a number of options for seven priority areas in order to deal car parking issues, encroachments and complaints on Shalford Common.

10.2. The principle options considered in dealing with the issues are:

- i. Do nothing/ Tolerate: This leads to increased number of encroachments and complaints, and Council would not be fulfilling its duties under common land legislation
- ii. Enforcement: Resource intensive and ineffective with current legislation, leads to local dissatisfaction
- iii. Physical measures to prevent access: Effective, but not possible where legitimate access is required, resource implication
- iv. Designate car parking areas: Provides clarity for residents and site users and provides an opportunity to comply with regulations, however there will be opposition to the loss of common land as this is not in the spirit of the Commons Act 2006.

10.3. Officers recognise a need for car parking in Shalford, and in consideration of the possible options recommend a combination of options as the best way forward.

10.4. In order to implement this proposed combination of options, the legal framework would require updating. This would provide more effective enforcement mechanisms as well as clarity for residents and site users where car parking on the Common is not allowed.

10.5. Officers identified seven priority areas on the Common outlined in table 1, and have proposed a number of feasible options for consultation for each area.

10.6. Officers have proposed preferred options; however, other options are equally deliverable and are likely to find equal support and opposition.

10.7. Officers propose carrying out a public consultation on the options to regulate access and compliance with commons legislation. Public consultation will be a statutory requirement to support common land applications and to introduce new byelaws, and will be a key step for the project to achieve its intended outcome.

11. Conclusion

11.1. Officers recommend carrying out a proposed set of actions as outlined in Table 2 that allow implementation of measures to reduce encroachments onto Shalford Common

from un-authorized vehicle access and to comply with commons legislation for car parking, access, leisure activities and highway improvements.

11.2. The outcomes of the project are:

- i. Compliance with the Council's landowner obligations to protect Shalford Common from encroachments in line with the Commons Act 2006
- ii. Reduction of conflicts and complaints regarding un-authorized car parking on the Common
- iii. Provision of car parking areas compliant with the Commons Act 2006

11.3. The project will propose, consult on and implement measures in seven priority areas as detailed in table 1 which consist of a combination of

- i. Designating car parking areas
- ii. Physical measures to prevent access
- iii. Enforcement through new legal framework

11.4. The project will include public consultations to a) fulfil the statutory consultation requirements and b) to ensure widest public understanding and acceptance of the proposed measures.

11.5. Officers recommend that the Executive

- i. consider the issues and options in managing the increased demand for car parking at Shalford Common
- ii. decide and agree on the options outlined in table 1 for the priority areas on the Common to be put forward for public consultation
- iii. agree to implement an action plan to comply with commons legislation for car parking, access, leisure activities and highway improvements as outlined in Table 2
- iv. agree to carry out a public consultation as part of the action plan
- v. agree to introduce new byelaws for Shalford Common to support the proposed actions

12. Background Papers

13. Appendices

Appendix 1: Priority Areas maps and Photos