



Application Decision

by **Richard Holland**

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

Decision date: **28 August 2015**

Application Ref: **COM 716**

Stafford Common, Staffordshire

Register Unit No: CL 1

Commons Registration Authority: Staffordshire County Council

- The application, dated 9 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 replacement of a 450mm sewer main, 420m in length, and the upsizing of a section of existing sewer (99m) to a 1200mm storage facility, with associated surface apparatus; 4 trial hole locations, to be carried out before the main construction works; and temporary fencing enclosing a maximum of 10380m².
 - The works will be located from Bradshaw Way playing field across to Common Road, Stafford.
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Decision

1. Consent is granted for the works described above in accordance with the application dated 9 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, except where there are above ground permanent apparatus; and
 - iii) the fencing shall be removed within 1 month of the completion of the works.
2. For the purposes of identification only the location of the proposed works is shown hatched 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.

¹ Common Land Consents Policy Guidance (Defra July 2009)

5. I have taken account of the representation made by the Open Spaces Society and Historic England.
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. There are no rights of common recorded in the commons register. However, the applicant has advised that Stafford Common Trustees (the Trustees), who own the common, are thought to have a right to graze their livestock, and that a grazier currently grazes the common on a license basis. The Coal Authority, previously the National Coal Board, claim ownership of any coal in or under the land and all rights incident thereto. All the above-mentioned have been consulted about the proposed works and have not objected. There is no evidence before me therefore that the proposed 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 applicant advises that there are currently multiple developments being built to the north of Stafford for both residential and commercial uses, and that the current sewerage infrastructure is not able to take the increased flows which these new developments have created. A new sewer is therefore being constructed to enable the surface storm water to be transported without causing localised flooding. Fencing will be used to secure the temporary working areas and to protect livestock and pedestrians. The applicant will agree alternative proposed routes for livestock and pedestrians with the landowner and grazier before the works begin.
9. The Open Spaces Society (OSS) has no objection to the application provided the common is reinstated when the temporary element of the works is complete.
10. Although the works may restrict free access over the common during construction, this is only likely to be for a relatively short period of around 8 – 10 weeks. The pipes will be underground and the Method Statement, which accompanied the application, indicates that the land will be reinstated. Manholes will be the only likely surface apparatus required and these will be flush to the ground. The remainder of the works will be temporary only and any fencing will be removed soon after the works are completed. Furthermore, I note that there will be crossing points to enable the public to cross the working areas at all times. I consider therefore that there will be no long-term harmful effect on the interests of

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.

the neighbourhood or public rights of access over the common and I accept the works are necessary to allay the risk of flooding.

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. Inevitably, by their nature, the works will have some impact on the landscape. However, the majority of the works will be underground and the land will be re-instated, the manholes will be flush to the ground, and the fencing will be removed when the works are completed. Furthermore, I note that there is already an existing sewer and above ground apparatus following the same line as the replacement sewer. I consider therefore that any adverse visual impact will be minimal and the works will not cause any long-term unacceptable harm to the common's appearance.

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 helping to prevent localised flooding. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland