



Application Decision

by **Richard Holland**

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

Decision date: 30 November 2015

Application Ref: COM 738

Curtismill Green and Wattons Green, Essex

Register Unit No: CL12

Commons Registration Authority: Essex County Council

- The application, dated 21 September 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 Freedom Group on behalf of UK Power Networks.
 - The works comprise the installation of a new high voltage overhead electricity pole, 70cm in circumference, and two supporting stay wires, and diverting a section of overhead line. The stay wire spread will be approximately 6-8m and installed within the scrubland.
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Decision

1. Consent is granted for the works in accordance with the application dated 21 September 2015 and the plan submitted with it subject to the condition that the works shall begin no later than 3 years from the date of this decision.
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 Policy¹ 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 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 Essex County Council Historic Environment Officer.
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;

¹ Common Land Consents Policy (Defra November 2015)

- 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 and all commoners 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 applicant has advised that with the existing line configuration the wires pass through a climbable tree, which represents an urgent safety hazard that UK Power Networks are required to rectify. The works will occupy a relatively small area of the common and will be carried out over approximately five days. The vehicles, machines and materials will be on site for the minimum time and will be removed once the works are completed.
- 9. The Open Spaces Society recognises the health and safety issue and has no objection provided there is no adverse effect on the common and people's rights to walk and ride there.
- 10. Although the works may have some effect on local people's use of the common, I consider this will be insignificant. I do not consider that there will be any long term adverse effect on the interests of the neighbourhood or public rights of access. Indeed, I accept that the works are needed in the interests of public health and safety which will benefit local residents and the general public.

Nature Conservation

- 11. The applicant has advised that the area is designated as a Site of Special Scientific Interest (SSSI). It is working with Natural England (NE) to obtain consent and NE has confirmed to it that the proposal will not have a significant impact on the SSSI and consent will be forthcoming. NE was also formally consulted about this application but has not commented on it. There is no evidence before me therefore that the works will harm any statutorily protected sites or other nature conservation interests, and in view of the small scale of the works I am satisfied that they are unlikely to do so.

Conservation of the landscape

- 12. By their nature, overhead electricity supply structures will have some impact on an open landscape. However, I note that the location of the pole and stay wires has been chosen based on its proximity to a large section of scrub land. It will not be installed on clear open space therefore which will help to reduce any visual impact. Consequently, I consider that the appearance of the common will not be unacceptably harmed and the works are justified by the health and safety benefits they will bring about.

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.

Archaeological remains and features of historic interest

13. Essex County Council Historic Environment Officer has advised that there are no known archaeological deposits in the area of the works and there are no archaeological requirements for the installation of the works. I am content therefore that the proposed works are unlikely to harm any such remains or historic features.

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(1), so that an exchange of land is proposed and can be considered on its merits. However, 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"*.
15. I am satisfied that the application works accord with this policy objective because they will not materially harm the interests outlined in paragraph 6 above and will confer a wider benefit to the local community and general public by removing a health and safety risk. I conclude therefore that consent should be granted subject to the conditions set out in paragraph 1.

Richard Holland