
Application Decision

by **Richard Holland**

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

Decision date: 20 April 2016

Application Ref: COM 762
Staplefield Common, West Sussex

Register Unit No: CL315

Commons Registration Authority: West Sussex County Council

- The application, dated 4 December 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 on behalf of South East Water Ltd by Edward Higson, Dalcour Maclaren Ltd, 20 Hollingworth Court, Turkey Mill, Ashford Road, Maidstone, Kent ME14 5PP.
- The works comprise: the installation of an underground pressure reducing valve and ancillary equipment, including surface structures that will be flush with the ground. Temporary fencing will be used to protect the excavation.

Decision

1. Consent is granted for the works in accordance with the application dated 4 December 2015 and the plan submitted with it subject to the following conditions;-
 - i. the common shall be restored, and all fencing removed, within one month of completion of the works; and
 - ii. the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the permanent works is shown in red and the location of the temporary fencing is shown in yellow 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, 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 (Defra November 2015)

5. I have taken account of the representations made by the Open Spaces Society.
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 land is owned by Ansty and Staplefield Parish Council. The parish council was consulted about the application and did not raise any objections. No rights are registered over Staplefield Common and there are no relevant easements or leaseholders. I conclude that the proposed works will not adversely affect the interests of persons having rights over the land.

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

8. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. The pressure reducing valve will alleviate high water pressure issues experienced by local residents, which can cause damage to properties and internal pipework. The properties affected are adjacent to the common.
9. A section of land on the edge of Staplefield common will be unavailable for public access while the works are carried out. The works are expected to take no more than 28 days, however, and I consider that given this short duration, and the small area affected, the works will not unacceptably restrict public rights of access nor harm the interests of the neighbourhood.

Nature conservation

10. The common is a grassed area with some trees and shrub. The proposed works are near the Cow Wood and Harry's Wood SSSI but not within it, and there is nothing before me to suggest they will impact on the SSSI. Natural England was consulted about the application and did not raise an objection.
11. The Open Spaces Society questioned whether the works were needed on the common and suggested the pressure valve should be installed under the surface of Rose Cottage Lane. The applicant explained that this option had been explored but was not appropriate because of the disruption to traffic it would cause. Ongoing maintenance and ad-hoc access to the equipment would also require additional road closures in the future making it a costly and unpractical option. The fact that there is a fire hydrant on the common supports the applicant's contention that the existing water main is located in the verge and that the best location for the valve is on the common. I am satisfied with this

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.

explanation and accept that the road verge is the most appropriate location for the works.

12. The Open Spaces Society further raised concerns regarding a mature tree that is within the works area. The applicant clarified that the fenced area of 300m² (shown yellow on the application map) is the maximum area required and is needed for the security of the workers, the public and equipment; no trees will be impacted by the works. I am satisfied that the works will not harm nature conservation interests.

Conservation of the landscape

13. The common lies within the High Weald AONB. The applicant has submitted photographs of the type of surface level cover to be used in the works. Given the small size of the permanent covers and their low profile, and that the common will be reinstated once the works are complete, I am satisfied that there will be no lasting harm to the natural beauty of the area. The fencing required while the works are carried out will unavoidably have some impact on the appearance of the common but, due to the short duration of the works, I do not consider that this will unacceptably harm the appearance of the landscape. The natural beauty of the AONB will therefore be conserved.

Archaeological remains and features of historic interest

14. There is no evidence before me of archaeological features within the application site or nearby and I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

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. water utility) to provide or improve the public service to local residents and businesses. In such cases 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 accept that the works are necessary to alleviate the issues caused by high water pressure in the area and this outweighs the small amount of harm caused by the short term disruption to public access. Having regard to the interests set out in paragraph 6 above, I conclude that the works will not unacceptably harm the common or the interests of those using it while allowing for improvements to water services to nearby properties; they will therefore accord with Defra's policy and consent should be granted.

Richard Holland