**##  
Application Decision**

**By Richard Holland**

**Appointed by the Secretary of State for Environment, Food and Rural Affairs**

Decision date: 17 September 2021

**Application Ref: COM 3274285**

**Worcestershire Beacon, Sugarloaf Hill and North Hill, Malvern, Worcestershire**

Register Unit No: CL16

Commons Registration Authority: Worcestershire County Council.

\* The application, dated 22 March 2021, 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 the Freedom Group for Western Power Distribution Plc.

\* The works of approximately four weeks duration comprise i) the underground installation of approximately 700 metres of low voltage electricity cables to connect to an existing water pumping station; and ii) temporary 2 metre high Heras fencing of up to 100 meters length at any one time to enclose the working area during the works period.

Decision

1. Consent is granted for the works in accordance with the application dated 22 March 2021 and the plan submitted with it subject to the following conditions.

* 1. the works shall begin no later than three years from the date of this decision; and
  2. all temporary fencing shall be removed and the common shall be fully restored within one month from the completion of the works.

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

**Preliminary matters**

3. I have had regard to Defra’s Common Land Consents Policy Guidance in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants.

4. However, every application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

5. This application has been determined solely on the basis of written evidence.

6. No representations were received about the application in response to the published application notice.

7. I am required by section 39 of the 2006 Act to have regard to the following in

determining this application:

\* the interests of the persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

\* the interests of the neighbourhood;

\* 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 any other matter considered to be relevant.

Reasons

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

8. The application land is owned by the Malvern Hills Conservators, who engaged with the applicant about the works but have not directly commented on the application.

9. The common land register for CL16 records 33 rights to graze the common. The Conservators advised the applicant that no rights holders are active in exercising the rights.

10. Severn Trent Water (STW) has rights of access over the application land to the pumping station at Beacon Road. The applicant advises that the new electricity supply was requested by STW to improve the quality and security of the water pumping station and that STW have been actively involved in the planning process.

11. I am satisfied that the works are unlikely to adversely impact on the interests of those occupying or having rights over the land.

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

12. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. The proposed cable route will run beneath a surfaced track which is used to access the pumping station from Beacon Road. The applicant advises that the area is also used for recreational purposes by ramblers and it is likely that there will be some impediment to such use whilst the works are taking place.

13. The electricity cables will be entirely underground leaving no new permanent above ground features, all excavated trenches will be backfilled and all temporary fencing will be removed once the works are completed, which is expected to be within around 4 weeks. To minimise any inconvenience to ramblers the installation will be carried out in sections. I am satisfied that the works will not have an unacceptable impact on local and public access rights over the common.

***The public interest***

*Nature conservation and conservation of the landscape*

14. The application plan shows that approximately half of the proposed cable route lies within the Malvern Hills Site of Special Scientific Interest (SSSI). Natural England (NE) was consulted about the application but has not commented. However, NE has given its assent to the works within the SSSI and I am satisfied that the SSSI’s interests will not be harmed. There is no evidence to suggest that the nature conservation interests of the application land outside the SSSI will be harmed by the proposed works.

15. The cable trench will be excavated within the track, which has a combined tarmac and weathered gravel aggregate surface, except for short sections at each end where the cables will connect to the existing infrastructure. The applicant confirms that the land will be re-instated to match the existing surface, which can be ensured by attaching suitable conditions to the consent.

16. The proposed works lie within the Malvern Hills Area of Outstanding Natural Beauty (AONB). The AONB Partnership did not comment on the application at the time it was made but has since advised that it has no objection to the underground cable works provided that all landowner and relevant statutory consents are in place. I am satisfied that the AONB Partnership is content for the works to be carried out and that post-works reinstatement of the land will allow the natural beauty of the AONB to be conserved.

*Archaeological remains and features of historic interest*

17. The proposed cable route passes alongside and into a Scheduled Ancient Monument (SAM) comprising a shire ditch. Historic England (HE) has given Scheduled Monument Consent for the underground cable works and I am satisfied that the interests of the SAM will not be harmed by the works. There is no evidence before me to suggest that the works will harm any other archaeological remains or features of historic interest.

Other relevant matters

18. Defra’s policy guidance advises that “...*works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses … consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit*”. I am satisfied that the proposed works accord with this policy objective.

Conclusion

19. Having regard to the interests set out in paragraph 7 above, I conclude that the works will not unacceptably harm those interests. Indeed, they will confer a public benefit by improving the quality and security of the water pumping installation at Beacon Road and therefore consent should be granted.

Richard Holland

