



Application Decision

by Richard Holland

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

Decision date: 13 January 2017

Application Ref: COM/3162749

Land near Allotment Gardens, The Friends' Meeting House and the Washings, Layer Breton, Essex

Register Unit No: CL 360

Commons Registration Authority: Essex County Council

- The application, dated 7 November 2016, is made under Section 38 of the Commons Act 2006 (the Act) for consent to carry out restricted works on common land.
 - The application is made by Stanfords Chartered Surveyors, Auctioneers, Land and Estate Agents for Mr Richard Isles.
 - The works comprise the laying of 20 metres of underground electricity cable.
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Decision

1. Consent is granted for the works in accordance with the application dated 7 November 2016 and accompanying plan, subject to the following conditions:-
 - (i) the works shall begin no later than 3 years from the date of this decision; and
 - (ii) the land shall be fully reinstated within one month of completion of the works.
2. For the purposes of identification only the location of the works is shown 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 representation made by the Open Spaces Society (OSS), which does not object to the application.
6. I am required by section 39 of the 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 land owner was consulted about the application but submitted no representations. There are no rights of common registered over the land. I am satisfied that there is no evidence to suggest the interests of those occupying or having rights over the land will be harmed by the granting of consent for the proposed works.

The interests of the neighbourhood and the protection of public rights of access

8. The common is comprised of four narrow roadside strips of land, which extend to varying degrees onto the highway at some points. The strip where the works will take place lies mainly on the southern side of Shatters Road. The proposed underground electric cable is required to provide an electricity supply to stables located outside the common and its route will cross the strip at one of the widest points.
9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. Once the cable is installed, the land will be backfilled and will be available for public access as before. The applicant has not said how long the works will take but, as only 20m of cable will be laid, they are likely to be of short duration. No temporary fencing is proposed for the duration of the works. 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

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

Conservation of the landscape

11. The applicant has advised that the current ground surface is partly hardcore and partly established grass and that all necessary reinstatement of the land will be carried out. Any damage caused will be made good, including re-seeding as necessary. The applicant has said that the cable will be laid by UKPN (which I take to mean UK Power Networks), which has its own restoration code. I consider that following full reinstatement of the land, which can be ensured by attaching a suitable condition to the consent, there is likely to be no long term detrimental impact on 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

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

Other matters

13. The proposed works will be of benefit to the applicant but will provide no wider benefit to the public interests in the common land. However, the works are small scale and will leave no above-ground features. Furthermore, there will be full reinstatement of the land once the works are completed. I therefore consider that the application is consistent with the continuing use of the land as common land, even though it is entirely for private benefit, because other than during the short cable-laying process the works will not interfere with the public interests in the land.

Conclusion

14. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and that consent should be granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

