



# Application Decision

by **Richard Holland**

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

Decision date: 8 February 2016

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## Application Ref: COM 750

### Barking Tye, Stowmarket, Suffolk

Register Unit No: CL23

Commons Registration Authority: Suffolk County Council

- The application, dated 27 October 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 Anglian Water Services Limited.
  - The works comprise the laying of a 950 metres long replacement underground water main on the western side of the B1078 road. The main is to be laid in approximately 150 metres sections by directional drilling from excavated insertion and extraction drill pits. While works proceed on each section temporary 1.8 metres high Heras fencing will surround the pits, enclosing approximately 45 square metres (15 x 3 metres). Further 1.2 metres high plastic Rhino temporary fencing will protect a pipe welding working area, enclosing approximately 900 square metres (150 x 6 metres). The land will be fully re-instated section by section.
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## Decision

1. Consent is granted for the works in accordance with the application dated 27 October 2015 and the plans submitted with it, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. any temporary fencing or safety barriers shall be removed within one month of completion of the works; and
  - iii. the common shall be restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> 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

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

4. This application has been determined solely on the basis of written evidence.
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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

7. The landowner, Barking Parish Council, fully supports the proposals. Five rights are registered to graze animals over the whole of the common land unit. All five 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 interests of the neighbourhood test relates primarily to whether the works will impact on the way the common land is used by local people but also relates to wider neighbourhood interests. The applicant has advised that the existing water main is nearing the end of its useful life, as evidenced by a number of bursts. The local community lobbied for a full replacement and this was programmed as a matter of urgency into Anglian Water's business plan for delivery by 2020. The replacement works are deemed necessary to protect nearby properties and the common from flooding, to secure reliable supplies to the local community and to conserve water. Temporary fencing is necessary to enclose the working area for health and safety reasons. The works are expected to take place over a period of six weeks.
9. The Open Spaces Society has no objection to the application provided the common is fully reinstated when the works are complete.
10. Although free access across the common may be disrupted while the works are being carried out, this will be to relatively small areas and for a short period. The land will be reinstated and access restored fully when the works are completed.

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<sup>2</sup>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.

11. Access outside of the temporary working areas will not be restricted. I am satisfied therefore that the works will not unacceptably harm the interests of the neighbourhood or public rights of access over the common. Furthermore, I accept the works are necessary to prevent flooding, secure the water supply to the local community and conserve water, which outweighs the harm caused by any short term disruption to access.

### ***Nature conservation***

12. 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***

13. The underground directional drill method will be used to minimise surface excavation and reinstatement of the land will be in full accordance with the Water Undertakers (Pipelaying and other Works) (Code of Practice) Order 1999 (SI 1999/3070). There will necessarily be a number of new access plates covering underground fire hydrants, which are legally required to be provided. The plans indicate that there will be seven such plates, which will be visible, albeit flush to the ground. Any turf to be taken up will be separated from the sub-soil, set to one side and regularly watered/maintained. Following the works the turf will be reinstated by Anglian water's landscaping contractors and monitored after completion to ensure it sets back down appropriately.
14. As the temporary fencing will be removed and the land will be restored on completion of the works I consider that the installation of the replacement water main will have no lasting harmful impact on the common's appearance. Whilst the required fire hydrant access plates will be visible, they will be few in number, spread over some distance along the water main route through the common land and will be flush to the ground. I therefore consider that their visual impact is likely to be negligible.

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

15. Historic England suggested that a programme of archaeological mitigation and consultation with the Suffolk County Council Archaeological Service (SCCAS) may be required as there is adjacent and nearby evidence of medieval and Roman period activity and a potential for encountering archaeological remains. The applicant has provided a brief prepared by SCCAS' Conservation Team for archaeological monitoring of the replacement water main scheme at Barking Tye and a Written Scheme of Investigation prepared by the archaeological contractor Oxford East Archaeology which has been approved by the Council's archaeologist.
16. I am content that appropriate steps have been taken to identify and monitor any risk to archaeological interests that may be present in and around the area of works. I am therefore satisfied that the works are unlikely to harm any such archaeological remains or features.

### **Conclusion**

17. Defra's Consents 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. 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”.*

18. 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 by helping to improve the water supply to the local community. I conclude therefore that consent should be granted subject to the conditions set out in paragraph 1.

**Richard Holland**