



Application Decision

by Richard Holland

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

Decision date: 24 August 2016

Application Ref: COM 796

Brill Common, Buckinghamshire

Register Unit No: CL 109

Commons Registration Authority: Buckinghamshire County Council.

- The application, dated 26 May 2016, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
- The application is made by Fisher German LLP for Thames Water Utilities Limited.
- The works of approximately two weeks duration comprise:
 - (i) renewal of approximately 12m of existing water main and associated apparatus; and
 - (ii) creating a temporary working area of approximately 55sq m using not more than 35m of 2m high steel mesh Heras fencing.

Decision

1. Consent is granted for the works in accordance with the application dated 26 May 2016 and accompanying plan, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. 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 as a red line 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 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 representation made by the Open Spaces Society (OSS).
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. Brill Parish Council, as landowner, has been consulted and has not objected to the proposed works. No commoners have objected to the application and there is no indication that the works will impact on grazing rights which exist over the common. The applicant advises that these rights are exercised year round over North and South Hills, which form part of Brill Common, by the Brill Village Community Herd Society. However, these areas are some distance away from the application site and are unaffected 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. The works are proposed for a small area of roadside verge adjacent to a highway crossroads junction. The site is just inside the common land boundary at a point remote from the main body of the common. I consider it unlikely to be an area of the common well-used by local people.
- 9. The proposed works involve the underground installation of High Performance Polyethylene Equipment (HPPE) pipe services to replace existing ductile iron and asbestos cement services. The applicant confirms that the proposed works are needed on the common as part of a larger, routine renewal program being undertaken by Thames Water Utilities Limited to assets that have been identified as having a high burst rate. The works will ensure the continued improvement to water supply and I consider them to be in the wider interests of the neighbourhood.
- 10. The works are underground and the common land will be reinstated upon completion of the works. The temporary fencing will be removed as soon as possible once the works are completed, which is expected to be within two weeks. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation

- 11. Berks, Bucks and Oxon Wildlife Trust was consulted before the application was made and said that it did not wish to comment on the proposal. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

- 12. The application plan shows the location of a distribution hydrant and valves. The applicant has clarified that these are current underground features that are to be removed as part of the works. All the works will be underground and the common fully restored upon completion. The contractors will reinstate the land in accordance with a photographic record to be prepared before the works take place in-line with the industry code of practice. This will typically involve levelling, spreading grass seed, adding further topsoil if required and rolling to create a good seed bed. I consider that any visual impact on the landscape will be limited and short term. I am satisfied that there will be no lasting harmful impact on the common.

Archaeological remains and features of historic interest

- 13. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

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.

Other relevant matters

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". I am satisfied that the proposed works accord with this policy objective.

Conclusion

15. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will confer a public benefit by ensuring the continued integrity of water supply to the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

**Legend**

- Distribution Mains
- Distribution Valves
- Closed/Throttled Distribution Valves
- Distribution Hydrant
- Common Land
- Extent of Proposed Scheme
- Proposed Working Area

