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| **Application Decision** |
| Site visit made on 1 July 2025 |
| **by Paul Freer BA (Hons) LLM PhD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 August 2025** |
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| |  | | --- | | **Application Ref: COM/3346161**  **Dunsfold Common, Dunsfold Common Road, Dunsfold, Surrey** | | Register Unit: CL162 | | Registration Authority: Surrey County Council | | * The application, dated 6 June 2024, is made under Section 38 of the Commons Act (the 2006 Act) for consent to carry out restrictedworks on common land. * The application is made by Sigma Homes Limited. * The application is for works consisting of: * the removal of the existing concrete surfacing and the creation of a 5.5 metre, two-way access road. * The creation of a 1.5m wide footway on the southern side of the access for pedestrian right of way. * The provision of an uncontrolled tactile crossing point on for the new connection to the public footpath, and a tactile crossing at the proposed access. * The creation of a 1.5m wide new footway on the east side of Dunsfold Common Road. * The creation of a defined access radius onto Dunsfold Common Road * The removal of the existing entrance gate to Coombebury Cottage and partial removal of the boundary fence. * The removal of 5 trees adjacent to the access.  |  |  | | --- | --- | |  |  | | | | |

**Decision**

1. Consent for the removal of the existing concrete surfacing and the creation of a 5.5 metre, two-way access road; the creation of a 1.5m wide footway on the southern side of the access for pedestrian right of way; the provision of an uncontrolled tactile crossing point on for the new connection to the public footpath, and a tactile crossing at the proposed access; the creation of a 1.5m wide new footway on the east side of Dunsfold Common Road; and the creation of a defined access radius onto Dunsfold Common Road at Dunsfold Common, Dunsfold Common Road, Dunsfold, Surrey is granted in accordance with the application dated 6 June 2024 and accompanying plans, subject to the following condition:

*Prior to the commencement of the restricted works, an application under section 15(8) of the Commons Act 2006 for the dedication of the land shown shaded in yellow on Drawing No PL-10 Revision E, dated 3 October 2022 and titled ‘Village Green Proposal’*, *shall be made to the Commons Registration Authority in the form of a Deed of Dedication in Form 44*.

**Preliminary matters**

1. I carried out an unaccompanied site visit on 1 July 2025 during which I viewed the existing vehicular access to Coombebury Cottage from the public highway. I also took the opportunity to view the area surrounding the appeal site.
2. I have taken the description of the development set out in the header above from the application form. However, some of the ‘works’ described there are not restricted works for the purposes of an application made under Section 38 of the 2006 Act. I therefore modified that description in my Decision above to refer only to ‘restricted works’.
3. Following initial advertisement of the applications, a total of 7 representations were received. Some of those who made representations at that initial stage also subsequently submitted supplementary comments at later stages of the application process. I have taken all those representations into account, including where the views expressed in earlier submissions were overtaken by subsequent events and/or have been revised to take account of those subsequent events.
4. The land to which the application relates is not owned by Sigma Homes Ltd, albeit the landowner has been approached with a view to purchasing it. The land is owned by Waverley Borough Council (WBC) and is leased to Dunsfold Parish Council (DPC). Both of those Councils object to the application. This creates an obvious tension in terms of carrying out the works for which consent is sought. However, that is not a matter before me and I must determine the application as submitted.
5. I have determined this application on the basis of the written evidence and my own observations of the site and surroundings.

**Main Issues**

1. I am required by Section 39(1) of the 2006 Act to have regard to the following in determining this application:

(a) the interests of persons having rights in relation to, or occupying, the land

(and in particular persons exercising rights of common over it);

(b) the interests of the neighbourhood;

(c) the public interest, including 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

(d) any other matter considered to be relevant.

1. In considering these tests, regard should be given to the Department for Environment, Food and Rural Affairs Common Land Consents Policy of November 2015 (“the Consents Policy”) which has been published for the guidance of both the Planning Inspectorate and applicants.

***The application***

1. On 8 May 2024, outline planning permission was granted on appeal for the erection of up to 53 dwellings, public open space, landscaping and related infrastructure (APP/R3650/W/23/3332590). All matters were reserved except access. The permission was subject to conditions and to the applicants entering into a Section 106 Agreement to secure, amongst other things, the delivery of the public open space. This application is made under Section 38 of the 2006 Act is for a revised access to provide vehicular and pedestrian access to the residential development proposed.

**Reasons**

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

1. The owners of Coombebury Cottage have a right of access with or without vehicles along the existing access road. This right is exercised on a daily basis but will become obsolete if the planning permission for the residential development of the site is implemented.
2. There is a general right of access for the wider community which would still be exercisable over the new vehicular access. I recognise that the additional vehicular traffic generated by the residential development that would use the new vehicular access would to some extent interrupt the exercise of that right, but this would only be for a short duration at any one time and in that sense would only be a minor inconvenience to someone exercising that right.

***The interests of the neighbourhood***

1. The 2006 Act does not define the term ‘neighbourhood’. I concur with the view expressed by the Inspector who determined a previous application made under Section 38 (COM/3311552) that the village of Dunsfold is the appropriate neighbourhood for this purpose.
2. For the reasons set out above, the proposed works would interfere to some extent with the rights over the common that may be exercised ty those living in the neighbourhood. There would also be an interference with the exercise of those rights during the construction period for the residential development, albeit that interference would be temporary.
3. The proposed works would also introduce an urban feature into this part of the common. The effect of this on the landscape, and therefore on the interests of the neighbourhood, is considered in more detail below.
4. The applicants point out that the new residential development would provide a new circular walking route of some 650 metres in length and would include a ‘destination’ in the form of a pond. This circular walking route would provide an alternative route throughout the year, particularly during the winter months when the common can be more difficult to negotiate.
5. The new circular walking route would be a benefit to the neighbourhood. However, the route is over private land and in that context is a permissive route rather than being a designated right of way. The availability of that route could therefore be withdrawn at any time. For that reason, I only afford this benefit to the neighbourhood limited weight.
6. The proposed works also includes a new section of footway between the site access and the existing footway on the east side. This would be an all-weather surface, suitable for buggies and wheelchairs. This would also be a benefit to the neighbourhood but, because of its location and extent, is a benefit that only attracts limited weight.
7. On balance, I conclude that the proposed works would have neutral effect on the interests of the neighbourhood.

***The public interest***

*The conservation of the landscape*

1. In the vicinity of the application site, Dunsfold Common comprises a narrow strip of land on the east and south-east side of Dunsfold Common Road. The existing vehicular access enters onto Dunsfold Common Road and is therefore typically viewed in the context of other vehicular accesses onto that road to the north-west of the site. I recognise that the vehicular accesses located on the north-west side of Dunsfold Common Road are not on the common. Nevertheless, those vehicular accesses form part of the wider landscape in which the proposed new vehicular access would typically be viewed and experienced.
2. Photographs of the site embedded within the applicant’s evidence show the grass on either side of the existing access to be mown. That gave the land a more urban or sub-urban character and appearance. However, at the time of my site visit, the land had reverted to a more natural appearance that was broadly consistent with photographs in objector’s evidence of how the land looked prior to 2024.
3. The existing access would be considerably widened as part of the proposed works, with the addition of a 1.5m footway. This would result in a more urban appearance that in isolation would be incongruous with the more natural character and appearance of the land. It would also result in fragmentation of this part of the common, insofar as the areas of grass/vegetation either side of the paved surface would become more widely separated.
4. Nevertheless, the proposed access would not typically be viewed in isolation but in the context of the other vehicular accesses that cross the soft verge of Dunsfold Common Road. In that sense, this part of the common is already fragmented, comprising patches of grass/vegetation separated by a series of vehicular accesses. Looked at in this way, the widening of an existing vehicular access would not have a significant effect on the wider landscape within which it would be viewed. For that reason, the landscape would not be conserved but any detrimental effect would only be limited.

*Nature conservation*

1. Natural England (NE) describe the impact of the proposed works on nature conservation as being “negligible”. NE anticipates that any benefits to nature conservation arising from the proposed works would be dependent upon compliance with the conditions imposed on the planning permission for the residential development of the site but otherwise does not raise any objection in that respect.
2. Reference is made in representations to the Dunsfold volunteer Amphibian Rescue Patrol, and to the installation of a temporary net to prevent amphibians from crossing the road. The amphibians recorded in this locality include Great Crested Newts, a protected species. Concern is expressed that these amphibian populations have difficulty in traversing obstacles such as kerbstones, and that the proposed widening of the access would exacerbate that difficulty.
3. I am not convinced by the logic of that objection. It seems to me that the amphibians would have the same difficulty in surmounted the initial kerbstone irrespective of the width of access to be crossed having done so. It therefore seems to me that is more a matter of detailed design than of principle, and that these concerns may be addressed in the reserved matters that have yet to be approved. In that context, I note that in allowing the appeal for the residential development the Inspector imposed a condition (No.32) requiring the preparation of an amphibian mitigation and enhancement strategy. Moreover, NE have undoubted knowledge and expertise in this area and have not raised any objection on these grounds.

*The protection of archaeological remains and features of historic interest*

1. Historic England have not commented on the application. There is no indication that any archaeological remains or features of historic interest on the common land would be lost or damaged as a result of the proposed works.

*The protection of public rights of access to any area of land*

1. There would be no amendment to or diversion of the existing public footpath where it traverses the common land. The construction phase of the residential development would result in the temporary closure or diversion of that public footpath. Access to the public footpath may to some extent be hindered by the increased vehicular traffic using the widened access on completion of the residential development but would not prevent it. I am satisfied that the proposed works would not adversely affect public rights of access to any area of land.

**Other matters considered to be relevant**

1. The proposed works are required to provide access for the residential development for which outline planning permission has been granted (APP/R3650/W/23/3332590). The proposed residential development would boost local housing supply in an area where the local planning authority cannot demonstrate a five-year housing supply: the figure was only 1.28 years supply as of February 2025. This would include the provision of some affordable housing. The scheme would also provide an area of public open space, additional tree planting and through the imposition of a condition would achieve a minimum 10% Biodiversity Net Gain overall.
2. The development would therefore confer economic, social, and environmental public benefits which attract significant weight in favour of allowing the proposal. The proposed works subject to this application are necessary to unlock those benefits. This is a matter which I have considered in the overall balance.
3. Paragraph 4.3 of the Consents Policy states that the Secretary of State will wish to know what alternatives have been considered to the application proposal. The applicant explains that there are no other existing access routes from Dunsfold Common Road. The creation of a new vehicular access would require significant tree removal and the destruction of habitat. Moreover, the neighbouring land is also not under the applicant’s control. I am therefore satisfied that the widening of the existing access onto Dunsfold Common Road is the only suitable location for the proposed works and that there is no realistic alternative.
4. The Consents Policy recognises that the construction of a paved vehicular way may be the only practical means of providing access to land adjacent to the common. I am satisfied that this is the case here. I am therefore satisfied that the works proposed in the application are a positive benefit, albeit indirectly, insofar as they unlock the benefits that would accrue from the residential development.
5. The applicants do not own the land on which the proposed works would take place and therefore are not in a position to submit an application under section 16 of the 2006 Act to replace the common land that would be covered by the proposed works. Instead, the applicants have entered into a Section 106 Agreement to ensure that the area of Public Open Space shown in the indicative layout for the residential development is secured.
6. In principle, I see no difficulty with a Section 106 Agreement being used to secure the Public Open Space in perpetuity. However, the Public Open Space Specification as defined in the Section 106 Agreement states that it may include provision for the Public Open Space to be voluntarily registered as a village green under s15(8) of the Commons Act 2006 (emphasis added). Consequently, as drafted, the Section 106 Agreement could not compel the applicant to register the Public Open Space as a village green.
7. Paragraph 3.2 of the Consents Policy states that the objective is to ensure that the stock of common land and greens is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit. The principle of there being no net loss of common land is therefore at front and centre of the Consents Policy.
8. Paragraph 5.10 of the Consents Policy notes that the deregistration of the land covered by a vehicular way, and the substitution of replacement land elsewhere, may be undesirable in that the release land ceases to be subject to statutory protection, may cause fragmentation of the common or green, and may cease to be available to the community. In this case, whilst the land covered by the widened vehicular access would not be deregistered, the proposed works would interfere with the exercise of rights available to the neighbourhood.
9. Consequently, whilst the Section 106 would secure the provision of public open space, it would not offset the effective ‘loss’ of common land caused by the widening of the existing access. The applicant does not own the land and therefore cannot make an application under Section 16 of the 2006 Act to provide replacement land. Therefore, some other mechanism is required.
10. Following the High Court judgement in *The King (on the application of Gladman Developments Limited v Secretary of State for Environment, Food and Rural Affairs* (AC-2024-LON-002368), it is established that a condition can be imposed on a consent granted under Section 38 of the 2006 Act to compel an applicant to dedicate replacement land before the works commence. The applicant in this case is content with that approach and has provided a form of wording.
11. In this case, the situation is complicated somewhat by the fact that the planning permission that has been granted for the residential development is in outline only, with all matters reserved apart from access. It is therefore entirely possible that the scheme may go through several iterations before the final layout is agreed.
12. Nevertheless, the application drawings include Drawing No PL-10 Revision E, dated 3 October 2022 and titled ‘Village Green Proposal’. On that plan, the area to be offered as a Village Green is shown shaded in yellow and extends across the northern boundary of the application site. The area to be offered is not particular deep but would provide a linear feature that would be suitable for many forms of recreation.
13. The area of land of the village green amounts to some 0.16 hectares. This would greatly exceed the area covered by the widened vehicular access and would provide a far better environment and greater opportunities for recreation. I therefore consider that the provision of the Village Green that is available to all, to be secured by a condition, represents a significant benefit to the neighbourhood.

**Overall balance and conclusion**

1. Paragraph 3.2 of the Consents Policy seeks the outcome 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.
2. I have found that the works proposed in this case would neither maintain nor improve the condition of the common. In particular, the physical works would have a noticeable urbanising impact that would be lasting albeit, for the reason set out above, that would only be detrimental to a limited extent. Moreover, the creation of the vehicular accesses would facilitate an increase in the number of vehicular movements across the common. This would not be consistent with its status. The proposed works would therefore conflict with the outcomes set out in paragraph 3.2 of the Consents Policy. This counts heavily against the proposal.
3. Other impacts on the common resulting from the proposed works would either be neutral or capable of mitigated. In relation to nature conservation, this would largely be achieved by conditions imposed upon the outline planning permission.
4. Against this, the proposed works are necessary to unlock the benefits that would arise from the residential development that is proposed. These would include the provision of housing (including affordable housing) in a Borough that cannot demonstrate a five-year supply of housing, and a circular walk that links with an existing public footpath. There is no realistic alternative location for those works, without which those benefits would not be secured.
5. However, by far the greatest benefit that would arise (indirectly) from the proposed works is the provision of the Village Green of some 0.16 hectares in area. This would far exceed the area covered by the proposed vehicular access and would represent a significant benefit to the neighbourhood. I am satisfied that this can be achieved in perpetuity by the imposition of an appropriately worded condition.
6. Paragraph 1.3 of the Consents Policy expects adherence to the policy but does allow for departures from it as appropriate based on the merits of the case. Insofar as the proposed works are a departure from the Consents Policy, which they are not in all respects, I consider that the wider public benefits arising from the proposal (principally the Village Green) justify a departure from the Consents Policy in this case.
7. In weighing the overall balance, I conclude that the applicants have demonstrated that the public benefits that would undoubtably arise (albeit indirectly) from the proposed works would outweigh the permanent harm to the common that would be caused by those works. I am therefore persuaded that consent should be granted.

Paul Freer

INSPECTOR

Figure 1 – Application site

