

---

# Application Decision

**by Richard Holland**

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

Decision date: 17 May 2017

---

## Application Ref: COM 3163638

### Upper Common/Lower Common, Bucklebury, Berkshire

Register Unit No: CL 28

Commons Registration Authority: West Berkshire Council.

- The application, dated 18 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 Thames Water Utilities Limited.
  - The works of approximately ten weeks duration comprise:
    - i. replacement of approximately 170m of existing 4" cast iron water main with High Performance Polyethylene Equipment (HPPE); and
    - ii. temporary 1.5m high plastic barrier fencing and 2m high Heras type mesh barrier fencing enclosing up to 600m<sup>2</sup> at any one time (in approximately 100m lengths).
- 

## Decision

1. Consent is granted for the works in accordance with the application dated 18 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 Natural England (NE) and the Open Spaces Society (OSS), neither of which object to the application.
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);

---

<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 William Hartley-Russel, 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 over 100 rights of common; including rights of estovers and rights to graze sheep, cattle, horses, pigs, geese and goats. The applicant has said that there are 25 active rights holders and that consultation letters were sent to each of them. None have commented on the application. Given the extent and timescale of the proposed works I consider that the works are unlikely to interfere significantly with any 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 part of a larger, routine asset renewal programme required to ensure the continued improvement to water supply and quality and to reduce the likelihood of 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, with associated temporary safety/security fencing, will need to be used. This being the case, excavation would be in 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 the highway known as Tyler's Lane, beneath which 140m of the 170m length pipe will be laid. The remaining 30m length then continues in a south easterly direction from Tyler's Lane, stopping just short of a footpath where it will link with an existing water main. The applicant has confirmed that access to adjacent properties will be maintained throughout the works, as will access for the public on foot.
- 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 ten 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. The Common has no special nature conservation designation. NE has advised that it does not see the works as having a detrimental effect on landscape, access or the biodiversity of the common as a whole. I am satisfied that the works are unlikely to harm nature conservation interests.

### ***Conservation of the landscape***

- 13. The applicant has confirmed that the ground will be reinstated in accordance with a photographic record of condition to be prepared before the works begin. For grassed areas this is likely to involve levelling and re-seeding. Hard surfaced areas such as the highway will be reinstated with 'like for

---

<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.

like' materials (tarmac, concrete, gravel, etc.). As all the permanent works will be underground and mostly beneath the existing highway, I consider that any impact on the landscape will be small and short term.

14. The common lies within the North Wessex Downs 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**

15. 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**

16. 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**

17. 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**



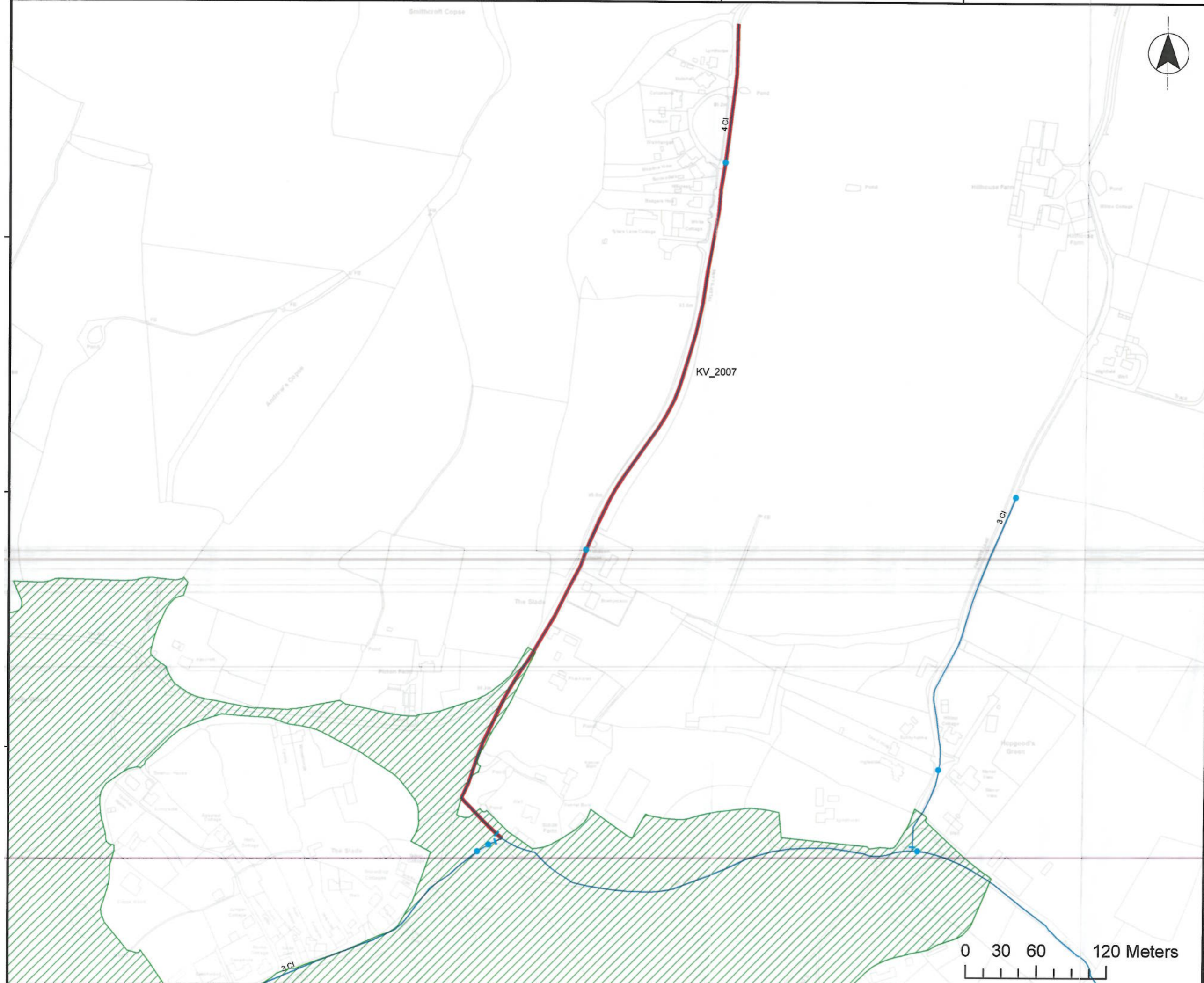
DO NOT SCALE - IF IN DOUBT ASK



CLEARWATER COURT  
VASTERN ROAD  
READING  
RG1 8DB

### Legend

- Distribution Valves
- Distribution Hydrant
- Distribution Mains
- Common Land
- Proposed Scheme



#### CURRENT VERSION INFORMATION

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

Rev	Description	Appd	Date
A	For Information	HJ	04.11.2016



Thames Water Utilities

Rose Kiln Court  
Rose Kiln Lane, Reading RG2 0HP

Location Code:	OS Reference:	Security Reference:	Drawn By:
-	SU536702	-	HJ
Project Group:	Sub Process: WATER		
Location / Town: West Berkshire			
Site Name: KV_2007			
Project Name: THAMES VALLEY MAINS REPLACEMENT			
Contract Name: EIGHT20 AMP6			
Drawing Title: Common Land Drawing : KV 2007 Tylers Lane - Sheet 1 of 2			
Drawing No.:	Scale:	Sheet Size:	Rev:
D363.211-BSK-C9120-A	1:3000	A3	A