
Application Decision

by **Richard Holland**

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

Decision date: 23 August 2017

Application Ref: COM 3171894
Semley and Gutch Commons, Wiltshire

Register Unit No: CL4

Commons Registration Authority: Wiltshire Council.

- The application, dated 15 March 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 Wiltshire Council.
 - The works of approximately 12 weeks duration to replace an existing sewage treatment plant comprise:
 - (i) construction of an underground sewage treatment plant (STP) and ancillary apparatus, pipework and ditching on Semley Common;
 - (ii) an above-ground, wooden-kerbed and shingle-dressed rectangular plinth housing access covers and air vents, protected by a line of 10 bollards and covering approximately 47.5 m² (4.1m x 11.6m); and
 - (iii) 150m of 2m high Heras type temporary fencing enclosing a working area of approximately 600m² for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 15 March 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 above ground plinth is shown in blue and the extent of the area to be temporarily fenced is shown in red on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy¹ 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 the Open Spaces Society (OSS).

¹ Common Land Consents Policy (Defra November 2015)

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;² 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 unit is owned by The Honourable Richard John Tennant Arundell. He has not commented on the application but the applicant has said he has agreed in principle to the siting of the works on a section of the common and that negotiations are ongoing for a grant of a long lease of the land. The common land register records numerous and varied rights over the unit, which comprises a large network of road verges over a wide area. The applicant has said that no rights are registered in respect of the area of land subject to the application and 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 site of the proposed plinth abuts a hard surfaced area at the end of an access road serving eight houses at Sem Hill. From photographs provided by the applicant the hard surfaced area appears to be used as a vehicle turning point and for residents parking. The area of common land comprises rough grass, scrub and bushes and appears to have little recreational value other than for general access. The application plan indicates that the temporary fencing, which will enclose a much larger area than that occupied by the completed plinth, will not interfere with local residents' access to the road or interfere with access to it from neighbouring properties. The applicant has said that the proposed fence line represents the maximum area required and that in practice it may well be possible to temporarily enclose a smaller area.
9. The permanent works will be largely underground and the common land around the plinth will be reinstated upon completion of the works. I consider that although the works will have an impact on the interests of the neighbourhood and public rights of access by removing a 47.5 m² area of rough grass, scrub and bushes from public use, the impact on these interests will not be so great that consent for the works should be withheld for this reason alone.

Nature conservation

10. The site is approximately 1km away from the Gutch Common Site of Special Scientific Interest (SSSI). Natural England was consulted about the application but did not comment. The Environment Agency has issued an environmental permit covering the works and commented in its covering letter that it is satisfied the activity can be carried out, in accordance with the permit, without harm to the environment. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

11. The site lies within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (AONB), although I give significant weight to the site's residential area setting. The AONB

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.

Board was consulted about the application but did not comment. As the permanent works will be largely underground and the works will be completed in around 12 weeks I consider that the visual impact on the landscape will be limited and short term. Whilst the plinth will introduce a new above ground built feature into the landscape, I am satisfied that its impact on the AONB will be negligible given its residential area setting and that the natural beauty of the AONB will be conserved.

12. The applicant has committed to fully reinstating the surrounding land on completion of the works, which can be ensured by attaching a suitable condition to the consent.

Archaeological remains and features of historic interest

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

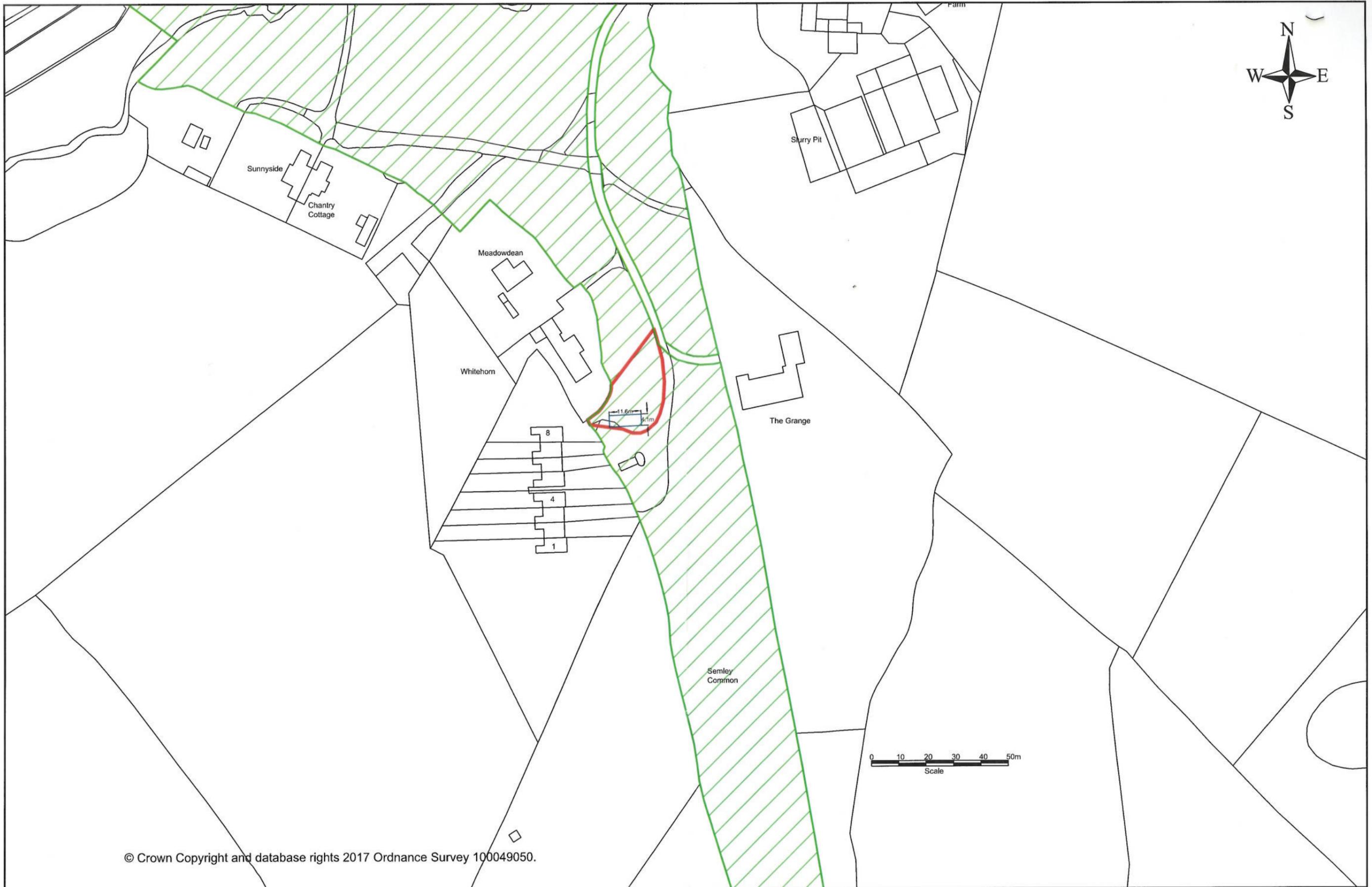
Other relevant matters

14. A solution is required to replace the existing STP because it is failing and is allowing semi-treated effluent to enter an adjacent watercourse. 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"*.
15. The impact of the proposed works will be small and they will provide a fully working sewage system for local residents which will prevent further pollution of a nearby watercourse. I am therefore satisfied that the works accord with this policy objective.

Conclusion

16. I conclude that the proposed works will not significantly harm the interests set out in paragraph 6 above and will confer a public benefit by providing a more effective sewage system for local residents. OSS questioned why the works need to be on common land when the existing STP is situated off the common in the back garden of a private residential property (No. 8 Sem Hill). The applicant has said that the current STP is coming to the end of its working life (the adjacent soakaway is silted up and not working) but is still in use. It cannot be decommissioned until a new STP has been built and is operational. As the existing STP is still in use the new one cannot be constructed within the same site. Furthermore, the STP outfall must be near the local watercourse to discharge into. Locating the STP in one of the nearby residential gardens is impractical. I accept that the proposed site, common land or otherwise, is the most suitable for the works. In any case, as I have concluded that the works will not cause any serious harm and will confer a public benefit I give OSS' objection little weight.
17. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



SITE: Sem Hill, Semley

SCALE: 1:1250 @A3

DRAWN: PFS

KEY:

DATE: April 2017

CAD REF:

Semley Common shown 

Area of Works shown  approx 47.5m²