



Application Decision

by **Richard Holland**

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

Decision date: **11 November 2016**

Application Ref: **COM 3159922**

DRIGG COMMON, CUMBRIA

Register Unit No: CL 324

Commons Registration Authority: Cumbria County Council

- The application, dated 26 September 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 Bilfinger GVA on behalf of LLW Repository Ltd.
 - The works comprise: repairs to the existing manhole and the construction of a below ground valve chamber and an adjacent equipment kiosk measuring 1.6 m x 2.9 m x 1.85 m high located at manhole 11. The cabinet will be constructed on a concrete foundation slab measuring 2.5 m x 2.8 m.
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Decision

1. Consent is granted for the works in accordance with the application dated 26 September 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 outlined in red 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) and Historic England (HE).
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

¹ Common Land Consents Policy (Defra November 2015)

- 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 landowner, the Muncaster Estate, has been consulted about the application and has not objected to the works. Rights to take sand, gravel and driftwood are registered over the common. The applicant confirms that these rights are not exercised. 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 applicant advises that the site is infrequently used due to its remote location. I note that the works are scheduled to take 16 weeks to complete during which access to the common will be maintained. On completion, the works, with exception of the equipment kiosk, will not be apparent above ground. The OSS does not object to the application as it considers that the works are unobtrusive and will not affect public access.
9. I conclude that the works will have a negligible impact on the interests of the neighbourhood or public rights of access.

Nature conservation and Conservation of the landscape

10. The common lies within the Drigg Site of Special Scientific Interest and Special Area of Conservation. The nearby Low Level Waste Repository (LLWR) site is the UK's national facility for the management and disposal of low level radioactive waste. The applicant has obtained planning permission for the works which are needed to ensure that adequate and efficient monitoring of groundwater can be undertaken by modernising monitoring capabilities. This will ensure that the activities taking place at the LLWR site do not harm the environment and that the applicant fully complies with its Environmental Permit. The works will also enable safe access to manhole 11. I note that the applicant has consulted Natural England about the application and received its agreement to the works proceeding.
11. I consider that as the valve chamber and manhole will not protrude above the ground they will have little or no visual impact on the common. The equipment kiosk is designed to mitigate any visual impact by being small scale, with a low tapered roof. It is a condition of the planning permission that the kiosk should be faced in locally sourced cobble stone to minimise its visual impact.
12. In view of the above, I am satisfied that the works will not harm nature conservation interests nor adversely impact on the conservation of the landscape.

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.

Archaeological remains and features of historic interest

13. HE does not object to the granting of consent for the proposed works. I am therefore satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

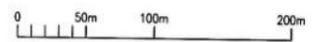
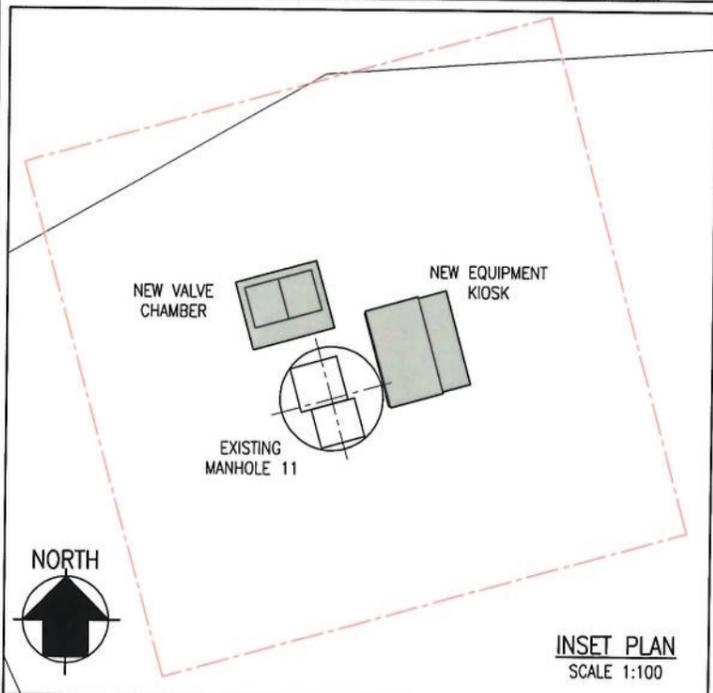
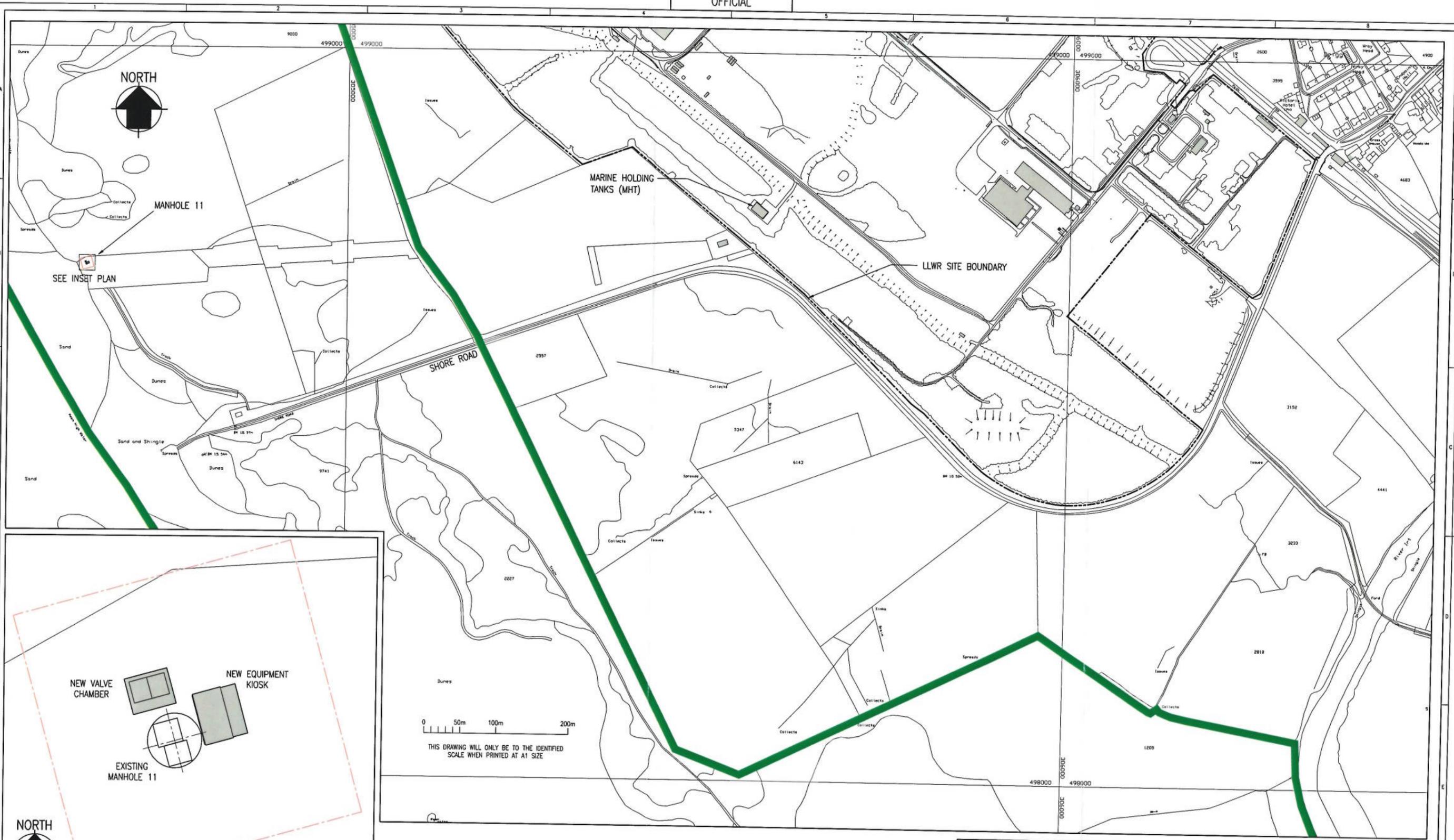
Other relevant matters

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". By ensuring that the activities at the LLWR site do not impact on a statutorily protected site or the wider environment the proposed works will confer a public benefit. I am therefore 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, furthermore, will confer a public benefit by ensuring that the LLWR site does not adversely impact the environment. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



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LOCATION PLAN
SCALE 1:2500

KEY
 - DENOTES COMMON LAND BOUNDARY CLJ24

REFERENCE DRAWINGS	
DRAWING No.	TITLE
BE 2931609	EQUIPMENT KIOSK & VALVE CHAMBER GENERAL ARRANGEMENT

PLANNING DRAWING

LOW LEVEL WASTE REPOSITORY
 MANHOLE 11 REFURBISHMENT PROJECT
 EQUIPMENT KIOSK & VALVE CHAMBER
 LOCATION PLAN

Drg. No. **1 BE 2931608** Mod. **P3**

Security Class OFFICIAL

Mod.	Date :	Mod. P3	Date : 16-SEP-2016	Mod. P2	Date : 17-MAR-2016		
ISSUED FOR COMMON LAND BOUNDARY CONSENT APPLICATION. DRAWING PRODUCED IN COLOUR.		ISSUED FOR PLANNING PERMISSION					
Drawn	Checked	Lvl.	Approved	Drawn	Checked	Lvl.	Approved
Name	A CAVAGHAN	3	T E OWEN	Name	M SLOAN	2	T OWEN
Signature				Signature			

Security Class
OFFICIAL
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Project No.	34/09289.17
Building No.	-
Site/Location	LLWR
Department	CS&A
Discipline/Type	C01
Designer	L VAREY
Scale	AS SHOWN
Contract No.	-
Drawing Category	-

LLW Repository Ltd
 Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1XH

System No.	-	Clients Drg. No.	-
Plant Area	MH11	Clients Proj. No.	-
Plant Title	LOW LEVEL WASTE REPOSITORY		
Plant Item No.	-		