Planning Inspectorate logo

|  |
| --- |
| **Application Decision** |
|  |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 June 2023** |

|  |
| --- |
| **Application Ref: COM/3311552**  Register Unit: CL162  Registration Authority: Surrey County Council |
| * The application, dated 18 November 2022, is made under Section 38 of the Commons Act 2006 (“the 2006 Act”) for consent to carry out restricted works on common land. |
| * The application is made on behalf of Waverley Borough Council. |
| * The works comprise the creation of a 5.5m access road, a 1.5m footway and associated works. |

**Decision**

1. The application is not approved.

Preliminary Matters

1. I have not visited the site, but I was satisfied I could make my decision without the need to do so.
2. For purposes of identification only the location of the proposed works is shown marked in red on the attached plan.

###### The Application

1. The application relates to the construction of a new access road associated with an outline planning application for up to 53 homes on land adjoining the common. This is proposed to replace the existing narrower (2.5m) access to Coomebury Cottage. I understand that the planning application has now been refused but the applicant has not sought to withdraw the current application and I have therefore proceeded to consider it.

**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 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.
5. any other matter considered to be relevant.
6. I will also have regard to published guidance (Department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy Guidance, November 2015) in relation to the determination of applications under Section 38.

**Representations**

1. Fourteen objections were submitted from individuals and organisations, including Dunsfold Parish Council, Dunsfold Planning Action Group, the British Horse Society, Natural England (NE) and the Open Spaces Society. Some of the objectors opposed not only the works applied for but also the proposed housing development intended to be served by the new access road.

The interests of persons occupying or having rights over the land

1. The land affected by the proposed works is owned by Waverley Borough Council and leased to Dunsfold Parish Council.
2. The owners of Coomebury Cottage have the right of access with or without vehicles along the existing access road. This right is exercised on a daily basis by the current owners but will become obsolete if and when the property is developed.
3. There is also a general right of access for the wider community which will still be exercisable over the proposed new access road.

The interests of the neighbourhood

1. The 2006 Act does not define the term ‘neighbourhood’. However, in this case it seems logical to consider the village of Dunsfold to be the appropriate neighbourhood.
2. The published guidance states that the consent process seeks to ensure that *“…works take place on common land only where 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.”* In addition, in respect of applications for works under section 38 of the 2006 Act, it states that *“Commons should be maintained or improved as a result of the works being proposed on them. The Secretary of State sees section 38 as conferring additional protection on common land, rather than enabling common land to be used for purposes inconsistent with its origin, status and character.”*
3. The works proposed in this application are not temporary and will have a lasting impact on the common. Also, it cannot be said that the construction of a 5.5m road and 1.5m footway will maintain or improve the condition of the common. By its nature, the proposed new access road will not only reduce the area of common available for recreational use but will also introduce a more urban type of feature into part of the common.
4. However, the guidance also recognises that the construction of a paved vehicular way may be the only practical means of providing access to land adjacent to the common. That would seem to be the case here and it appears to be generally accepted that the proposed access road would be the most practical means of providing improved access to the adjoining land, if such access is needed.
5. In cases where proposed works do not benefit the common but there is a potential underlying public benefit, the guidance also states that such projects *“…are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits.”*
6. In this case, any wider benefit of the proposed works is not clear, particularly in the light of the refusal of planning permission for the housing development that would be enabled by the construction of the road. In any event, the deregistration of the land to be covered by the new road would not result in greater fragmentation of the common than currently proposed as the road would still be accessible to the public. Also, there would appear to be no reason why a suitable area of replacement land could not be provided on land adjoining the common as part of the proposed residential development.

*Conclusions on the interests of the neighbourhood*

1. The proposed works will not maintain or improve the common but will damage it to some extent. In addition, they are not temporary, will have a lasting impact and will not confer any clear wider benefit.

The public interest

Nature Conservation

1. Construction of the proposed access road will require the removal of 5 trees. These are said to be classed as either of low quality or recommended for removal as a result of their existing condition. It is proposed that these will be replaced with English Oak, Hawthorn and Hazel to be planted within the common.
2. Dunsfold Common is not subject to any statutory designation for nature conservation. Natural England (NE), the body responsible for advising the Secretary of State on matters such as nature conservation, landscape and countryside access, has stated that the common supports a good diversity of habitats and has been designated as a (non-statutory) Site of Nature Conservation Interest (SNCI). NE has expressed pleasure that the wildlife interest of the site has been recognised and measures to mitigate any adverse effects of the proposed works put forward although they are not able to say whether these would increase the nature conservation value of the common.
3. Overall, the proposed works are likely to have only a limited effect on the nature conservation interest of the common and the mitigation measures proposed may actually enhance it.

Landscape

1. The site is located within an Area of Great Landscape Value defined in the Waverley local Plan.
2. NE has expressed the view that the upgrading of the existing concrete track which is proposed will introduce a more urbanising feature into this part of the common which, despite the existence of the track, still retains a strong rural, semi-natural character.
3. Although the impact of the proposed works on the wider landscape will be limited, it will to some extent be detrimental.

Public Access

1. If the application is approved and the proposed access road constructed, it will remain as part of the common and therefore still be open to public access. However, people walking from north to south or south to north will have a wider and busier road to cross which may be regarded as something of a barrier to movement. In addition, access will have to be temporarily restricted during the construction of the road.
2. A public footpath runs along the existing driveway to Coomebury Cottage. The application proposes that this would remain and run along the footway adjacent to the new access road.

Archaeological remains and features of historic interest

1. The proposed works will not affect any known archaeological remains or features of historic interest. The Historic Environment Officer of Surrey County Council has raised no objection to the application subject to the imposition of appropriate conditions on the planning application.

Conclusions on the public interest

1. Any adverse effects of the proposed works on nature conservation are likely to be mitigated by measures put forward in the application. However, the works will have a negative effect on the landscape of the area and on public access, albeit of a limited nature.

Conclusions

1. Overall, the proposed works would not maintain or improve the common, would not be temporary and would not confer wider public benefit. Accordingly, the application does not comply with government policy and should not be approved.

Barney Grimshaw

INSPECTOR

