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# Application Decision

by **Richard Holland**

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

Decision date: 6 July 2017

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**Application Ref: COM/3176580**  
**Malvern Common, Worcestershire**

Register Unit No: CL 17

Commons Registration Authority: Worcestershire County Council.

- The application, dated 19 May 2017, 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 on behalf of Severn Trent Water Ltd.
  - The works comprise: the construction of approximately 250 metres of water pipe line and associated apparatus. Temporary barriers to ensure the health and safety of the public will be located along the route during construction. The works/fencing will be located within common land adjacent to Lower Wyche Road, Malvern.
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## Decision

1. Consent is granted for the works in accordance with the application dated 19 May 2017 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 full 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 representation made by the Open Spaces Society (OSS).
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;

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

- 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 Malvern Hills Conservators, which own and manage the land, has been consulted about the application and has not objected to the proposed works. The Conservators have advised the applicant that the commoners do not exercise their rights of commons. I am satisfied that the proposed works will not harm the interests of those occupying or having rights over the land.

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

8. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The proposed works are part of a wider scheme to replace assets in the networks as part of Severn Trent's strategy to improve and renew assets to ensure a continuous supply of water for Malvern. Access to the working area (3040 square metres) will be restricted for around 5 to 6 weeks while underground works are being undertaken. The proposed works include access covers for surface apparatus. The covers will be flush to existing ground levels.
9. I accept that temporary barriers are required for health and safety purposes. I consider that, as the proposed works will only impede access for a short duration and the ground will be reinstated, the interests of the neighbourhood will not be harmed and public rights of access will not be interfered with in the long term.

### ***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. Malvern Common lies within the Malvern Hills Area of Outstanding Natural Beauty (AONB). I am satisfied that any impact on the landscape will be short term and the proposed works will conserve the natural beauty of the AONB in the long term.

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

12. I note that the Worcestershire Archive and Archaeology Service confirm that the proposed works are unlikely to affect any known heritage assets of archaeological interest, and the area is also deemed to have a low potential to contain any as yet unknown/undiscovered remains. I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

### ***Other relevant matters***

13. 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. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits. However, 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*

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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.

*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**

14. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will confer a public benefit by securing the local community's water supply. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**





GENERAL NOTES



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PROJECT NAME  
COWLEIGH ROAD

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