



Application Decision

by Richard Holland

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

Decision date: 13 October 2017

Application Ref: COM/3178929

Powick Hams, Worcestershire

Register Unit No: CL 77

Commons Registration Authority: Worcestershire County Council

- The application, dated 26 June 2017, 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 the Environment Agency.
 - The works comprise a temporary 341 m access road and compound, 216.5 m of temporary heras fencing and 95 m of post and stock proof fencing, extending to approximately 2675 m² for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 26 June 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;
 - ii. 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 access road is shown outlined in red, the compound hatched in red, heras fencing as a blue line and post and stock proof netting as broken purple line 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), Historic England (HE), Worcestershire County Council, Sarah Hawkins and R. Floyd, Chairman, Powick Commons Committee.
6. I am required by section 39 of the Commons Act 2006 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;

¹ Common Land Consents Policy (Defra November 2015)

- 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 landowner, Worcestershire County Council, has been consulted and does not object to the proposed works. I note that the Council (in its capacity as highway authority) is content with the applicant's assurance that it will liaise with it on the timetable of the works to ensure that there is no impediment to the undertaking of any necessary highway works.
- 8. The applicant explains that there are a number of active commoners who exercise their rights on the common. The common is not subject to rights all year round and rights are allocated by the commons association on a yearly basis. The applicant confirms that there are no commoners currently exercising rights of common on the site of the proposed works, and it will work with the commons association to mitigate any impact on active commoners. The commons association has not objected to the proposed works.
- 9. I am satisfied that the measures undertaken by the applicant will ensure that the interests of the landowner and the commoners are not adversely affected by the proposed works.

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

- 10. 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 wishes to use the common as a temporary working area to facilitate the removal of Powick Weir. The weir is located along the River Teme; it lies near the common but does not form part of it. The applicant explains that the weir is being removed to help the River Teme achieve Site of Special Scientific Interest (SSSI) "favourable condition" and good ecological status.
- 11. The works will exclude public access to the temporary working area for a 12 week period, after which the works will be removed. The public will continue to have access to the rest of the common. The location of the works is mostly shrub/disused land and therefore unlikely to have much recreational value. However a public right of way crosses the access road. A double leaf gate system will be used within the heras fencing to maintain public access to the right of way.
- 12. I accept that the works are needed on the common to enable the removal of Powick Weir. I do not consider that the works will unacceptably interfere with how the common is used by local people or public rights of access. I conclude that as the proposed works are temporary in duration they will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation

- 13. The River Teme is designated as a SSSI. The common does not form part of the SSSI and there is no indication that the works will have any impact on the SSSI. I note that an ecological walkover is included in the method statement to identify protected species in the working area and enact mitigation measures. I am satisfied that there is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

- 14. The proposed access will take what the applicant considers to be the most practical and direct route along an existing track on the common and a trackway system is proposed to protect, where possible, the surface of the common. The access track will be upgraded where

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.

needed to enable safe use for construction traffic. Stock proof netting and heras fencing is needed to contain the works and to meet health and safety requirements. The common will be fully restored following the completion of works.

15. I consider that since the works will be in place for only around 12 weeks their visual impact is likely to be limited especially given that the route of the access will follow an existing track and the works will be contained within a designated area. I conclude that any visual impact will be temporary and will not be unacceptable.

Archaeological remains and features of historic interest

16. HE confirmed that it does not wish to offer any comments on the application. I am satisfied that there is no evidence before me to indicate that the proposed works will harm any archaeological remains and features of historic interest.

Other matters

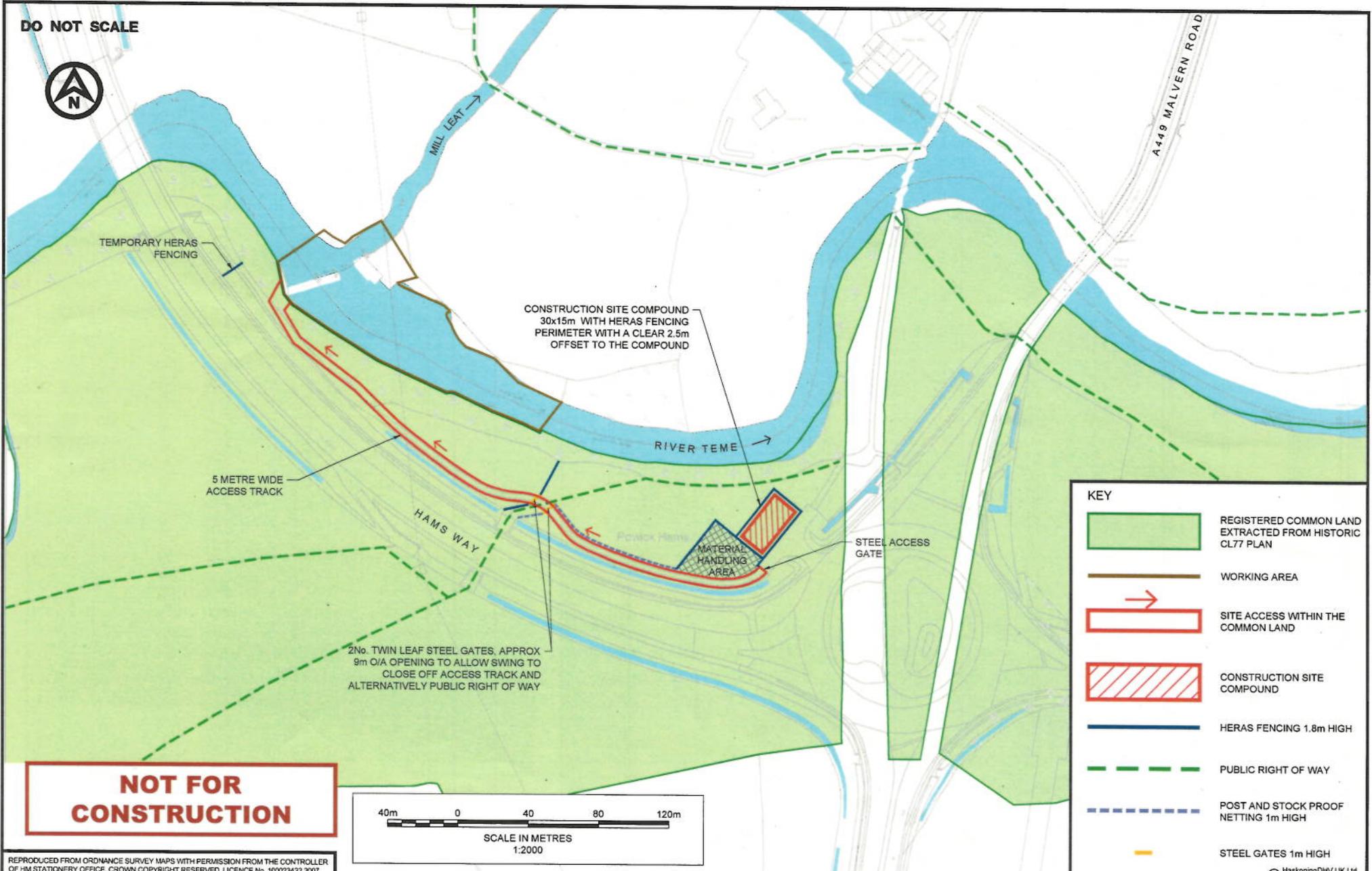
17. I note that some of the concerns raised relate to the removal of the weir, and not the proposed works. As the removal of the weir does not form part of this application, I consider the concerns are outside the scope of my considerations.

Conclusion

18. Defra's consents policy advises 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 manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit."*
19. I conclude that the works will not unacceptably harm the interests set out in paragraph 6 above and are consistent with Defra's policy guidance. Consent is granted for the works.

Richard Holland

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TITLE
POWICK SITE ACCESS AND COMPOUND PLAN

PROJECT
SHWG D & B AND APPRAISAL PACKAGE SEVERN S.A.C.



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