
Application Decision

by **Richard Holland**

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

Decision date: 4 October 2016

Application Ref: COM 797

Blackheath Common and Land at Hallam's Farm, Surrey

Register Unit No: CL179, CL435

Commons Registration Authority: Surrey 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 six weeks duration comprise:
 - (i) renewal of approximately 250m of existing water main and associated apparatus; and
 - (ii) 1.5m high temporary plastic safety fencing (up to 200m at any one time).
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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 representations made by the Open Spaces Society (OSS), Natural England (NE), Carol Collins & Richard Turner and Mr J H Lippiatt.
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 proposed route of the new pipeline runs mainly through Blackheath Common (CL179). It crosses into, and ends at, the north east corner of Land at Hallam's Farm (CL435). The two common land units are separately owned and are subject to separate registered rights of common.
- 8. CL179 is owned by Mr P Herbert. The applicant has said that Mr Herbert raised no objections to the proposed works when consulted by telephone on 12 May 2016. Mr Herbert was also consulted in writing and has not submitted an objection. There are four registered rights to graze a small number of animals over the common land unit and of estovers and turbary. The applicant has said that one rights holder exercises his rights of estovers and turbary but there is no evidence of any grazing rights being exercised. I consider that the rights are unlikely to be seriously harmed by the proposed temporary works and I am satisfied that the works will not harm the interests of those occupying or having rights over the land.
- 9. CL435 is owned by Carol Collins and Richard Turner, who made a representation of objection. Their concerns were in relation to restriction of vehicular access to their home during the course of the proposed works. Following assurances by the applicant that their access would be maintained, Ms Collins and Mr Turner withdrew their objection. There is one registered right to graze a small number of animals over the common land unit and of estovers and pannage. The applicant has said that the rights are not exercised. I am satisfied that the 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

- 10. The proposed works involve the underground installation by open cut trench of High Performance Polyethylene Equipment (HPPE) pipe services to replace existing cast iron pipeline. The applicant confirms that the proposed works are needed as part of a larger, routine renewal program required to ensure the continued improvement to the water supply/quality and to reduce the chances of bursts. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land, which is largely woodland, is used by local people. All works will be undertaken within an existing track heading east from Littleford Lane, therefore specifically impacting on a walkway through the woodland. I therefore consider that there is likely to be some short term disruption to local people's use of the common land.
- 11. The track also serves as the access to two properties to the east of Littleford Lane. One of the properties, The Hallams, is the residence of Ms Collins and Mr Turner who, as I have said, initially objected to the proposals on access grounds. The other property, Hallams Court, is the residence of Mr Lippiatt, who also initially objected on access grounds but subsequently withdrew his objection following assurances from the applicant.
- 12. The works are wholly underground and the common land affected will be reinstated upon completion of the works, which is expected to take around 6 weeks, with the temporary fencing then removed as quickly as possible. The application states that up to 200m of temporary fencing will be erected at any one time. However, the application also states that the trench will be excavated in 100m sections and backfilled before the next section is excavated. This being the case, there will be one enclosed 100m section rather than a continuous 200m length of fencing at any one time. I conclude that the works will have some temporary impact but will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

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.

Nature conservation

13. CL179 lies within the Blackheath Site of Special Scientific Interest (SSSI). NE has given assent with conditions for the works under section 28h of the Wildlife and Countryside Act 1981. NE has also separately advised that it does not see the works as having a detrimental effect on landscape, access or the biodiversity of the common as a whole. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

14. Both common land units lie within the Surrey Hills Area of Outstanding Natural Beauty (AONB). All the works will be underground and excavation will be limited to the track. The applicant has said that should any damage be caused to the track edge or vegetation the contractors will reinstate the land in accordance with the industry code of practice. Given the designation of this particular site this will likely involve levelling and allowing natural regeneration rather than importing replacement foliage and/or soils. Reinstatement of the track will involve backfilling the excavation using the same materials as previously excavated, levelling and compacting to an equivalent standard as before. I am satisfied that any impact on the visual appearance of the common will be of short duration and that the natural beauty of the AONB will be conserved in the long term.

Archaeological remains and features of historic interest

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

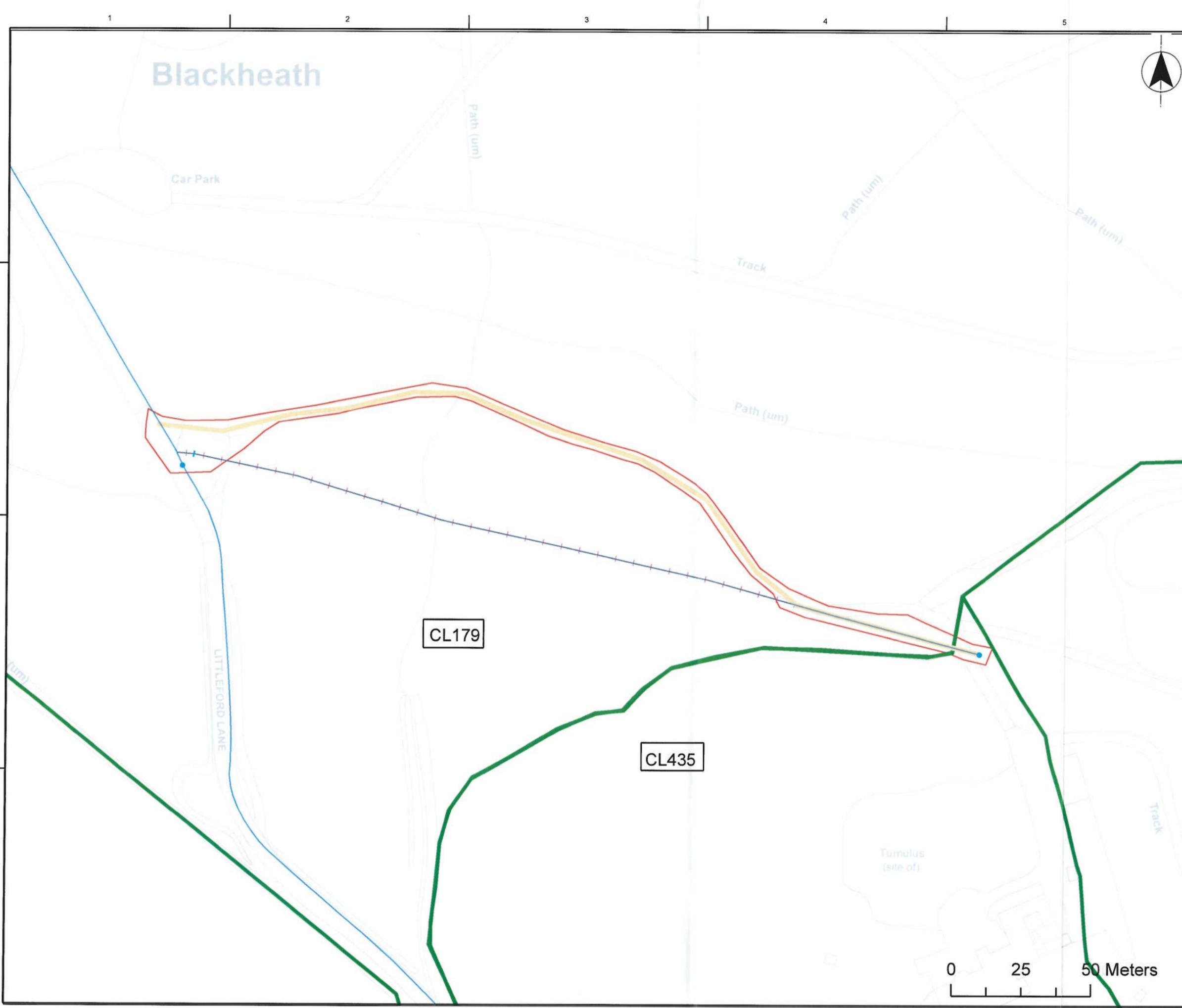
Other relevant matters

16. Defra's policy guidance advises that 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

17. I conclude that the proposed works will not unacceptably 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



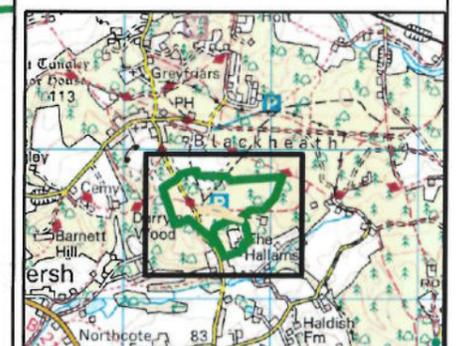
DO NOT SCALE - IF IN DOUBT ASK

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CLEARWATER COURT
VASTERN ROAD
READING
RG1 8DB

Legend

-  Distribution Valves
-  Distribution Hydrant
-  Distribution Mains
-  Extent of main to be abandoned
-  Extent of proposed scheme to be laid
-  Common Land
-  Proposed Working Area



CURRENT VERSION INFORMATION

Based on the Ordnance Survey Map with the Sanction of the Controller of H.M Stationery Office License Number 100019345

| Rev | Description | Dsgnr | Chkd | Appd | Date |
|-----|-----------------|-------|------|------|------------|
| D | For Information | RW | SF | SM | 25/05/2016 |
| C | For Information | RW | SF | ST | 24/05/2016 |
| B | For Information | RW | SF | ST | 24/05/2016 |
| A | For Information | KA | JP | RC | 22/04/2016 |

 **Thames Water Utilities**

Rose Kiln Court
Rose Kiln Lane, Reading RG2 0HP

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|---|---------------|---------------------|-----------|
| Location Code: | OS Reference: | Security Reference: | Drawn By: |
| - | - | - | RW |
| Project Group: | | Sub Process: WATER | |
| Location / Town: Guildford | | | |
| Site Name: Littleford Lane, Blackheath | | | |
| Project Name: THAMES VALLEY MAINS REPLACEMENT | | | |
| Contract Name: EIGHT20 AMP6 | | | |
| Drawing Title: Common Land: GFORD 109 LITTLEFORD LANE | | | |
| Drawing No.: C956.011-BSK-C9156- D | Scale: 1:1250 | Sheet Size: A3 | Rev: D |

