
Application Decision

by **Richard Holland**

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

Decision date: 12 October 2015

Application Ref: COM 720

Large Green, Car Colston, Nottinghamshire

Register Unit No: CL71

Commons Registration Authority: Nottinghamshire County Council

- The application, dated 30 July 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 Fisher German LLP, on behalf of Severn Trent Water Limited.
 - The works comprise: the installation of a new 200mm diameter by-pass main with 150mm CLA valve along with an elbow meter with an UPT on an existing 300mm water main. A UPT and washout will also be constructed on an existing 315mm MDPE water main (and associated apparatus) with temporary fencing enclosing 100m².
 - The works will be located within Large Green, Car Colston, Nottinghamshire.
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Decision

1. Consent is granted for the works described above in accordance with the application dated 30 July 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, with the exception of the man hole cover; 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 in red 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.

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 landowners, whom the applicant has advised are also the common 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 new commercial meters will enable Severn Trent Water Limited to improve the water supply to the local community and help to prevent future bursts. Both existing mains are near to each other, so the working area required is small. Small concrete chambers will be left flush to the ground upon completion of the new meters. Temporary safety fencing will be used to secure the temporary working areas. The works are anticipated to take approximately two weeks to complete.
9. The Open Spaces Society has no objection to the application provided the common is fully reinstated once the works are complete.
10. Whilst free access over the common may be restricted while the works are being carried out, this will only be to a relatively small area and for a relatively short period. The majority of the works will be underground, and on completion the fencing will be removed. I consider therefore that any harmful effect on the interests of the neighbourhood or public rights of access over the common will be minimal and short lived, and that by facilitating an improved water supply to the neighbourhood there is an underlying public benefit.

Nature conservation

11. 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 or other nature conservation interests.

Conservation of the landscape

12. The temporary fencing will cover a relatively small area, will be of short duration and will be removed when the works are completed. The manhole cover will be the only visible feature present on the surface upon completion of the scheme and this will be flush to the ground. The small area surrounding it will be re-seeded with a grass mix. I consider therefore that in the long term the works will have a minimal visual impact on the common and will not unacceptably harm its appearance.

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.

Protection of archaeological remains and features of historic interest

13. Historic England, which was consulted about the application, has not objected and there is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

Conclusion

14. 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'*.

15. 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 improving the water supply to the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland