



Application Decision

by **Richard Holland**

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

Decision date: 17 October 2017

Application Ref: COM/3182676

Woolley Green, Bradford-upon-Avon, Wiltshire

Register Unit No: CL 76

Commons Registration Authority: Wiltshire Council

- The application, dated 14 August 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 Wessex Water.
 - The works comprise the replacement of a lead water pipe with a new polyethylene pipe. A temporary 0.35 m width and 1.2 m depth open cut trench, covering an area of 175 m² (5m width x 35m long) and temporary (heras) fencing. The temporary works will last for a period of 4 weeks plus remedial works (re-seeding grass).
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Decision

1. Consent is granted for the works in accordance with the application dated 14 August 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 the completion of the works.
2. For the purposes of identification only the location of the works is shown hatched 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 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:-

¹ Common Land Consents Policy (Defra November 2015)

- 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 applicant confirms that the common has no known owner and no rights are registered over the common. I am satisfied that the interests of those occupying or having rights over the land is not at issue.

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 works will replace an existing water pipe crossing the common from the public highway. The applicant considers that the works are an essential service upgrade to the water supply system, serving an existing residential property in the Woolley Green area.
9. I accept that the works are required to be undertaken on the common and temporary 'heras' fencing is needed for health and safety purposes. I am satisfied that as the proposed works involve only a small area of the common for a short period of time, after which all temporary works will be removed and the common fully restored, there will be no significant or lasting impact on the interests of the neighbourhood or public rights of access to the common.

Nature conservation

10. There is no evidence before me to indicate that the works will harm nature conservation interests.

Conservation of the landscape

11. The applicant has advised that the working area has been kept to a minimum and there are no permanent or long term above ground structures or apparatus. The grassed common will be reseeded upon completion of the works. I am satisfied that the works will not have a lasting visual impact on the common and will conserve the landscape in the long term.

Archaeological remains and features of historic interest

12. There is no evidence before me to indicate that the works will adversely impact on archaeological remains or features of historic interest.

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.

Conclusion

13. Defra's 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.*"
14. The works will serve only a single residential property; however, I consider that they will have no significant or lasting impact on the interests set out in paragraph 6 above and they accord with Defra's policy. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

