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# Application Decision

by **Richard Holland**

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

Decision date: 28 March 2017

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## Application Ref: COM 3164404

### Henley Common, Church Stretton, Shropshire

Register Unit No: CL 50

Commons Registration Authority: Shropshire County Council.

- The application, dated 29 November 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 Severn Trent Water Limited.
  - The works of approximately five weeks duration comprise:
    - i. replacement of approximately 332m of existing 4" asbestos cement water main with a polyurethane pipe; and
    - ii. temporary 1m high mobile plastic utility barrier fencing or 2m high Heras type galvanized mesh barrier fencing (approximately 100m lengths at any one time).
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## Decision

1. Consent is granted for the works in accordance with the application dated 29 November 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 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.
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), Shropshire Council (the Council) and Shropshire Wildlife Trust (SWT).
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);

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

- 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***

- 7. The landowner, Mr T S Acton, has been consulted about the application and has not objected to the proposed works. I am satisfied that the works will not harm the interests of those occupying the land.
- 8. The common land register records one rights holder with rights to graze 50 cattle and 500 sheep over the common land unit. The applicant has said that the consultation letter sent to the rights holder was undelivered and returned by Royal Mail as the addressee had gone away. This does not prove that the rights are not exercised and the applicant has also said that consultations with the landowner's agent about the exercising of the rights were not conclusive. However, I consider it unlikely that significant grazing activity would go unnoticed. Given the extent and timescale of the proposed works, and that any grazing is likely to be small scale, I consider that the works are unlikely to interfere significantly with the exercising of the rights. I am therefore satisfied that the works are unlikely to harm the interests of those having rights over the land.

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

- 9. The applicant confirms that the proposed water main replacement works are needed as the existing water main is approximately 50 years old and is no longer able to cope with the volume of water it carries. It is now beyond its working life and is prone to regular bursts. 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, excavation would be in fenced 100 metre sections with the land backfilled and the fencing removed as the works progress along the route.
- 10. 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 along two vehicular tracks running through the common, beneath which the pipe will be laid. The applicant has confirmed that vehicle access along the tracks for local residents and emergency services will be maintained throughout the works; if necessary through the use of steel road plates. Access for the public on foot will also be maintained along the route.
- 11. The permanent works are underground, with no new above surface features, and the common land affected will be reinstated upon completion of the works. Only around 200m of the temporary fencing will be erected at any one time (100m on each side of the trench) and it will be removed as soon as possible once the works are completed, which is expected to be within five 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***

- 12. Henley Common is designated as a Local Wildlife Site administered by SWT. Both SWT and the Council's Biodiversity Data Officer raised concerns about the potential impact of the works on nesting birds and grassland areas; in particular the Turtle Dove, which is a red listed Bird of Conservation Concern and categorised as threatened globally, and Dyer's Greenweed, which is associated with roadside ditches.

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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.

13. The applicant has confirmed that a small amount of shrub removal will be required at Henley Common Farmhouse where the new pipe will be connected to the existing water main. However, before any shrub removal a competent ecologist/ornithologist will conduct a thorough inspection to ensure that no nesting birds are present. If nesting birds are present the connection will be put back until after the nesting period. As the remaining works will be along the vehicular tracks there will be no need for hedgerow removal and storage of materials will be restricted to hardstanding areas to minimise disturbance to trackside flora and fauna. I am satisfied that with these measures in place the works will not harm nature conservation interests.

### **Conservation of the landscape**

14. The applicant has said that final restoration of the ground will be of paramount concern throughout the works and will be taken into consideration when planning pit locations (if directional drilling is used), digging the ground and replacing disturbed soil and vegetation. Any excavations required will be backfilled and compacted and the area reinstated to match its surroundings once the works are completed. As all the permanent works will be underground and mostly beneath the existing tracks, I consider that any impact on the landscape will be small and short term.
15. Henley Common lies within the Shropshire Hills Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. I am satisfied that any visual intrusion will be of temporary duration and that the natural beauty of the AONB will be conserved in the long term.

### **Archaeological remains and features of historic interest**

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

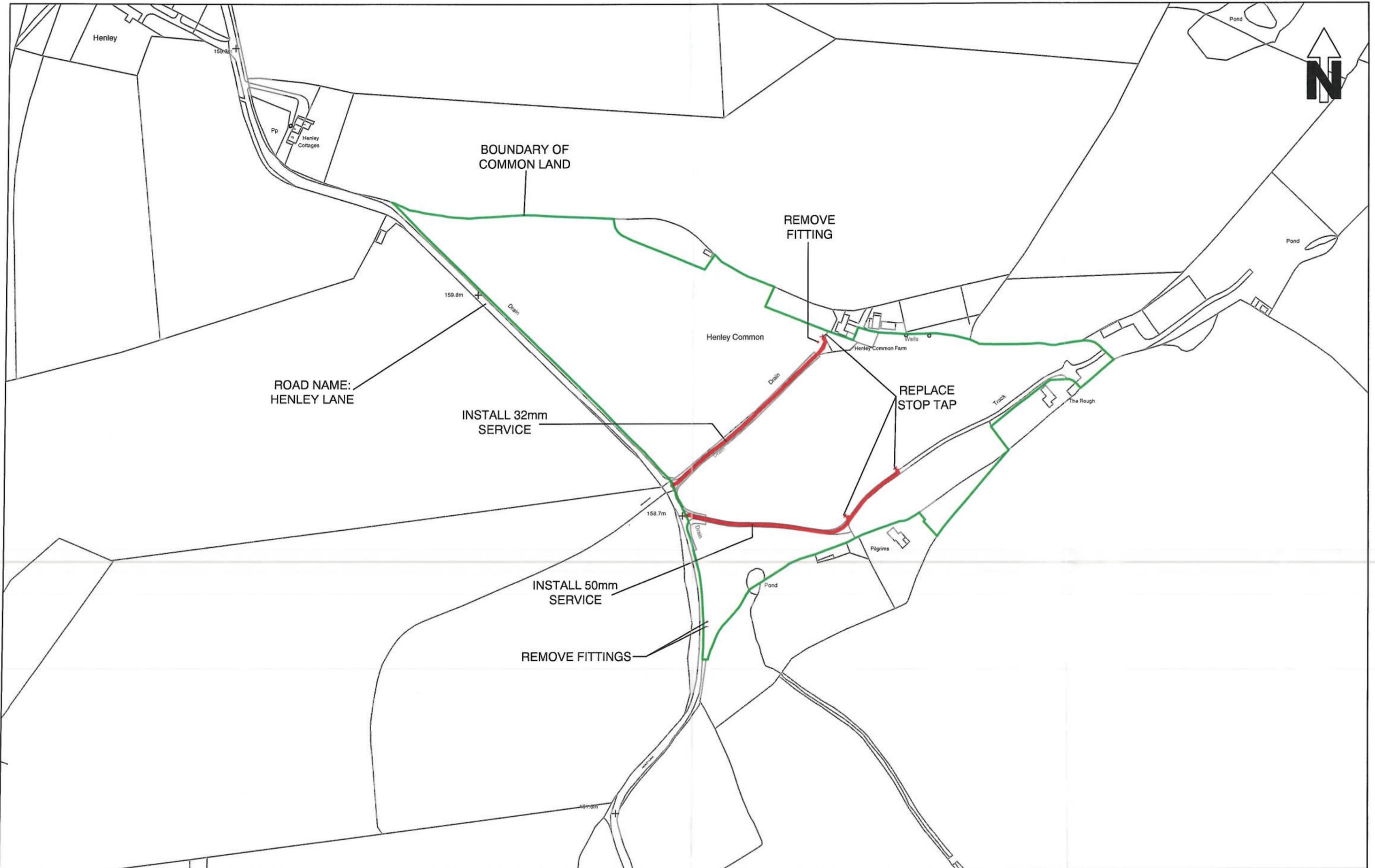
### **Other relevant matters**

17. 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.....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**

18. 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**



WORKING WIDTH OVER PIPE WILL BE APPROXIMATELY 10.0m

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