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| **Application Decision** |
| Site visit made on 15 July 2022 |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 August 2022** |

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| **Application Ref: COM/3289953**  **Land at Sunningdale Golf Club, Ridgemount Road, Sunningdale SL5 9RR**  Register Unit No: CL249  Commons Registration Authority: Surrey County Council |
| * The application, dated 17 January 2022, is made under section 38 of the Commons Act 2006. |
| * The application is made by Clarke Willmott LLP on behalf of Sunningdale Golf Club to construct works on common land. |
| * The application works are described as:   (i) the demolition of 4 buildings which are sited within Chobham Common and currently comprise a vehicle and large equipment store, workshop and grinding room, sand bays and external fuel and wash area. The land upon which these buildings are sited and the land between will be relandscaped as heathland habitat using Heather Turf, covering an area of 1,712.3m2 of land to be re-introduced into Chobham Common.  (ii) the erection of a building for the purpose of accommodating the fleet of vehicles and equipment belonging to Sunningdale Golf Club and the laying of a hardstanding for the purpose of an external fuel and wash area jointly covering 1,869.4sqm of Chobham Common. |
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Decision

1. The application is refused.

Preliminary Matters, Background and Application

1. Sunningdale Golf Club includes two long standing and internationally renowned golf courses. The courses extend out over heathland interspersed with areas of woodland, mainly consisting of pine. The Golf Club both own and lease land over which the two courses are located. The section of the courses which is owned by the Club all fall within land registered as common land and the leased land falls beyond the common.
2. The common land is registered in two parcels (CL249 and CL326). It is parcel CL249 which is relevant to this application. This parcel of common land was added to the Register of Common Land in 1972, pursuant to the Commons Registration Act 1965.
3. Parts of this common land (CL249) is within, adjoining and south of the greenkeepers’ area and other buildings, which are located in a very broadly central location within the courses. The boundary of the common land in this area runs approximately east-west. Within the common land there is the existing greenkeepers’ building (441sqm) which includes use as a workshop and for the storage of vehicles, a separate sand bay area with some enclosed sides, the vehicle wash/fuel bay, fenced areas and areas of hardstanding. Within this building group, but broadly further north and outside the common land, there are other buildings supporting the golf club use, such as offices, storage buildings, residential accommodation occupied by staff, parking areas and hardstandings.
4. A public footpath (FP75a) runs through this greenkeepers’ yard area. The surface of the footpath forms part of the road from the broadly north east, crosses through the yard area on the hard surface of the access areas and then continues approximately south west through the verdant areas of the golf course.
5. A public bridleway (BW76) runs broadly north-south and follows the access to the eastern side of the building group, including the residential properties of Pinedale and 1 and 2 Kingshill Cottages. Another right of way links FP75a and BW76 and passes through part of the yard area.
6. Section 38 of the Commons Act 2006 (the 2006 Act) prohibits works on common land unless consent is obtained. Restricted works include the construction of buildings and other structures.
7. This application seeks consent for a number of works and they would be located on the land to the east of the bridleway. The works would include the construction of a building (approximately 1,370sqm) which would be wholly within the common land. Adjoining the northern side of the proposed building would be a vehicle parking area, some of which would be within the common land and a wash/fuel bay and associated access which would be mainly within the common land. Further to the broadly north of these structures, and outside the common land, would be an access drive and sand bays.
8. The proposed works within the common land would cover an area of about 1,869.4sqm. However, it is proposed as part of the overall works to remove from within the common land the greenkeepers’ building, the sand bays, the external wash/fuel area, fenced areas and areas of hardstanding. This area would be returned to heathland and the reinstated area would extend to about 1,712.3sqm. This would result in a net loss of about 157.1sqm of open common land, which the applicant states would amount to 0.02% of the common. Planning permission has been granted for these works.
9. Representations have been received from Natural England, the Open Spaces Society (OSS) and Chobham Parish Council. I have taken their views into account in my consideration of this application and highlight particular aspects of the submissions in the following sections of this decision.
10. One of the objections from the Parish Council is that it argues the publicity requirements for the application have not been followed. I note that the applicant has explained that a second notification process took place and with the overall publicity and consultations, including individual letters to the Commoner and Parish Council, as well as other organisations, I am satisfied that the process of notification of the application has been satisfactory.

**Main Issues**

1. I am required by section 39 of the 2006 Act to have regard to the following in determining this application.
2. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it):
3. the interests of the neighbourhood:
4. the public interest (which includes the 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): and
5. any other matter considered to be relevant.
6. Section 39(3) of the 2006 Act provides that consent may be given in relation to all or parts of the proposed works and subject to such modifications and conditions relating to the proposed works as are thought fit.
7. Defra’s Common Land Consents Policy (the Consents Policy), published in November 2015, sets out the policy objectives for protecting common land and the approach when considering applications for works on common land. I will have regard to this policy document in my considerations.

Reasons

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

1. The Register identifies one commoner with the rights to graze 3 horses or cattle or pigs, 24 heads of poultry, as well as rights of herbage, estovers, turbuary and piscary. The Commoner was notified of the application and has not responded and the evidence indicates that the commoner does not exercise those rights.
2. In terms of the applicant’s case, it is argued that the net effect on the common land would be very minor because existing buildings and hardstandings would be removed with the land reintroduced to heathland and therefore become available as useable common land. Nevertheless, even if that was to take place then the proposal would still diminish the overall available area of common land, albeit to a minor extent, and this is a matter that weighs against the scheme.
3. However, the OSS do not consider that the existing buildings and hardstandings within the common land are lawful. The OSS consequently makes the case that their removal and the reinstatement of the land should not be considered in the overall balance of the considerations in favour of approval. There is a dispute between the parties on this issue. I will consider this matter under this section but it is also relevant to the overall balance of considerations which I will examine later.
4. The evidence indicates that the greenkeepers’ building and the built surroundings within this part of the common land were in place in 1999. They were therefore not covered by the restrictions and requirements of the 2006 Act. The land was registered as common land in the early 1970s. However, this was the formal registration process and this does not in itself determine how long the land had been used as a common in the past. The issue is whether the land was common land at the time of the introduction of the Law of Property Act 1925. If this was to be the case then any subsequent erection of any building or fence, or the construction of any other work, that would prevent or impede access to the land would have required consent under that Act. If such consent was required there is no clear evidence of it being granted.
5. The OSS sets out its case that the land was subject to the restriction under the Law of Property Act 1925. This includes references to a web site link on the history of the Sunningdale golf courses. The highlighted extract explains that the original New Course was laid out and came into being in 1922, and that the construction of the course was laid out mainly on Chobham Common and that the Club purchased the freehold of the land, subject to commoners’ rights.
6. The applicant has made detailed arguments why this information should be considered to carry little or no weight, including that the authors of the web site do not credit their sources or provide any collaborative evidence, and that they are based abroad with no direct or first-hand knowledge of the historic situation. The applicant has detailed the investigations that it has taken on this matter but has been unable to find any evidence as to why and when any rights of common may have begun. It is suggested by the applicant that the rights could possibly have been established through prescription which would have taken only a 30 year period prior to formal registration.
7. The applicant considers that the OSS’s claims that the existing works are unlawful are based on supposition and assumption and that given the potential consequences for a landowner for breaches of the provisions of the Law of Property Act 1925 there is a high standard of proof which must be met in order to demonstrate that the works were unlawful.
8. It is very difficult to determine this matter precisely on the factual information available which is limited in extent and, with the time that has now passed, comprehensive information may not be available. It is not the purpose of this decision to make a definitive determination of this matter and anything I say should be considered in that light. More information may come to light in time which would allow a more comprehensive assessment to be taken. However, it is necessary, given the competing arguments, to determine the weight that I should attach to the removal of the existing buildings and structures in terms of the overall effect on the common land.
9. The OSS has, at least, although with the stated limitations, provided some information which supports its arguments that the land should be considered to be common land when that part of the golf course was laid out. It seems to me that it is unlikely from a practical point of view that the common rights, including the grazing of animals, were established after the golf courses were laid out and in use because the two uses do not appear especially compatible. On the other hand, while seeking to counter all these arguments made by the OSS, the applicant has provided only limited evidence itself of the history and background to the land. It may be that this information is not available and I appreciate it is difficult to prove a negative.
10. I appreciate that the buildings and surfaces in the yard within the common land have been there for some time and there is no evidence that those with common rights have ever complained about their presence. The scheme would secure their removal and the reinstatement of the land regardless of the background and historic situation.
11. I am left to make very much a judgement on the existing building and yard situation based on the limited information before me. Both the applicant and the OSS have submitted several representations to support their case on this matter and therefore have had the opportunity to set out the arguments and any evidence available. I consider that I need to take a precautionary approach to the consideration of the common land and, on balance, there is sufficient information and argument made from the OSS to provide some support to the case that the land under consideration in this application would have benefited from protection under the Law of Property Act 1925. The information does not allow me to come to a clearer conclusion and therefore I will consider both propositions in my overall conclusion.
12. While the Commoner may not object in this case, such rights are enduring and the potential reduction in common land, either with the applicant’s calculations or those of the OSS, would adversely affect those who have rights over the common. This is a matter that weighs against the application.

***The interests of the neighbourhood***

1. There is no definition of the concept of “neighbourhood” within the terms of the 2006 Act. However, in general terms works should only be permitted on common land if they maintain or improve the condition of the common, or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact (paragraph 3.2 of the Consents Policy).
2. In this case, the public are restricted to the rights of way through the golf courses and therefore the interests of the neighbourhood would mainly concern the effect on rights of way and the visual impact of the proposal. In these respects there is some overlap with the other considerations which are listed below.
3. At the present time the footpath (FP75a) runs through the greenkeepers’ yard and is close to the main greenkeepers’ building and other facilities such as the sand bays. The applicant has highlighted the working environment, the difficulties of mixing walkers with the working area and that there are deliveries including with large vehicles and other machinery working within this area. However, the route is open and there appears to be adequate visibility of approaching and working vehicles. Furthermore, the route through this yard area is clear and direct and a reasonably short distance. While the connecting right of way, between the footpath and the bridleway, is presently somewhat convoluted it is serviceable. As a consequence of the above analysis, any improvements and benefits that would result from the separation of walkers from the present yard area and its activities appears to me to be fairly limited.
4. However, the removal of the buildings and structures within the existing yard would result in a visual improvement to this area, especially as it would be landscaped and a heathland environment provided. Nevertheless, this wider, general area outside the common land would still contain a building and parking area with the associated activity and therefore the improvement to the experience for walkers along this reasonably short stretch of footpath, while worthwhile, would be reasonably modest in extent.
5. The replacement building would consolidate most of the storage, workshop and other activities in one building. It would be quite large and be constructed on undeveloped land extending development further to the east. A reasonably attractive area of trees, albeit with a potential limited life, would be removed to make way for the structure. The proposed building would be lowered into the ground and a comprehensive landscaping scheme is proposed. However, the large size of the building, in particular the long length of the southern elevation, would be likely to be apparent through the existing and proposed landscaping when bridleway users were approaching from the south. This landscaping, and sympathetic external materials, is unlikely to wholly mitigate the extent of the southern elevation which would appear as a large development in generally verdant surroundings. I consider that the size and form of this aspect of the building would detract from the rural character of this part of the golf course. In this respect I agree with Natural England who comment that given the scale of the building it feels that it is likely to have a negative impact on the more open character of the landscape in this area.

***The public interest***

*Nature conservation*

1. Details of a Landscape and Ecological Management Plan and a Construction Environmental Management Plan have been agreed by the Local Planning Authority, following confirmation from Natural England. These documents include the landscaping of the existing yard area within the common land after the removal of the buildings and structures. I am satisfied that were consent to be granted for this application, a condition could be attached to any approval to require that the works take place in accordance with these documents.
2. The landscaping scheme includes provision for the replacement of two trees for every one that would be removed and a range of other appropriate planting for the area. There would be a short term loss of habitat and vegetation but, in the longer term, the evidence indicates that there would be an overall net gain achieved in the biodiversity of the site. This weighs in favour of the scheme.

*Conservation of the landscape*

1. I have considered this matter above, and while the site would not intrude on any of the rights of way, it would detract from the experience of users of the bridleway, especially when they were approaching from the broadly south. This adverse visual effect would not be compensated for by the removal of the other buildings, structures and hardstandings within the existing yard. Because of the size of the proposed building and the extent of southern elevation, the net effect of the scheme would be to detract from the conservation of the landscape.

*Public access*

1. As explained above, there would be a fairly limited benefit to the public access routes through this part of the golf courses because of the reduction in the potential conflict and interaction between the use of the greenkeepers’ yard and walkers through this area. Furthermore, I have also concluded the improvement to the experience for walkers along this reasonably short stretch of footpath, while worthwhile, would be reasonably modest.

*Archaeological remains and features of historic interest*

1. There is no evidence that there are any archaeological remains or features of historic interest would be affected by the proposal.

**Other Matters**

1. The scheme has been the subject of much consideration by the applicant. There are detailed plans and specifications which explain how the building would be used and identify the various uses within the building. I accept that there is a need for improved facilities and storage and this would be achieved within a purpose designed building. It is logical for the accommodation to be in this fairly central area within the golf courses to provide the necessary maintenance of the courses in an operationally efficient manner. Both courses are of world renown and it is not unreasonable for the support facilities to be of a similar high quality. The high quality maintenance of the golf courses and thereby the related benefits that the courses bring, such as the provision of outdoor sport and recreation, and the benefits to the local economy from the hosting of tournaments, are aspects that support the provision of the building.
2. The Consents Policy explains that the Secretary of State will wish to know what alternatives have been considered to the application proposal. This has also been raised by the OSS. The applicant has set out details of the examination of alternatives. This includes that the applicant would have wished to have avoided development on the common land if this had been possible. It has been explained that the applicant does not own the freehold of any land outside the common and whilst the applicant does lease land outside of the common, it is explained that it has not been possible to acquire the land for the purposes of the development.
3. The OSS comment that in terms of alternatives it seems to the OSS that it is possible that the building could be moved further north and outside the common land. This would be within the leased land.
4. The leased land is to be used for the access drive and sand bay area and a section of the parking area in front of the proposed building. Clearly part of the development is, therefore, proposed to be accommodated within the leased land and not within the common land. The applicant has made several submissions on the issues of alternatives. However, these comments and information do not explain in detail, in my view, for instance, why it would not be possible to accommodate all rather than just some of the vehicle parking area within the land outside the common and also the wash/fuel area. The same could be said for some, if not all, of the building itself. I have very carefully considered the evidence and information provided by the applicant on this matter. However, I am not satisfied that the case made has been comprehensively demonstrated why the development needs to be within the common land to the extent proposed.

**Overall Balance and Conclusion**

1. The proposal has attributes that weigh in support of the application. There would be a limited benefit from separating walkers from the working yard area, a modest benefit to the experience of rights of way users when using the routes in and around the yard and, in time, a net gain in the biodiversity of the overall site. The scheme would clearly assist with the on-going maintenance of the golf courses and provide support facilities that would be more secure and appropriate to ensure retention of world class golf. The scheme would also indirectly provide support to the local and wider economy because the building would aid the well-being of the course and thereby strengthen the ability to host tournaments. The good maintenance of the course would facilitate the continued use of the land in sport and recreation and would thereby help deliver health and social benefits for those playing.
2. The Consents Policy indicates that consent will not normally be granted under section 38 for permanent buildings on common land, because such development is normally incompatible with the future use of the land as common land. However, in this case, the proposed building is intrinsically related to the enjoyment and management of the common land in its golfing use and therefore could be considered appropriate.
3. On the other hand, even on the applicant’s calculations, the area of common land available would be diminished. The net effect of the scheme would be to cause harm to the conservation of the landscape. Furthermore, the information does not satisfy me that it has been demonstrated that the development has to be located within the common land to the extent proposed. It seems to me that more of the common land would be taken than has been clearly shown to be necessary and this weighs against the scheme in its present form.
4. The provision of such a large building on the common land would have a lasting impact. The building in itself would not maintain or improve the condition of the common in that specific location, and overall, as I have said above, the area of open common land would be diminished. Natural England has commented that the reduction of 157.1sqm of common land available is regrettable and, given the impact of the works on the common, Natural England feel a net gain in common land available for the public use would be a more appropriate outcome in terms of serving the public interest. I agree.
5. Drawing all these matters together, the scheme is not without merit. However, the concerns that I have outlined above mean that I consider that it could be possible that the scheme could be undertaken with less or no adverse effect on the common land compared with that proposed. Overall and weighing all the matters in the balance, the harm that I have identified would not be outweighed by the benefits of the proposal in terms of the effect on the common land. This balance is formed on the basis of the applicant’s case that the loss of open common land would be 157.1sqm. If the uncertainty with the building and structures in the existing yard within the common land are added into the assessment then the balance falls even more clearly in favour of refusal of the application.
6. In the light of the above analysis, I conclude that the application should be refused.

David Wyborn

INSPECTOR