



Application Decision

by **Richard Holland**

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

Decision date: 25 August 2017

Application Ref: COM/3177508 Blackstone Common, Calderdale

Register Unit No: CL674

Commons Registration Authority: Calderdale Council

- The application, dated 26 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 Bell Ingram LLP for United Utilities Water Ltd.
 - The works comprise:
 - i. permeation grouting of the north embankment and infilling of the tunnel portal;
 - ii. the existing overflow spillway is being modified (north embankment) with the addition of a 45m long, 7m wide (approx) channel to ensure flows from a flood event can safely be conveyed away from the reservoir embankment. Where the ground level does not fully cover the existing spillway walls, sandstone, cladding and concrete coping units are to be supplied. Galvanised hand-railing will be provided at the outfall headwall and the base of the spillway, with 5m timber, stock proof fencing being supplied elsewhere to prevent falls from height;
 - iii. the existing access road will be upgraded to be concrete in the action where the flows will overtop the end of the stilling basin (i.e. cover over the pipework) and erosion protections such as Geomat DM20 will be supplied in the other of overtopping. The erosion protection will be top soiled and seeded; and
 - iv. the existing stone access track from the reservoir crest (North embankment) to the spillway location is being re-profiled to a gradient of 1:6 (currently there are localised sections of 1:4).
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Decision

1. Consent is granted for the works in accordance with the application dated 26 May 2017 and accompanying plan.
2. For the purposes of identification only the area of works is shown as a red line on the attached plan.

Preliminary Matters

3. The application is retrospective as the works began in February 2016.
4. 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.
5. The application has been determined solely on the basis of written evidence.

¹ Common Land Consents Policy (Defra November 2015)

6. I have taken account of the representations made by the Open Spaces Society (OSS) and Historic England (HE).
7. I am required by section 39 of the 2006 Act to have regard to the following in determining these applications:-
 - 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

8. The applicant confirms that the Lord of the Manor of Rochdale is the landowner. The Lord of the Manor was consulted about the application and has not commented. There is no evidence before me to suggest that the interests of the Lord of the Manor will be harmed by the proposals. The common is subject to grazing rights. The applicant has consulted the commoners and none have objected. There is no indication that those rights will be impacted by the proposed works. 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 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 essential maintenance works are situated around the north embankment of Upper Chelburn reservoir. A short length (5m) of permanent fencing is required due to the height of the headwall and is intended to protect the health and safety of those working on site and the general public.
10. The works will upgrade and/or modify existing permanent structures over an area of 400 square metres of common. The applicant confirms that, with the exception of the spillway area, on completion of the scheme the public will have the same level of access onto the working area as they had before the works. The spillway is required to enable the reservoir to be controlled under storm conditions and prevent damage to the embankment and therefore the common. The 45 m x 7 m extension to the spillway will permanently reduce the area of common accessible to local people and the public generally on completion of the scheme. However, the area is only a very small proportion of the common as a whole.
11. I am satisfied that the works are needed to prevent damage to the reservoir and protect the common. I therefore consider that the impact of the spillway on public rights of access and the public's use of the common is outweighed by the public interest in reducing the risk of embankment failure and safeguarding the common from physical damage.

Nature conservation

12. The common lies within a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Special Protection Area (SPA). However, there is no evidence before me to suggest that the proposals will harm nature conservation interests.

Conservation of the landscape

13. The works, being largely of stone and concrete, will be a somewhat alien structure on the common and will cause some visual harm to the landscape. However, I consider that this harm is

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.

outweighed by the benefits to the conservation of the landscape that the works will deliver by preventing embankment failure and protecting the common from any damage that may otherwise result.

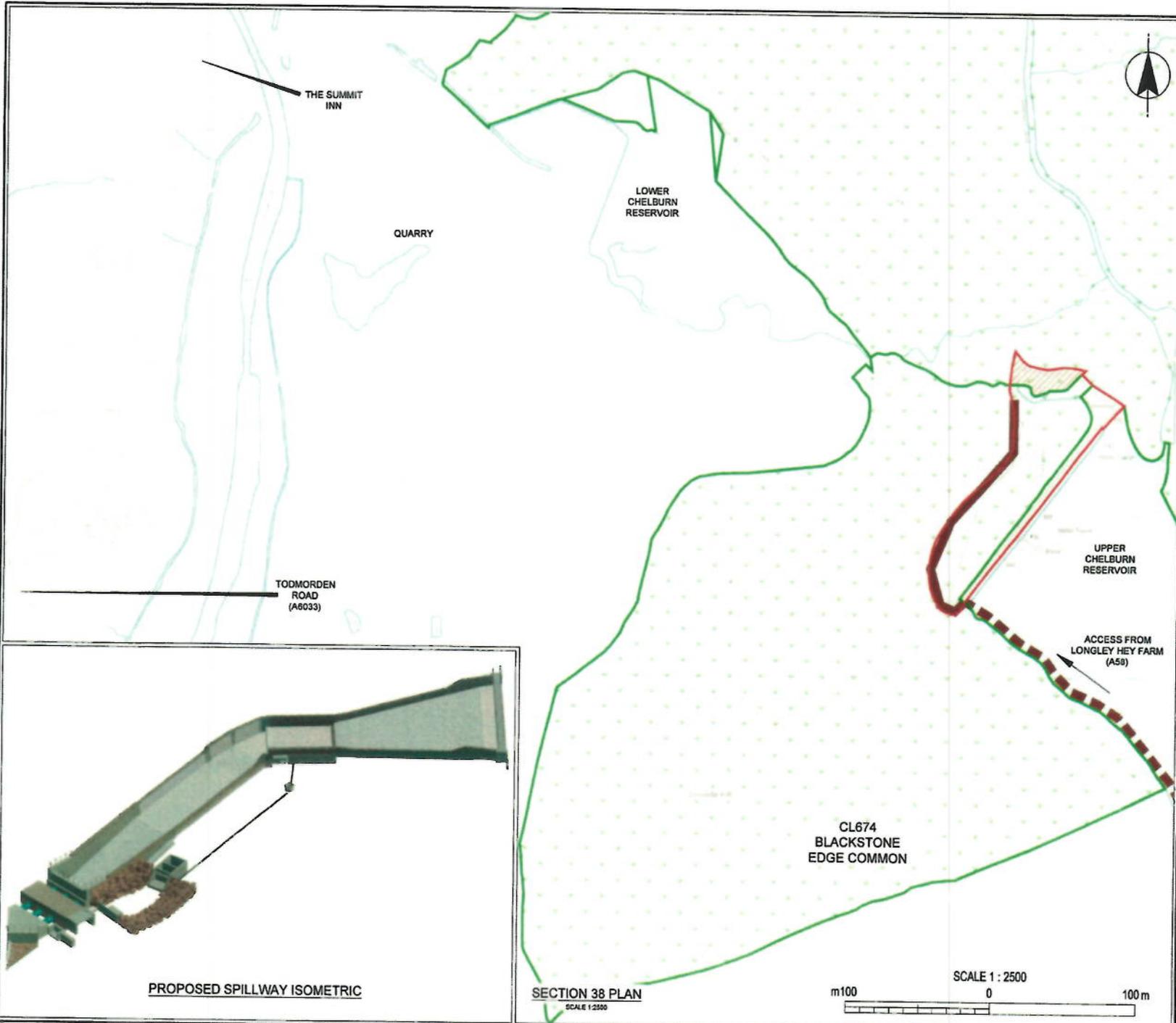
Archaeological remains and features of historic interest

14. Historic England does not object to the works but recommends that the applicant consults the Greater Manchester Archaeological Advisory Service. The applicant confirms that the advisory service has been consulted; it has not commented on the application. I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

Conclusion

15. I am satisfied that consent should be given for the works on the basis that although they will cause some visual harm and prevent public access to a very small proportion of the common this is offset by the protection the works will give to the common by reducing the risk of embankment failure.

Richard Holland



- NOTES**
1. ALL DIMENSIONS IN MILLIMETRES AND ALL LEVELS IN METRES ADD UNLESS NOTED OTHERWISE.
 2. NO DIMENSIONS ARE TO BE SCALED FROM THIS DRAWING.
 3. NEW PERMANENT STRUCTURES TO BE FENCED WITH STOCK PROOF FENCING.
 4. PROPOSED NEW SPILLWAY DIMENSIONS APPROX 45m x 7m

- LEGEND**
- EXISTING ACCESS ROUTE
 - ACCESS ROUTE
 - AREA OF COMMON LAND
 - PROPOSED WORKING AREA
 - PERMANENT STRUCTURES
 - SITE OF SPECIAL SCIENTIFIC INTEREST, SPECIAL PROTECTION AREA AND SPECIAL AREA OF CONSERVATION

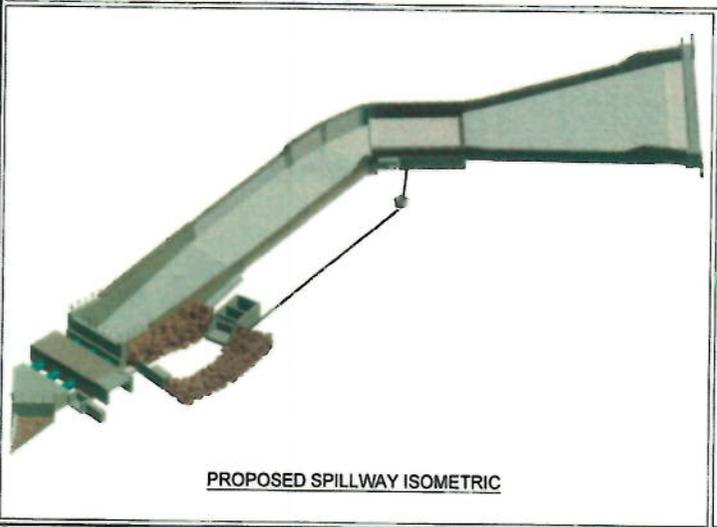
O.S. MAP REF:
SD6516

CURRENT ISSUE INFORMATION

P04.1	---	---	---	---	---
VERSION	AUTH	GRID	REV	REASON FOR ISSUE	DATE
S2				Issued for information	
SUBSTANTIALLY USED	SUBSTANTIALLY DESCRIPTION				

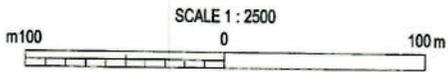


UPPER AND LOWER CHELBURN IRs PRA
COMMON LAND ACT 2006
SECTION 38 PLAN



PROPOSED SPILLWAY ISOMETRIC

SECTION 38 PLAN
SCALE 1:2500



SCALE 1:2500	SHEET SIZE A3
DRAWING NUMBER 80002837-01-MMB-UPD-06-DR-C-00010	REVISION P04.1