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# Application Decision

by **Richard Holland**

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

Decision date: 18 December 2017

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## Application Ref: COM/3187132

### Malvern Common and Roadside Verge, Worcestershire

Register Unit No: CL 18

Commons Registration Authority: Worcestershire County Council.

- The application, dated 6 October 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 Green Hedge Energy UK Limited.
  - The works comprise the construction and excavation of a 1 m deep trench to allow for the installation of a high voltage cable. The area to be excavated will be fenced off with temporary protective barrier fencing. The fencing will be 1.2 m high and 5 m in length and will be placed either side of the trench for the duration of these works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 6 October 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 temporary fencing shall be removed and the common restored within one month of full 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.
5. I have taken account of the representations made by Historic England (HE) and 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:-

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<sup>1</sup> 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;<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 landowners, the Malvern Hills Conservators, have been consulted and have not objected to the application. There are rights of grazing registered over the common. The applicant confirms that rights of common are not exercised. I am satisfied that the proposed works will not 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 is used by local people. The proposed works are needed to facilitate the laying of a high voltage cable. The cable will link a battery storage unit located within White House Farm to an adjacent 132 kv tower pylon. Temporary fencing is needed to protect the public and prevent entry to the construction area. The duration of the works is expected to be approximately 10 to 15 working days.
9. There is no indication that the site is well used by local people or the public. I accept that temporary barriers are required for health and safety purposes. The works are limited to a very small area of the common and are of short duration. I do not consider that the works will unduly interfere with access or local people's use of the common. I conclude that there will be no significant or lasting impact on the interests of the neighbourhood and public rights of access.

### ***Nature conservation***

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

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

11. The works will be undertaken on an area of roadside verge along Blakes Lane opposite the main entrance of White House Farm. The common will be reinstated upon completion of the works which includes the careful storage and reinstatement of all topsoil and subsoil, the reseeding of the grass verge and planting within the adjacent hedgerow. I am satisfied that as the works are of short duration and the common will be fully restored upon completion, the landscape will be conserved in the long term.

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

12. HE comments that there does not appear as if there is anything of historic significance on the site area or nearby that would concern it. In view of HE's comments I am satisfied that

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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.

the proposed works will not harm any archaeological remains or features of historic interest.

### **Other relevant matters**

13. 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. 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"*. It is not clear from what the applicant has said how the works will benefit the public. However, as the works will be of short duration and have no lasting impact on the common or how it is used, I do not consider that, in this case, the issue is so important that consent should be withheld.

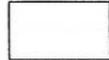
### **Conclusion**

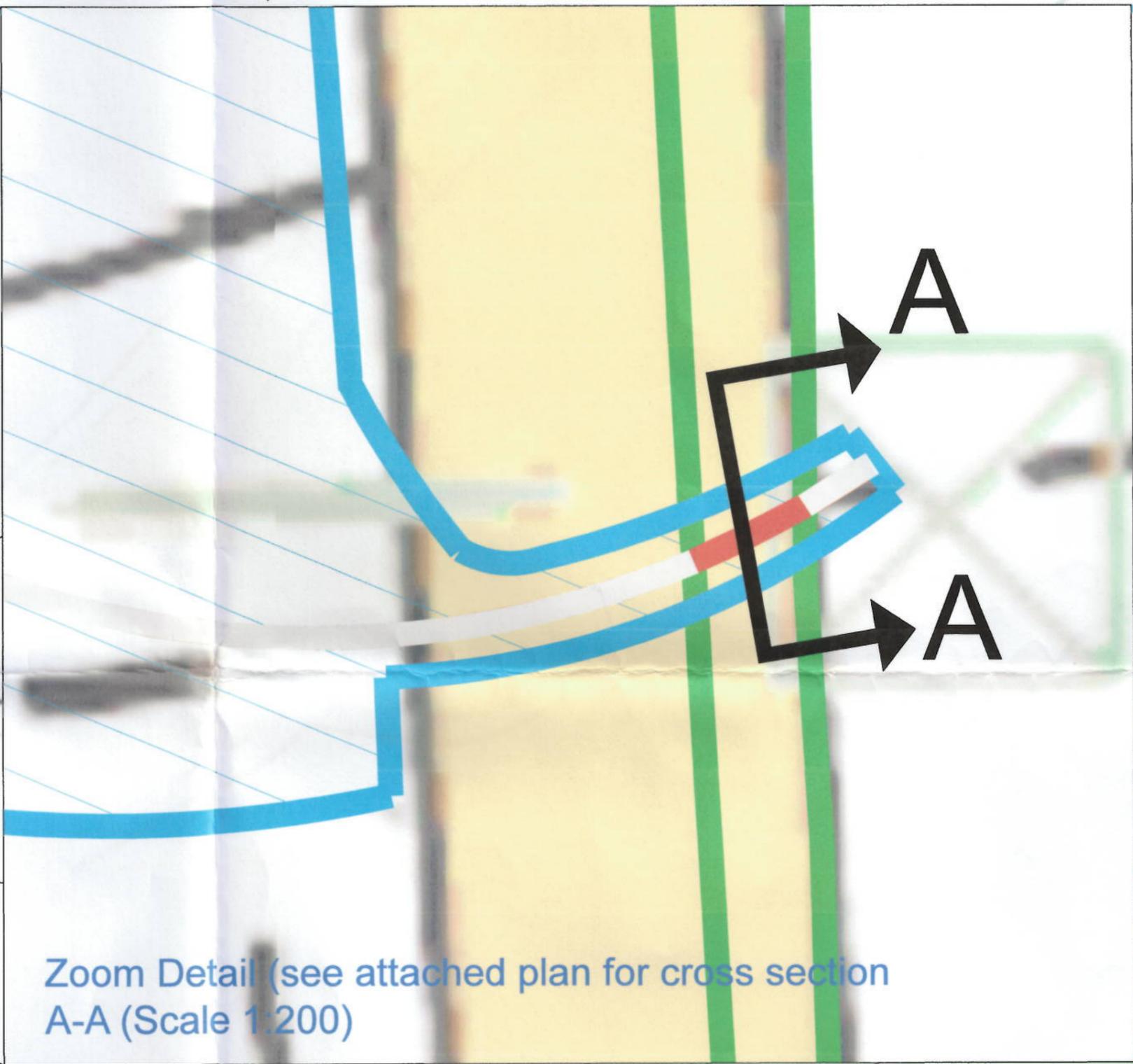
14. I conclude that the works will have no significant or lasting impact on the common and will not harm the interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

Heriots Farm

**LEGEND**

-  Site Boundary (Ref: P0644/17/FUL)
-  Common Land (Ref: CL18)
-  Underground Cable Within Common Land
-  Underground Cable Route Outside of Common Land



Zoom Detail (see attached plan for cross section A-A (Scale 1:200))

White House Farm