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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: 16 May 2025** |
| **Application Ref: COM/3361343**  **Chobham Common, East Sussex**  Register Unit No: CL326  Commons Registration Authority: Surrey County Council.   * The application dated 21 February 2025 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 Surrey County Council (SCC). * The works comprise (all measurements are approximate) resurfacing with bitumen macadam of a car park access track (180m long x 7m wide) and installation of four traffic calming humps. | |

**Decision**

1. Consent is granted for the works described in the application dated 21 February 2025 and the plans submitted with it, subject to the following conditions:
2. The works shall begin no later than 3 years from the date of this decision.

REASON: To provide certainty to users of the common land.

1. Any common land impacted by the works shall be fully reinstated within one month from the completion of the works (note that this does not apply to any physical changes or permanent features introduced as part of the works for which consent is granted).

REASON: To retain access for the public over the common land.

1. For the purposes of identification only, the location of the proposed works is shown on the attached plans.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) 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. The application has been determined solely on the basis of written evidence. I have taken account of representations made by Natural England (NE), Open Spaces Society (OSS) and Chobham Common Preservation Committee (CCPC).
3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:
4. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
5. the interests of the neighbourhood;
6. 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
7. any other matter considered to be relevant.

**Reasons**

1. The proposed works aim to improve the existing single access point into and out of Chobham Common Roundabout Car Park from the B383 Windsor Road. The works will create a sealed surface circular spine running through the centre of the car park and back to link with the entrance/exit, whilst retaining the current parking bay surface.
2. SCC advises that Roundabout Car Park is the largest and busiest serving Chobham Common. The existing surface comprises compacted bitumen planings, which have a limited life and frequently erode to leave an uneven, pot-holed and unsafe surface for vehicles and pedestrians. The works will form a level, safe and durable surface through the car park. The four traffic calming humps will be installed to ensure that vehicles drive slowly over the improved surface.

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

1. SSC owns the land the subject of the application and it follows that the proposed works are in the landowner’s interests.
2. The common land register for unit CL326 records two rights holders. Rights include turbary, estovers, piscary and the right to graze 5 goats over a specified area of the common. SCC advises that none of the rights are exercised. Even if they were, I consider it unlikely that any of the rights could be exercised over an area of the common that is already a surfaced car park and I am satisfied that the proposed works are unlikely to harm the interests of those having rights over the land.

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

1. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access on foot. The application land is an existing car park serving visitors to the common. The proposed works will not change its use, increase its size or prevent local people and the public alike from walking over it, as they currently can. Indeed, the purpose of the works is to improve the surface for both vehicles and pedestrians and to avoid the need for disruptive annual maintenance.
2. I consider that the surface improvement works will be of benefit to those driving and walking through the car park and that the traffic calming humps will make it safer for pedestrians.
3. Chobham Common is subject to section 193 of the Law of Property Act 1925, which gives the public a right of access for air and exercise on foot and on horseback. Both OSS and CCPC point out that the current car park barrier height is too low to allow horse box vehicles, and potentially some vehicles with horse trailers, to enter. I agree that this is unhelpful to those wishing to exercise their right to ride on horseback over adjacent areas of the common.
4. OSS and CCPC have suggested moving the height barrier back towards the car park to create some dedicated equestrian vehicle spaces outside of the main parking area. In response SCC advises that as part of additional works to be carried out that they believe do not require Section 38 consent adjustments to the height barrier will be made, with appropriate signing, to provide limited provision for horse box parking. I consider that this will improve opportunities for horse riders to exercise their right of access over the common and that it weighs in favour of giving consent for the proposed works.

***The public interest***

*Nature conservation*

1. NE advises that the works site sits within the boundaries of Chobham Common Site of Special Scientific Interest (SSSI) and the area is also subject to the Thursley, Ash, Pirbright and Chobham Special Area of Conservation (SAC) and the Thames Basin Heaths Special Protection Area (SPA).
2. NE considers that the change from an unsealed to a sealed tarmac surface has potential, albeit very slight, for negative impacts on the SSSI, SAC and SPA as the supply and flow of water from rainfall to nearby habitats might be altered and spillages of oil, petrol and diesel from vehicles might find their way more easily out of the car park. However, the potential is only very slight as there is a ‘buffer zone’ of habitat with very low nature conservation interest around the car park consisting of species-poor acid grassland and dense bracken. NE advises that this, combined with disturbance from car park users, means it is highly unlikely that any of the bird species for which the SPA is designated would ever take up residence in the close vicinity of the car park. Therefore, risk of disturbance/displacement of nesting SPA birds is minimal, even if work were to take place during the bird nesting period.
3. SCC advises that to ensure minimal disturbance of nesting birds all construction work can be undertaken within the existing footprint of the car park and that contractors will not park vehicles or store materials outside of the existing surfaced area. SCC recognises that the sealed surface could potentially alter the direction and flow of water run-off and will take it into account when specifying the levels and direction of run-off for the new surface. SCC adds that it fully recognises the sensitivity of the site and obligations from multiple designations, so will ensure that any appropriate additional avoidance measures are set out in the necessary Habitats Regulations Assessment (HRA).
4. Surrey Wildlife Trust, which has a formal interest in the site, was consulted about the proposals but did not comment.
5. I am satisfied that measures will be put in place to control contractor movement over the common during the works and to address potential issues with water run-off from the resurfaced areas of the car park. I conclude that nature conservation interests are unlikely be harmed by the proposed works.

*Conservation of the landscape*

1. There is no evidence to suggest that the application land is subject to any formal landscape designation to which the Protected Landscapes duty applies.
2. SCC describes the car park as large, square, unsightly and difficult to maintain in a good condition. Parking bays are not formally set out. SCC says the proposed works will allow more structured parking which will maximise the available space and create a more ordered and tidy parking area and a more pleasant gateway to the rest of the common. SCC also says other works carried out that do not need section 38 consent include regrading and levelling of the existing surface.
3. I consider that the proposed works will only negligibly impact on landscape interests but are likely improve the car park’s appearance to a certain extent.

*Archaeological remains and features of historic interest*

1. Historic England and the Local Authority Archaeological Service were consulted about the application but did not comment. There is no evidence to suggest that the works will harm the above interests.

**Conclusion**

1. I conclude that the proposed works are unlikely to harm the interests of those occupying or having rights over the land or harm the public interests in nature conservation and archaeological remains and features of historic interest. I further conclude that the works may bring a slight improvement to landscape interests and, together with works that do not need Section 38 consent, will provide some parking facilities for horse riders to enable rights of access over the common on horseback to be exercised.
2. Consent is therefore granted for the proposed works subject to the conditions set out in paragraph 1.

**Harry Wood**

**First plan referred to in paragraph 2
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**Second plan referred to in paragraph 2.
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