
Application Decision

by **Richard Holland**

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

Decision date: 22 September 2015

Application Ref: COM 715
Threlkeld Common, Cumbria

Register Unit No: CL65

Commons Registration Authority: Cumbria County Council

- The application, dated 30 June 2015, 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 H & H Land and Property Ltd on behalf of Mr Graham Teasdale, Doddick Farm, Threlkeld, Keswick, Cumbria.
 - The works comprise: the installation of approximately 1600m of 600mm diameter, ductile iron pipeline, buried at a nominal depth of 1.5m on a line running north-south near to the eastern boundary of the common, as part of a high-head hydroelectric power generation scheme. Temporary fencing will be used during the construction phase for health and safety purposes.
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Decision

1. Consent is granted for the works described above in accordance with the application dated 30 June 2015 and the plans submitted with it subject to the following conditions:
 - i) the works shall begin no later than 3 years from the date of this decision;
 - ii) the common shall be restored within 1 month of completion of the works; and
 - iii) the fencing shall be removed within 1 month of completion of the works.
2. For the purposes of identification only the location of the proposed works is shown by a solid red line on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy Guidance¹ in determining this application under section 38 of the 2006 Act, 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by the Open Spaces Society and Historic England.

¹ Common Land Consents Policy Guidance (Defra July 2009)

6. I am required by section 39 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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

7. The landowner, Commoners' Association and rights holders have been consulted about the proposed works and have not objected. There is no evidence before me therefore that the works will harm the interests of persons occupying or having rights over the land and I am satisfied that they will not.

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

8. The works are required as part of a high-head hydroelectric power generation scheme. I acknowledge that the transition to a low carbon future and the development of renewable energy is generally regarded as desirable. The proposed location of the works provides the ideal point to maximise the head and catchment size while minimising the extent of pipeline, the visual impact of the water intake and any reduced water levels in Mosedale Beck. Temporary safety fencing will be used around active working areas on a rolling basis, enclosing only short sections, to protect the public/livestock from the excavations. It will not remain in place therefore for the whole duration of the works and will be removed once the trench is closed.
9. The Open Spaces Society (OSS) has no objection to the application provided the temporary fencing is removed within three months of completion of the works. The applicant has responded that it will remove the temporary fencing within the suggested timeframe, and its intention is to keep access restriction for both people and livestock to a minimum, whilst ensuring compliance with its duty of care under health and safety legislation. The OSS is satisfied with this assurance.
10. Whilst free access over the common may be disrupted during the excavation works, I do not consider this will be to any great degree. It is not proposed to fence substantial lengths; only small areas will be fenced for no longer than a few days and will be removed when the works are completed. The pipeline will be installed underground and the land will be reinstated. I consider therefore that there will be no long lasting harmful effect on the interests of the neighbourhood or public rights of access over the common and that by facilitating the generation of sustainable energy there is an underlying public benefit.

Nature conservation

11. The proposal falls within the Lake District National Park and on its east side lies near to Unit 2 of the Thornsgill Beck, Mosedale Beck and Wolf Craggs SSSI. Natural England, which was consulted about the application, has not objected and there is no evidence before me which leads me to think that the works will harm any statutorily protected sites

²Section 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.

or other nature conservation interests; the wildlife of the National Park will therefore be conserved.

Conservation of the landscape

12. The applicant has advised that the Lake District National Park Authority's Core Strategy makes particular reference to supporting high-head hydro projects where the landscape character is not adversely affected.
13. By their nature, the works will have some impact on the landscape. However, the only permanent works will be underground and during construction various methods will be employed to minimise the visual impact of the works; the vegetation layer removed during excavation will be reinstated and appropriate direct seeding will be employed to avoid leaving a visual line of the pipe. Long lengths of fencing will be avoided and any fencing that is used will be of short duration and will be removed when the works are completed. I consider therefore that there will be no lasting adverse visual impact and that the natural beauty of the National Park will therefore be conserved.

Protection of archaeological remains and features of historic interest

14. Whilst Historic England has no objection to the proposals, it has recommended that a walk-over survey of the proposed route is carried out in advance of construction. The applicant has confirmed that it intends to undertake further archaeological investigations and will present its findings to the Local Planning Authority when it makes its planning application. Where vulnerable archaeology is identified on or near to the work, it will make every effort to minimise disruption. I am satisfied therefore that any archaeological interests found during the works will be properly safeguarded and the cultural heritage of the National Park will therefore be conserved.

Conclusion

15. 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. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. An application for consent to such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued. Exceptionally, however, consent may be appropriate where the works are of temporary duration (such as a worksite) or where the works will be installed underground (such as a pipeline or pumping station), the proposals ensure the full restoration of the land affected, and the works confer a public benefit'*.
16. I am satisfied that the application works accord with this policy objective because they will not materially harm the interests set out in paragraph 6 above and they will confer a wider public benefit by facilitating the generation of sustainable energy. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland