
Application Decision

by **Richard Holland**

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

Decision date: 7 April 2017

Application Ref: COM/3165309
Blackstone Edge Common, Calderdale
Register Unit No: CL674

Application Ref: COM/3165310
Walsden Common, Calderdale
Register Unit No: CL673

Commons Registration Authority: Calderdale Council.

- The applications, dated 9 December 2016, are made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
- The applications are made by Bell Ingram LLP for United Utilities Water Ltd.
- The works relate to the maintenance of Warland Reservoir and comprise:
 - i. installation of a three pipe siphon discharge system to enable rapid drawdown of the reservoir in an emergency;
 - ii. works to clean out the existing embankment drainage and provide embankment seepage flow measurement via the provision of flow measurement systems connected to the new telemetry system;
 - iii. Provision of a telemetry system and power supply to transfer site data to a central control system; and
 - iv. grouting and infilling an existing conduit.

Decision

1. Consent is granted for the works in accordance with the applications dated 9 December 2016 and accompanying plans, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. all temporary fencing and materials held within the compound shall be removed and the commons shall be restored within one month of the completion of the works.
2. For the purposes of identification only the area within which the works are proposed is shown by a red line on the attached plan.

Preliminary Matters

3. The two common land units are contiguous, with an area of Warland Reservoir lying in each. Whilst a separate application has been made for each unit, much of the described works is applicable to both and cannot practically be separated out. This decision therefore considers the two applications together.
4. The applications plan shows Walsden Common as register unit CL167, as originally registered by Lancashire County Council. It subsequently fell under the remit of West Yorkshire Council commons registration authority under the new reference number CL 673, which it has retained under the current Calderdale Council commons registration authority remit.

5. The works described above are as set out in the two application notices published in the Rochdale Observer on 10 December 2016. The application forms and plans additionally refer to and show two above ground kiosks; a generator kiosk (2.3m x 2.5m x 3m high) and a siphon kiosk (3.8m x 2.5m x 3m high), and a partially above ground stilling basin (4.8m x 5.8m deep x 7.05m wide), which are new and permanent features. The generator and siphon kiosks are proposed to be placed together on Blackstone Edge Common. The stilling basin is proposed to be placed on the boundary between the two commons and will be mostly below ground level. I am satisfied that these new permanent features are needed to take forward the proposed works. The application forms and plans also refer to a fenced temporary works compound. The compound will enclose approximately 4417m² of land with a combination of Heras type security fencing and 1.2m high timber post and rail fencing totalling approximately 277m in length. The compound will be in place for the duration of the works, which is expected to be around 18 months. Although the compound is a significant element of the proposed works it was not specifically referred to in the published notices. However, it is clearly shown on the applications plan and prominently referred to in the application forms. I am satisfied that no-one is likely to be prejudiced by the absence of a specific reference to the kiosks, basin and fencing in the notices.
6. The applications plan shows a proposed working area around the reservoir of 519295m² (just under 52 hectares), which is marked by a red line. For the avoidance of doubt the applicant has confirmed that no new fencing is proposed on this line, although some lengths of fencing are already present. The only temporary fencing proposed is that around the works compound and possibly a small amount of temporary fencing around the stilling basin during its construction. The only permanent fencing proposed is a small line of stock proof fencing along the far side of the basin, which is required under health and safety requirements. The applications are being determined on this basis.
7. I have had regard to Defra's Common Land Consents Policy¹ in determining these applications 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.
8. These applications have been determined solely on the basis of written evidence.
9. I have taken account of the representation made by the Open Spaces Society (OSS), which raised no objections.
10. I am required by section 39 of the 2006 Act to have regard to the following in determining these applications:-
 - 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

11. Walsden Common is owned by The Lord of the Manor of Rochdale Estate, as is most of Blackstone Edge Common. The Lord of the Manor was consulted about the applications but has not

¹ Common Land Consents Policy (Defra November 2015)

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.

commented. There is no evidence before me to suggest that the interests of the Lord of the Manor will be harmed by the proposals. The common land register for Blackstone Edge indicates that four small areas near the reservoir are not owned by the Lord of the Manor and the Blackstone Edge application form gives two other owners - United Utilities Water Ltd and Yorkshire Water Services Limited. As one is the applicant and the other is a water company which is likely to have an interest in maintaining the reservoir, I consider that the proposed works are in the interests of both.

12. Both commons are subject to numerous grazing rights. The applicant identified four active commoners on Blackstone Edge and at least three on Walsden Common but consulted all the rights holders recorded in the common land registers. None have commented about the proposals. Given the extent, location and nature of the proposed works, 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

13. 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. Both commons are large and remote areas where local people and the public may roam. The proposed works are concentrated around the edge of the reservoir, which I consider is likely to be a particularly popular area for walking.
14. The maintenance work around the banks of the reservoir will have an impact on access to a certain extent and I accept that it may be necessary to use small sections of short term temporary safety fencing in places other than just around the stilling basin. However, I consider that this is likely to be of small scale and of short duration in any one place at any one time. The only permanent fencing will be a short stretch along the far side of the stilling basin to separate it from grazing animals and the public in the interests of health and safety. I do not consider it likely to have a significant impact on legitimate public access to the commons.
15. The main restriction to access created by the proposed works will be the works compound, which will enclose an area of approximately 4417m² with temporary fencing for around 18 months. I accept that such a compound is necessary to enable the proposed programme of works to be carried out and that, as the reservoir is surrounded by common land, there is no alternative to siting it on the common. I also consider that the area of common enclosed is negligible compared with the size of the common land as a whole and I give weight to the statement by OSS that it does not object to the proposals.
16. For the reasons above I consider that the proposed works will not significantly harm the interests of the neighbourhood and the protection of public rights of access.

Nature conservation

17. The commons fall within the South Pennines Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Specially Protected Area (SPA). The applicant has confirmed that Natural England (NE) was consulted extensively about the works and that the necessary NE assent has been granted. There is no evidence before me to suggest that the proposals will harm the interests of nature conservation.

Conservation of the landscape

18. There will be some visual impact from the proposed above ground permanent structures. However, the footprint of the stilling basin and two kiosks will be small and they will not be significantly out of keeping with the general area around the reservoir, where similar apparatus is already in place and where such structures are expected to be located. Most of the maintenance works described will either be below ground or will be below the normal functioning water level of the reservoir. The works compound will be temporary and the land will be reinstated once the works have been completed. The compound is nevertheless likely to have a significant detrimental visual impact on the landscape. However, the impact will only last for 18 months and the land will be restored on completion of the works. I therefore consider that the application should not be refused on the grounds of temporary landscape harm alone.

Archaeological remains and features of historic interest

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

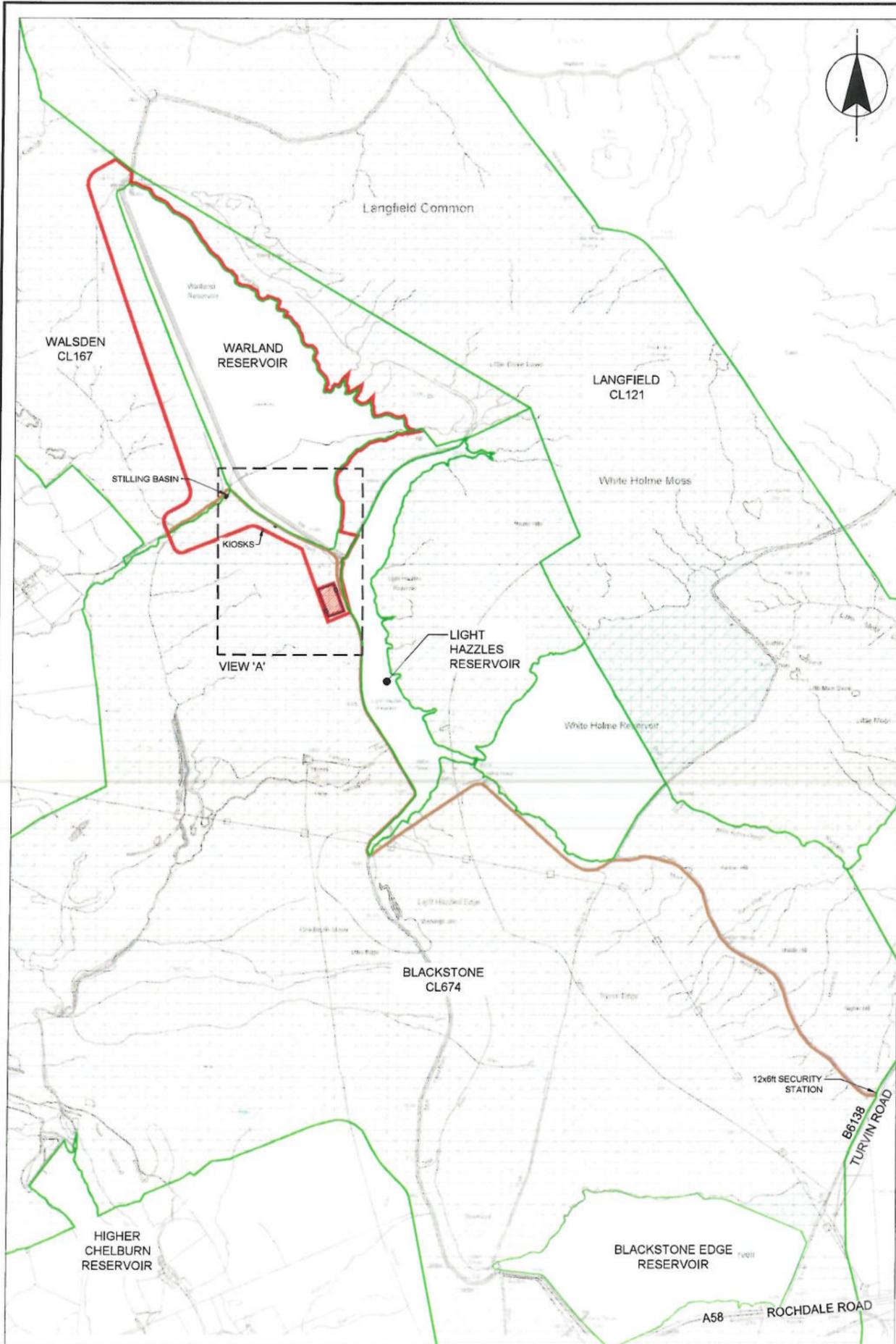
Other relevant matters

20. Warland is a Category A reservoir under the Reservoir Act 1975 and is used for public water supply. The applicant has said that the applications are for essential works resulting from statutory inspection under the Act and has given an undertaking to the water industry regulator to reduce the risk of embankment failure at all its reservoirs to an acceptable level.
21. Defra's policy says 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.

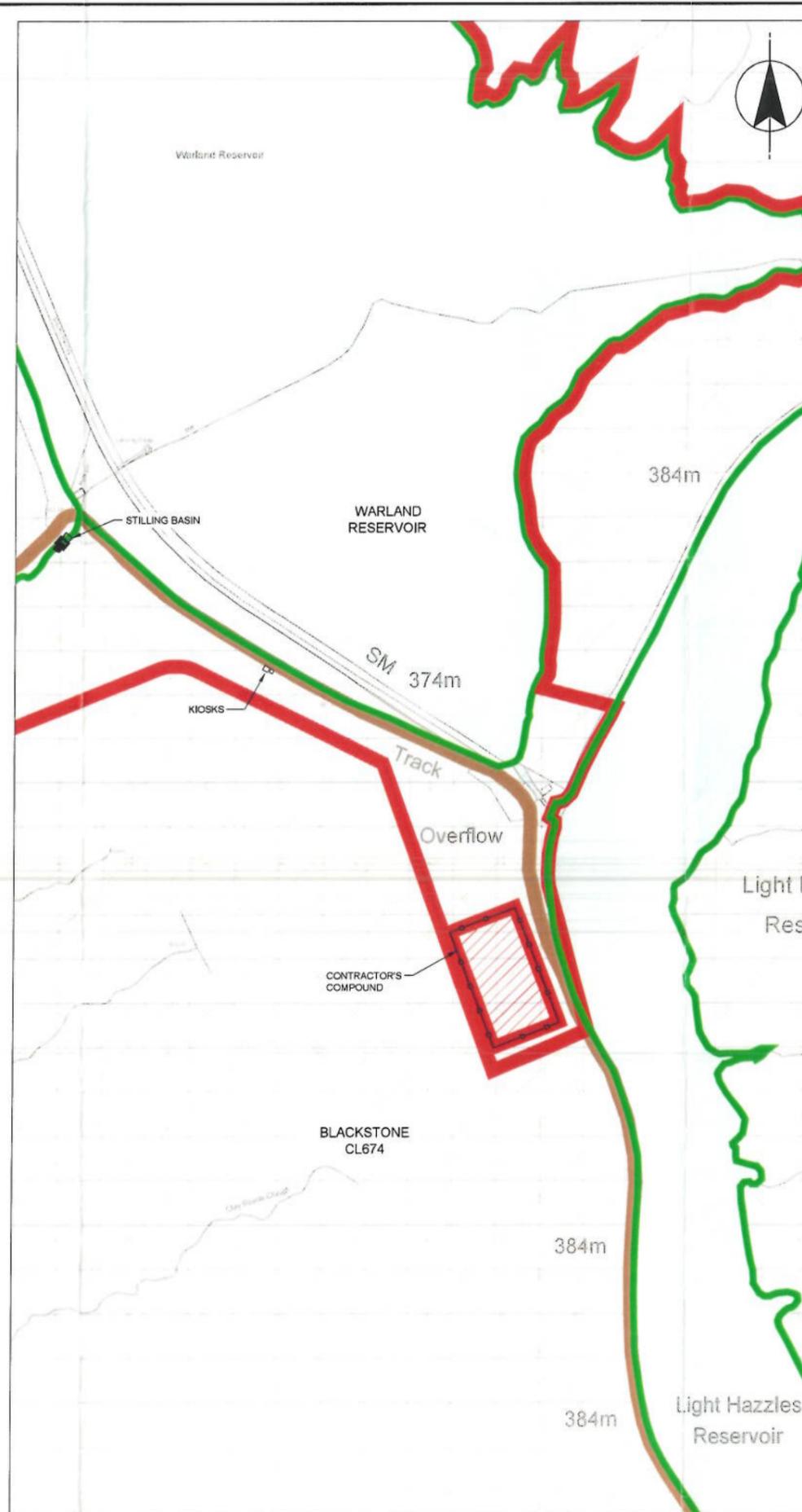
Conclusion

22. I conclude that the proposed works will not significantly or permanently harm the interests set out in paragraph 10 above and, in maintaining the reservoir embankment, will confer a public benefit by safeguarding the water supply to the local community. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland



PLAN
NTS



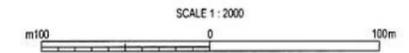
VIEW 'A'
SCALE 1:2000

NOTES

1. ALL DIMENSIONS IN MILLIMETRES AND ALL LEVELS IN METRES AOD UNLESS NOTED OTHERWISE.
2. NO DIMENSIONS ARE TO BE SCALED FROM THIS DRAWING.

LEGEND

- PROPOSED WORKING AREA
AREA = 519295m²
- PROPOSED TEMPORARY SITE COMPOUND
- PROPOSED SITE ACCESS ROUTE
- AREA OF COMMON LAND
- SPECIAL PROTECTION AREA (SPA)
- SPECIAL AREA OF CONSERVATION (SAC)
- SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI)
- PERMANENT STRUCTURES
- FENCING



O.S. GRID REF:
SD9520

CURRENT ISSUE INFORMATION

P03	JP	JS	JWB	Issued for Contract	06/12/16
VERSION	AUTH	C-NO	REV'D	REASON FOR ISSUE	DATE
S2		Issued for Information			
SUITABILITY CODE	SUITABILITY DESCRIPTION				



WARLAND IR SEEPAGE STABILITY PRA
COMMON LAND ACT 2006
SECTION 38 PLAN

SCALE 1:2000	SHEET SIZE A1
DRAWING NUMBER 80030711-01-MMB-WDN-96-DR-C-00009	REVISION P03