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| **Application Decision** |
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| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 May 2024** |

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| **Application Ref: COM/3327738****MERROW DOWNS, GUILDFORD, SURREY**Register Unit No: CL3Commons Registration Authority: Surrey County Council |
| * The application, dated 4 August 2023, 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 by Guildford Borough Council (GBC)
* The works comprise (measurements are approximate):
1. a 330m long soil bund/embankment (1.2m wide and 0.7m high) around existing car park; and
2. three removeable metal bollards.
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Decision

* 1. Consent is granted for the works in accordance with the application dated 4 August 2023 and accompanying plan, subject to the following conditions:
1. the works shall begin no later than three years from the date of this decision.

REASON: To provide certainty to users of Merrow Downs.

1. the common shall be restored within one month from the completion of the works.

REASON: To retain access for the public across Merrow Downs.

* 1. For the purposes of identification only the location of the works is shown on the attached plan.

**Preliminary Matters**

* 1. I have had regard to Defra’s Common Land Consents Policy (November 2015) in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
	2. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) Surrey Hills AONB Board (AONBB), Surrey County Council Historic Environment Planning Team (HEPT) and the Open Spaces Society (OSS).
	3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
1. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
2. the interests of the neighbourhood;
3. the public interest; Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest; and
4. any other matter considered to be relevant.

**Reasons**

1. GBC explains that the common is experiencing incidents of unauthorised vehicle access which impact on recreational use of the common. The proposed soil bund will comprise materials to be brought onto the site. It is needed to stop unwanted vehicular incursions onto the common from the southern end of Grove Road, which leads into the car park, and from the car park itself. The proposed removeable bollards will provide access for site management.

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

1. Pursuant to Commons Commissioner Decision 36/U/10 of 4 March 1976 following a hearing into the question of the ownership of CL3 land, the Commons Commissioner was not satisfied that any person was the owner of part of the land and that part remains subject to protection by GBC under s9 of the Commons Registration Act 1965 (now under s45 of the 2006 Act). It is not clear whether the land covered by the Commons Commissioner Decision includes the car park. In any case, GBC claims to be the current owner of the application land and there is no evidence before me to suggest otherwise.
2. The commons register records two rights of common, both of which were disputed and became void on 28 June 1976. GBC advises that a nearby property in High Path Road has an access easement over the application land, which is managed by a lockable bollard. GBC confirms that the arrangement will not be affected by the proposed works.
3. There is no evidence to suggest that the proposed works will harm the interests of those occupying or having rights over the land.

***The interests of the neighbourhood and the protection of public rights of access***

1. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people and is closely linked with public rights of access.
2. Merrow Downs is subject to rights of public access on foot and on horseback under section 193 of the Law of Property Act 1925 and NE advises that the proposed works intersect with a bridleway. GBC has confirmed that gaps in the bund will be provided at public rights of way and well used desire lines. There will be minimum of 8 gaps of at least 1.5m in width in accordance with the standards required to allow for horse riders and mobility scooters.
3. I consider that sufficient gaps will be placed at suitable points in the bunding and between the bollards to allow public access on foot and on horseback to continue and I am satisfied that the above interests will not be unacceptably harmed.

**The public interest**

1. As well as the public interest in the protection of public rights of access, I must also have regard to the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

 ***Nature conservation and conservation of the landscape***

1. There is no evidence to suggest that the common is subject to any statutory or non-statutory designations for nature conservation. GBC advises that the common has a large population of small blue butterfly and is managed for nature conservation. GBC proposes to seed the bund with a native wildflower mix, which NE advises has the potential to provide food and habitats for small insects and other invertebrates.
2. I conclude that proposed works are unlikely to harm nature conservation interests and that the wildflower seeding is likely to benefit those interests.
3. The common lies within the Surrey Hills National Landscape (formerly the Surrey Hills Area of Outstanding Natural Beauty – AONB). AONBB generally supports the proposed works, subject to there being sufficient gaps in the bund to allow the flow of drainage as well as to allow public access. I am satisfied that sufficient gaps will be provided.
4. NE suggests that a flowered bund has the potential to add interest for users of the common and I agree that the flowers should provide a pleasant visual feature. It is likely that there will be wider disturbance of the ground whilst the bund is being installed but the land will be restored on completion of the works, which can be ensured by attaching a suitable condition to the consent.
5. I conclude that three bollards and a bund of 0.7m in height around the car park are unlikely to have a detrimental visual impact and that the seeded wildflowers will help to conserve the natural beauty of the Surrey Hills National Landscape.

***Archaeological remains and features of historic interest***

1. HEPT advises that the area is identified as being of High Archaeological Potential as it was the location of a Second World War prisoner of war camp, but, as the bund is to be formed from imported material, the works will not involve any ground disturbance. HEPT further advises that the footprint of the bollards will cause minimal ground disturbance that will not threaten buried archaeology and confirms that it has no archaeological concerns about the proposals.
2. I am satisfied that the proposed works will not harm archaeological remains or features of historic interest.

**Other relevant matters**

1. Merrow Downs is regulated by the Surrey Act 1985. Given that the 1985 Act provides for GBC to execute any necessary works for the protection and improvement of the common, OSS sought clarification as to why they had applied for Secretary of State Consent under s38 of the 2006 Act.
2. Published Common Land Guidance Sheet 2c (Works and schemes of management) advises those proposing to carry out restricted works on common land to be satisfied that, under the terms of any scheme, s38 consent is needed. In this case, an application under s38 has been made and has been decided on its merits.

**Conclusion**

1. I conclude that the works will not unacceptably harm the interests of the neighbourhood and public rights of access or archaeological remains and features of historic interest. I further conclude that the works may be of some benefit to nature conservation and landscape interests. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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