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# Application Decision

by **Richard Holland**

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

Decision date: **22 May 2017**

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**Application Ref: COM 3164426**  
**Yateley Common, Yateley, Hampshire**

Register Unit No: CL 24

Commons Registration Authority: Hampshire County Council.

- The application, dated 22 November 2016, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
- The application is made by Dalcour Maclaren Ltd for South East Water Limited.
- The works of up to two years duration are to install a new 1.03km water main and comprise:
  - i. excavation of a 1.8m wide pipe trench to an average depth of 2.5m and topsoil stockpiling to one side;
  - ii. installation of ductile iron or steel pipes and associated valves and washouts;
  - iii. erection of approximately 1m high wooden post and single wire fencing, demarcating a 30m wide working area along the whole length of the works;
  - iv. lengths of up to approximately 300m of 1.8m high Heras fencing around open excavations as the works progress;
  - v. a 6m wide x 10m long x 3m deep excavation at the western end to connect the new pipe to the existing water main;
  - vi. associated tree and vegetation clearance along the pipe route; and
  - vii. backfilling of the trench and reinstatement of the topsoil.

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## Decision

1. Consent is granted for the works in accordance with the application dated 22 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 and all fencing removed 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.

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

5. I have taken account of the representations made by the Open Spaces Society (OSS), Mr Bob Milton and Mrs Barbara Mansell.
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);
  - 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 and manager of the common, Hampshire County Council (the Council), has been consulted about the application and has not commented on the proposed works. I am satisfied that the works are unlikely to harm the interests of the Council, as occupier of the land.
8. The common land register records numerous rights of common and the applicant has said that 23 properties have various extant rights of grazing, turbarry, estovers, common in the soil, pannage and piscary. The applicant has also said that the Council, which has a regular presence on the common, has advised that it has not observed any rights being exercised over the last 15 years or so. The applicant nevertheless consulted all the properties, including two (Oaklands and Heathfield) for which there is anecdotal evidence of the recent exercising of turbarry and estovers.
9. Mrs Mansell confirmed in her representation that she exercises rights attached to Follyfoot (previously named Cottage Farm and recorded as such in the register). Although she has raised concerns that the works will infringe such rights it is not clear from what Mrs Mansell has said what form such infringements might take. No other rights holders have made representations about the impact of the proposed works on the exercising of their rights and I am satisfied that, from the information before me, 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***

10. The common land proposals are part of a wider scheme to lay approximately 4.5km of new 1000mm diameter water main, which is described in the application as a critical piece of local infrastructure. The scheme aims to safeguard the local water supply in the long term as the existing 900mm water main serving the area is undersized to meet future levels of supply.
11. 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. The applicant has acknowledged that Yateley Common is widely used by the public both on foot and on horseback and that the pipe route crosses a number of existing paths, three of which are formal public rights of way. In their representations both OSS and Mr Milton expressed concerns about the potential impact of the works on public access.
12. The applicant has confirmed that four crossing points through the working area will be maintained during the period of works. Three will be positioned at the rights of way locations and the fourth will ensure access from the common to the adjacent Ely public house. The crossing points will be surfaced with a material that is suitable for equestrian use and will be monitored by the applicant to ensure that they remain safe and fit for purpose.

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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 crossing points will need to be closed for very short periods (a matter of minutes) in the interests of public safety at times when works vehicles and plant are manoeuvring in the immediate area. They will also need to be closed when excavation and backfilling takes place at their locations (likely to be for a maximum of two days), during which time the other three crossing points will remain open. I consider these arrangements strike a reasonable balance between ensuring public access and safety and allowing the works to progress without undue delay.
14. It is proposed to demarcate the whole length of the working area with post and wire fencing for the entire duration of the works, which is estimated to be up to two years. This means that areas will be closed to public access for lengthy periods of time when no works are taking place in the immediate area. The applicant has explained that the demarcation fencing is to demonstrate the extent of the works to users of the common before they begin, to ensure that contractor activity does not stray further than the 30m working area corridor during the works, and to assist in the reinstatement of the land on completion of the works. The area to be closed in this way amounts to around 30 hectares, which is not an insignificant area of land. However, Yateley Common extends to just over 493 hectares so 94% of it will remain open to the public during the works.
15. The permanent works are mostly underground, with no new above surface features other than valve chamber access covers, which will be flush to the ground. The common land affected will be reinstated upon completion of the works. The applicant has committed to removing the temporary demarcation fencing as soon as possible, which can be ensured by attaching a suitable condition to the consent. I consider that whilst the works are taking place they will have a significant impact on the interests of the neighbourhood and public rights of access to the area of common concerned but will have little or no impact on these interests thereafter.

### ***Nature conservation***

16. Yateley Common lies within the Castle Bottom to Yateley and Hawley Commons Site of Special Scientific Interest (SSSI) and the Thames Basin Heaths Specially Protected Area (SPA). Natural England (NE) has advised that it discussed the proposals with the applicant and is content for the works to proceed. Indeed, the necessary vegetation clearance along a section of the chosen pipe route presents an opportunity to enhance the SPA by removing successional scrub and reinstating the land with purely heathland species, thus increasing the area of heathland for which the SPA designation is given. I am therefore satisfied that the works will not harm nature conservation interests and that they have the potential to bring some conservation benefits in the longer term.

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

17. Once the scheme is complete only the valve chamber access covers will be visible. With the exception of the heathland restoration area the working area will be reinstated to its original state using a combination of natural regeneration from the replaced topsoil and re-seeding using seed and material sourced from appropriate adjacent habitat. There will be a detrimental impact on the landscape to a degree as a number of trees will need to be removed to accommodate the pipe line and will not be replaced. In acknowledging the tree loss the applicant has said that the dominant landscape features are the open heathland and the mature woodland strip along the southern boundary, both of which will remain.
18. As almost all the permanent works will be underground and the land will be re-instated, I consider that their visual impact will be largely short term. In the longer term, the positive effect of heathland restoration will go some way to compensate for the loss to the works of some trees. On balance, I consider that the tree loss is unlikely to have such a detrimental impact on the landscape that consent should be withheld for this reason alone.

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

19. The applicant has said that a thorough archaeological management plan will be agreed with Hampshire County Council and the County Archaeologist before any works begin to ensure that any such remains and features are protected throughout the period of works. I am satisfied that the proposed works are unlikely to harm any archaeological remains or features of historic interest.

### **Other relevant matters**

20. 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.

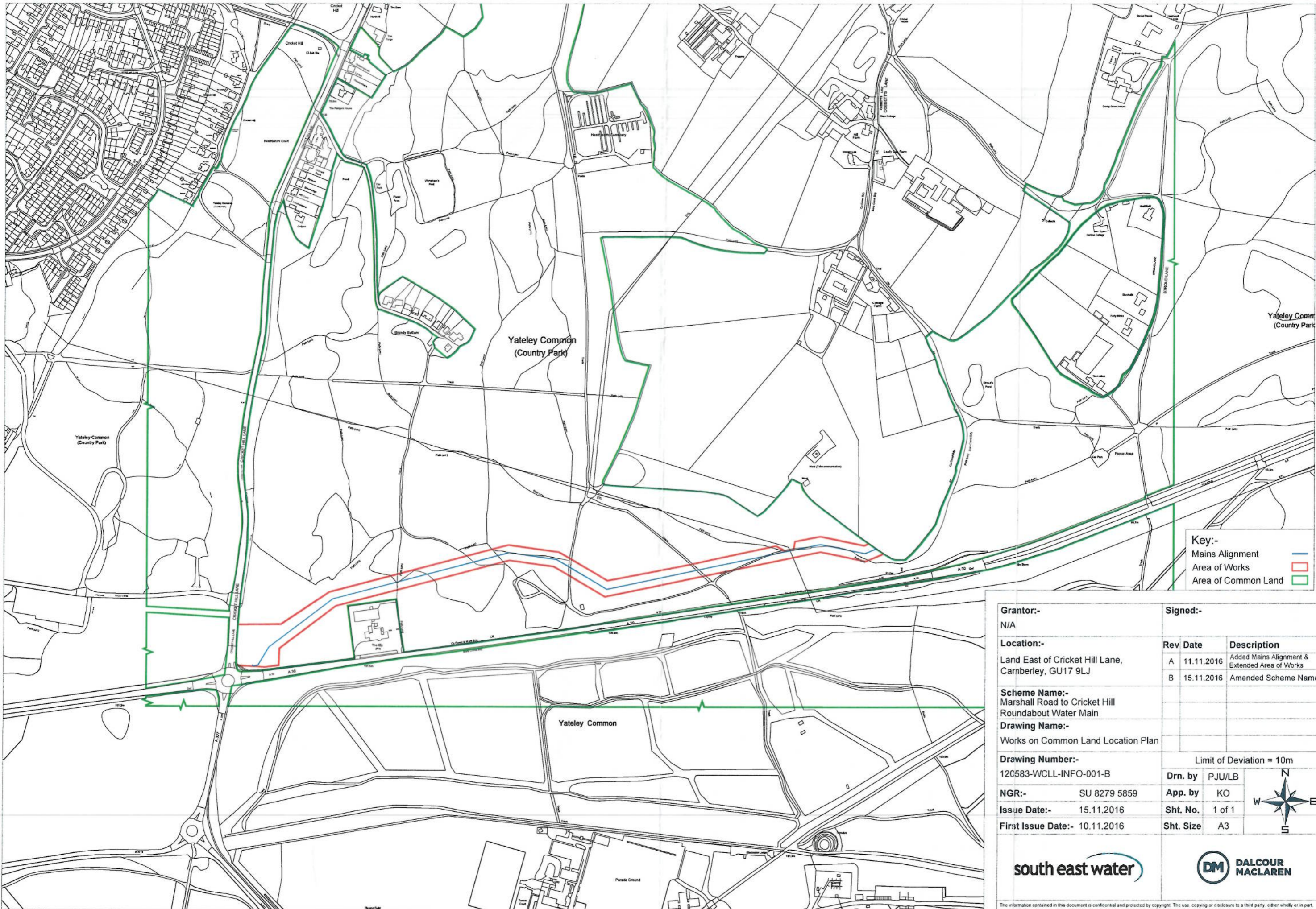
### **Other matters**

21. Mrs Mansell is concerned about the works crossing her property which adjoins the common. Although this matter is not relevant to my consideration of the application the applicant has stated that suitable access will be provided and will be subject to the usual negotiations held with private landowners affected by pipe laying schemes. Mrs Mansell also questions the need for the works as they will not benefit her because her property will not be supplied directly by the new water main; however, this does not of course mean that the wider community will not benefit from the scheme.

### **Conclusion**

22. I conclude that the proposed works will not unacceptably 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**



**Key:-**  
 Mains Alignment ———  
 Area of Works [Red Outline]  
 Area of Common Land [Green Outline]

<b>Grantor:-</b> N/A	<b>Signed:-</b>	
<b>Location:-</b> Land East of Cricket Hill Lane, Carnberley, GU17 9LJ	<b>Rev</b>	<b>Date</b>
	A	11.11.2016
	B	15.11.2016
<b>Scheme Name:-</b> Marshall Road to Cricket Hill Roundabout Water Main	<b>Description</b>	
	Added Mains Alignment & Extended Area of Works	
<b>Drawing Name:-</b> Works on Common Land Location Plan		
<b>Drawing Number:-</b> 120583-WCLL-INFO-001-B	Limit of Deviation = 10m	
<b>NGR:-</b> SU 8279 5859	<b>Drn. by</b>	PJU/LB
<b>Issue Date:-</b> 15.11.2016	<b>App. by</b>	KO
<b>First Issue Date:-</b> 10.11.2016	<b>Sht. No.</b>	1 of 1
	<b>Sht. Size</b>	A3



**south east water**

**DM DALCOUR  
MACLAREN**

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