



# Application Decision

**by Richard Holland**

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

**Decision date: 9 June 2016**

---

## **Application Ref: COM 789**

### **THE SEVERN HAM COMMON & MILL AVON AND RIVER SWILGATE COMMON, GLOUCESTERSHIRE**

Register Unit No: CL 21 & CL 379

Commons Registration Authority: Gloucestershire County Council

- The application, dated 12 April 2016, 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 the Environment Agency.
  - The works comprise: essential refurbishment works to the existing sluice at Abbey Mill, Tewkesbury. A temporary working area and access road will be required with temporary fencing extending to approximately 36,000 square metres in area for the duration of the works. The works are expected to last three months.
- 

## **Decision**

1. Consent is granted for the works in accordance with the application dated 12 April 2016 and the plan 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. the working area, access road and temporary fencing 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 outlined 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 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 representations made by the Open Spaces Society (OSS) and Historic England (HE).

---

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

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 landowners have been consulted about the proposed works and have not objected. The Trustees of Tewkesbury Common have exclusive rights to the aftermath over CL 21. Tewkesbury Town Council sells the hay crop each year. There is a right to fish from the water over CL 379. The rights holders have been consulted and there is no indication that either right will be affected by the proposed works. I am satisfied that the proposed works will not harm the interests of those occupying or 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 unacceptably interfere with the way the common is used by local people. A temporary working area is required on the common to undertake works to an existing sluice. The working area will accommodate the delivery and storage of materials and enable the safe operation of a crane in association with the sluice works. The sluice is now over 20 years old and essential refurbishment is needed to maintain upstream water at a level sufficient to ensure the River Avon in Tewkesbury remains navigable during periods of low flow.
9. The proposed works are expected to last three months and will exclude public access to the working area during this time. Access outside the working area will not be restricted and crossing points will be provided as close as possible to existing rights of ways. I accept that the works are essential to refurbish the sluice. I conclude that the proposed works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access; indeed, the refurbishment of the sluice will confer long term benefits on people navigating the River Avon at Tewkesbury.

### ***Nature conservation***

10. The application site is part of the Severn Ham Site of Special Scientific Interest (SSSI). I note that the applicant has consulted Natural England and agreed appropriate mitigation measures. I am satisfied, on the basis of the evidence before me, that the proposed works will not harm nature conservation interests.

---

<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.

### **Conservation of the landscape**

11. A trackway system is proposed to protect, where possible, the surface of the common. The temporary fencing is needed for health and safety purposes and to contain the proposed works within a designated area. The proposed refurbishment works are expected to last no longer than three months and the temporary works will be removed upon completion. I accept that the trackway system and temporary fencing is needed to help conserve the common while essential refurbishment works are taking place. I conclude that there will be no lasting impact on the common and the works to the sluice will help improve its visual appearance in the long term.

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

12. HE comments that they have reviewed the proposal and judged that no heritage assets will be affected by the proposals. I am satisfied that there is no evidence before me to indicate that the works will harm any archaeological remains, or features of historic interest.

### **Other relevant matters**

13. 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"*. I am satisfied that the application works accord with the policy objective.

### **Conclusion**

14. I consider that the proposed works will not materially harm any of the interests set out in paragraph 6 above and will benefit the interests of the neighbourhood in the long term. I conclude therefore that consent should be granted subject to the conditions set out in paragraph 1.

**Richard Holland**

# Abbey Mill Sluice - Working Area and Common Land with Designations

## Legend

-  Local Wildlife Sites
-  SSSI (England)
-  SSSI (Wales)
-  SAC (England)
-  SAC (Wales)
-  SPA (England)
-  SPA (Wales)
-  LNR (England)
-  LNR (Wales)
-  NNR (England)
-  NNR (Wales)

Access routes (only one of which will be used)

Temporary Working Area

Location of sluice

