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# Application Decision

by **Richard Holland**

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

Decision date: 12 July 2017

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**Application Ref: COM 3176291**  
**Breach and St James Common, Dorset**

Register Unit No: CL41

Commons Registration Authority: Dorset County Council.

- The application, dated 15 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 Wessex Water.
  - The works of approximately four weeks duration to an existing underground water pumping system comprise:
    - (i) installation of a new pressure release valve and by-pass main;
    - (ii) a ground level concrete pad of approximately 3 square metres surrounding the chamber covers; and
    - (iii) 3m high Heras type temporary fencing enclosing a 180 square metres works compound (18m x 10m).
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## Decision

1. Consent is granted for the works in accordance with the application dated 15 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. all temporary fencing shall be removed and 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 in red 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 representation made by the Open Spaces Society (OSS), which does not 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);
  - 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 common land register notes that having held a hearing on 8 March 1984, the Commons Commissioner was not satisfied that any person was the owner of the land and that it remained subject to local authority protection under section 9 of the Commons Registration Act 1965 (now under section 45 of the Commons Act 2006). There are numerous rights of grazing, which the applicant has said are not exercised. No rights holders have made any comments about the proposals. There is no evidence before me to suggest that the works will 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 land is used by local people and is closely linked with interests of public access. The area of the common concerned is rural roadside verge alongside the B3091 road near Coles Lane and appears to have little recreational value other than for general access. The application plan indicates that the temporary works compound fencing will abut the road and will prevent persons from walking along the verge at the roadside. However, the plan also indicates that it will be possible for persons to walk around the compound along its boundary furthest from the road and thus remain on the verge rather than having to cross the road in order to continue. I do not consider that these short term works will impact greatly on local or public use of this part of the common.
9. The permanent works are underground and the common land affected will be reinstated upon completion of the works. 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***

10. The applicant has confirmed that due regard will be given to ecological and environmental protection during the works. Natural England (NE) was consulted and indicated that as the common will be made good after the works it had no wish to make further comment. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

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

11. The common land has no special designated landscape value. As the permanent works will be underground, the concrete pad and chamber covers will be flush to the ground and the works will be completed in around 4 weeks I consider that any visual impact on the landscape will be limited and short term. I am satisfied that there will be no lasting harmful visual impact on the common.

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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.

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

12. 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**

13. The applicant describes the proposals as essential works to record and reduce leakage to the water supply system. 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"*. As the proposed works will help safeguard the local water supply I am satisfied that they 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 reducing leaks in the water supply system. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**