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| **Application Decision** |
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| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 March 2023** |

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| **Application Ref: COM/3316874****LAND AT SOUTHERN GREEN, HERTFORDSHIRE**Register Unit No: CL 39Commons Registration Authority: Hertfordshire County Council |
| * The application, dated 09 February 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 UK Power Networks.
* The works are to install approximately 300m of replacement underground cable with a total working area of 900m² and 600m of temporary fencing.

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Decision

* 1. Consent is granted for the works in accordance with the application dated 9 February 2023 and accompanying plan, subject to the following conditions:
	2. the works shall begin no later than three years from the date of this decision; and
	3. all fencing shall be removed and the common restored within one month from the completion of the works.
	4. For the purposes of identification only the location of the works are shown dashed blue and the common land coloured green on the attached plan.

**Preliminary Matters**

* 1. I have had regard to Defra’s Common Land Consents Policy (Common Land Consents Policy (Defra 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.
1. This application has been determined solely on the basis of written evidence.
2. I have taken account of the representations made by Natural England (NE), Ramblers Association and the Open Spaces Society.
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

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

1. The landowners have been consulted and have not objected to the works. There are no registered rights of common. There is no indication that the works would impact the interests of those occupying the land and the interests of those having rights over the land is not at issue.

***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. The applicant explains that the works are needed to address voltage problems in the existing network which are resulting in power outages for nearby residents. The works will ensure continuity of supply and reduce future maintenance which would require excavation of the common. The temporary fencing is necessary for health and safety purposes to enclose an open trench. The duration of the works is approximately 2 weeks. The applicant confirms that the temporary fencing will be removed upon completion of the works.
2. I accept that the temporary fencing is required for health and safety purposes. As the public will only be excluded from the application site for a short time, and the temporary fencing will be removed upon completion, the works will not seriously harm the interests of the neighbourhood or public rights of access.

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

1. NE advises that the site is not subject to any statutory or non-statutory designations for nature conservation and it does not object to the works. I note that there are no permanent above ground works, all trenches will be backfilled and the common fully reinstated upon completion of the works. I conclude that the works will not harm nature conservation and will conserve the landscape in the long term.

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

1. I am satisfied that there is no evidence before to indicate that the works will harm archaeological remains and features of historic interest.

**Conclusion**

12. Defra’s policy 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.”*

13. I conclude that the works will not harm the interests set out in paragraph 6 above. I am satisfied that the works accord with Defra’s policy and will confer a public benefit by helping to maintain electricity supplies to local residents. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

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