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# Application Decision

by **Richard Holland**

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

Decision date: **24 November 2016**

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## Application Ref: **COM 3157656**

### **Dunsfold Common and Dunsfold Green, Godalming, Surrey**

Register Unit No: CL 162

Commons Registration Authority: Surrey County Council.

- The application, dated 26 August 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 months duration comprise:
    - (i) renewal of approximately 510m of water main and associated apparatus; and
    - (ii) 1.5m high plastic barrier fencing (approximately 250m at any one time).
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## Decision

1. Consent is granted for the works in accordance with the application dated 26 August 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. The application is in respect of land along Dunsfold Common Road. The application plan indicates that the proposed pipeline will be laid below the highway within a temporary 10m wide fenced working strip. The applicant has interpreted the commons registration authority map such that the whole of the width of the road, as well as the roadside area to be fenced during the works, is within the common land boundary. The application has been made, and is being determined, on that basis.
4. 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS), which does not object to the application.

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

7. 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***

8. Waverley Borough Council, as landowner, has been consulted about the application and has not objected to the proposed works. There are no registered rights of common. 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***

9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people. In this case, the common land affected by the proposals is mainly the pavement on each side of Dunsfold Common Road and, to a lesser degree, the grassed roadside verge. The neighbourhood and public access interests are in the maintaining of pedestrian access over and along the pavements and verges during the works. The application plan shows a fenced 10m working strip covering the entire width of the road and encroaching onto the pavements on each side. However, the applicant has clarified that this is indicative of the maximum area to be fenced and, in practice, vehicle and pedestrian flow will be managed so that access remains open along the outside of the working strip for motorists and pedestrians alike. Furthermore, if access to any existing crossing point is prevented, alternative crossing points will be provided as appropriate.
10. The proposed works involve the underground installation of High Performance Polyethylene Equipment (HPPE) pipe services to replace an existing 8 inch asbestos cement water main. The applicant hopes that the pipe laying work can be undertaken by way of directional drilling, which removes the need for a continuous open trench and reduces restriction of public access. However, the application is made on the basis that this may not be possible and that the open cut trench excavation method will need to be used. This being the case, approximately half of the 510m length will be laid, the land backfilled and the fencing removed before a trench for the remaining pipe length is excavated. 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 local water supply/quality and to reduce the chances of bursts.
11. The permanent works are underground and the common land affected will be reinstated upon completion of the works. Only around 250m of the temporary fencing will be erected at any one time and it will be removed as soon as possible once the works are completed, which is expected to be within two months. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access. Furthermore, the works will improve the local water supply and I consider them to be in the wider interests of the neighbourhood.

### ***Nature conservation***

12. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

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<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**

13. The applicant has confirmed that some grassed verge areas of common land abutting the pavements could be damaged during the works by contractor presence and by the placing and moving of the safety fencing. Should any such damage be caused the contractors have a duty to reinstate the land. Any damaged areas would be levelled accordingly and re-seeded. As all the permanent works will be underground, 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**

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

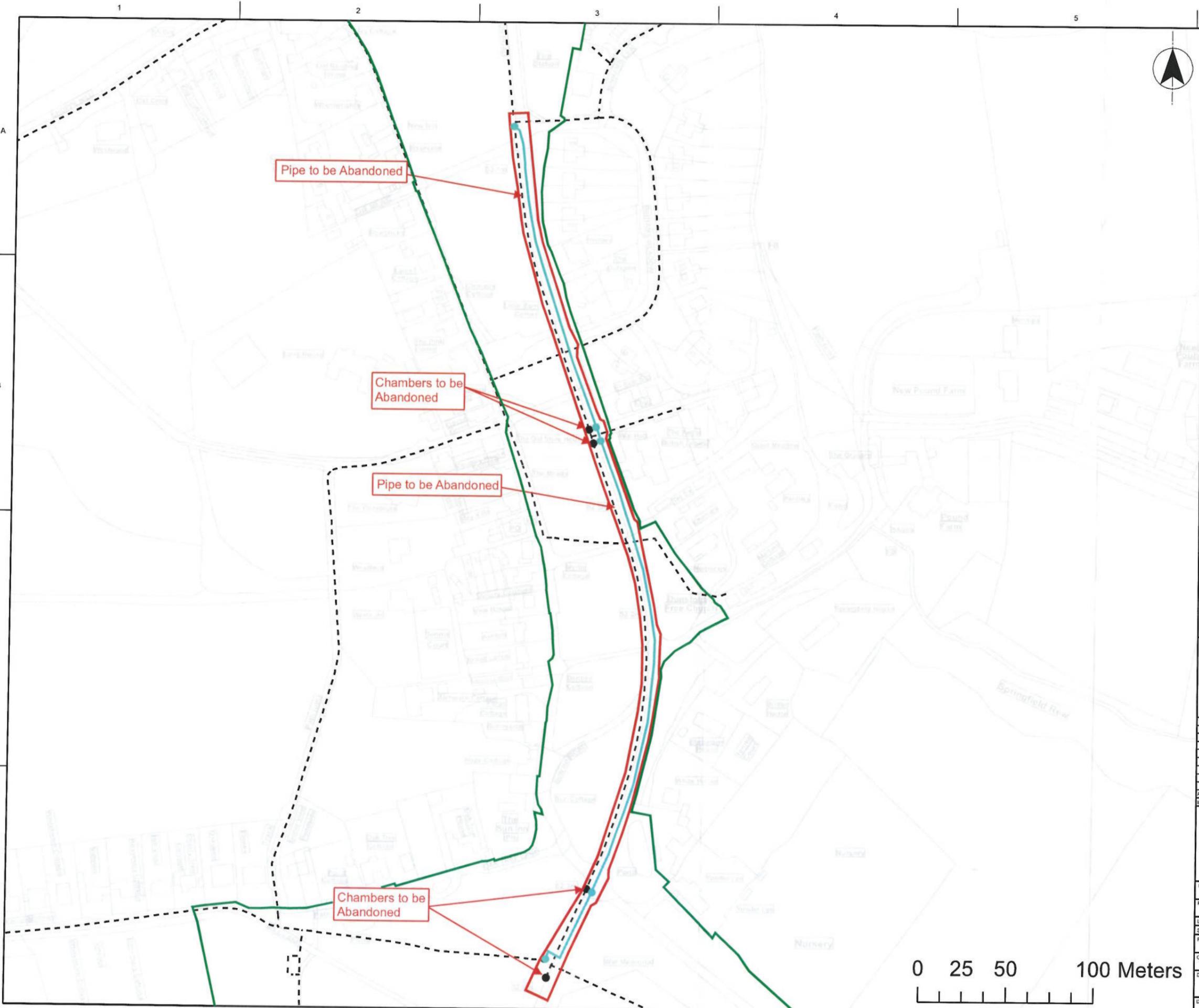
### **Other relevant matters**

15. 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**

16. I conclude that the proposed works will not harm the interests set out in paragraph 7 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

 CLEARWATER COURT  
VASTERN ROAD  
READING  
RG1 8DB

- Legend**
-  PROPOSED WATER MAINS APPROXIMATE ROUTE
  -  COMMON LAND
  -  WORKING WIDTH (APPROX. 10M)
  -  CHAMBER APPROX LOCATION
  -  CHAMBER TO BE ABANDONED
  -  EXISTING MAINS

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

CURRENT VERSION INFORMATION

Rev	Description	Disgr	Chkd	Appd	Date

A	FOR INFORMATION	HJ	JF	RC	26.08.2016
Rev	Description	Disgr	Chkd	Appd	Date

 **Thames Water Utilities**

Rose Kiln Court  
Rose Kiln Lane, Reading RG2 9HP

Location Code	OS Reference	Security Reference	Drawn By:
-	TQ006363	-	HJ
Project Group	Sub Process	-	
Location / Town	Dunsfold Common Road		
Site Name	GFORD 007		
Project Name	THAMES VALLEY MAINS REPLACEMENT		
Contract Name	EIGHT20 AMP6		
Drawing Title	GFORD007: WIA NOTICE PLAN		
Drawing No.	Scale	Sheet Size	Rev
C956 011-BSK-C9194-A	1:2000	A3	A

