
Application Decision

by **Richard Holland**

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

Decision date: **2 May 2018**

Application Ref: COM/3195730

Powick Hams, Worcestershire

Register Unit No: CL 77

Commons Registration Authority: Worcestershire County Council

- The application, dated 8 February 2018, 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 Worcestershire County Council.
 - The works comprise:
 - (i) retrospective permission for initial ground investigation in Powick Hams Common parallel to the existing A4440 Temeside Way, A4440 Hams Way and A449 Malvern Road embankments for soils material sampling, water monitoring and archaeological investigation, including reinstatement;
 - (ii) ground investigation in Powick Hams Common parallel to the existing A4440 Temeside Way, A4440 Hams Way and A449 Malvern Road embankments for soils material sampling, water monitoring and archaeological investigation. All ground investigation works will be temporarily fenced during investigation and backfilled on completion, with the exception of marked sampling tubes to remain protruding above ground for three years for water monitoring purposes in relation to the boreholes;
 - (iii) relocation within Powick Hams Common of an existing electricity pylon on the south of the A4440 Temeside Way, including associated ground investigation, erection of temporary pylon and temporary cable support structures during relocation (noting the existing pylon is already within Powick Hams Common); and
 - (iv) temporary site compounds and working areas to facilitate access for environmental mitigation works and undertaking permanent works to widen the A4440 and construct associated bridges.
 - The works occupy an area of 12.5Ha.
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Decision

1. Consent is granted for the works in accordance with the application dated 8 February 2018 and accompanying plan subject to the following conditions:
 - i. those works which at the time of the application had not begun shall begin no later than three years from the date of this decision;
 - ii. all temporary works shall be removed by no later than December 2021;
 - iii. 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 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

¹ Common Land Consents Policy (Defra November 2015)

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 Natural England (NE), W M Everitt on behalf of the Malvern Hills District Footpath Society, and Historic England (HE). HGR Taggart's representations relate to an application which was since withdrawn and no representations were received from him on the application before me.
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;
 - 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 is also the applicant. There are active commoners who exercise their rights on the common. The common is not subject to rights all year round; rights are allocated by the commons association on a yearly basis. The commons association and the commoners have been consulted about the application and have not objected to the proposed works.
8. There is no indication that the works have had, or will have, any adverse impact on the interests of those occupying or 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 works are in connection with the A4440 Worcester Southern Link Road scheme. Although I note that all public rights of way (PROW) and diversions affected by the works will be kept clear and gates will be installed in fencing crossing PROW to maintain access, the protection of PROW is controlled by separate legislation. Malvern Hills District Footpath Society confirmed that it had no objections to the current application.
10. The existing electricity pylon will be relocated 47 m to the southwest of its former position. The temporary works, including those already undertaken, will remain in place until December 2021 and the common will be restored upon completion of the works; this can be secured by way of conditions attached to the consent.
11. I consider that sufficient provision has been made to ensure that the works do not unacceptably interfere with how the common is used by local people or public rights of access.

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.

Nature conservation

12. NE confirms that it is satisfied that the applicant will make good any damage during the exploratory stage. I am satisfied that the proposed works will not harm nature conservation interests.

Conservation of the landscape

13. Fencing is required to secure the site and ensure the safety of the public and livestock. The use of post and wire fencing for livestock and block mesh fencing, where possible, will help mitigate the visual impact. Plastic barriers and solid hoarding (for use around the site compound) will be used to help minimise any disturbance to the common. The area needed for the works has been kept to a minimum and the common will be fully restored to its original condition upon completion of the works; this too can be secured by way of a condition.
14. I am satisfied that any visual impact will be temporary in duration or, in the case of the permanent pylon relocation, have no further impact than at present. I conclude that the works will conserve the landscape in the long term.

Archaeological remains and features of historic interest

15. HE confirms that it does not object to the application and, where required, works should be subject to appropriate levels of archaeological investigation and mitigation, secured through the planning process. The applicant has submitted a copy of the Method Statement for Archaeological Investigations and Evaluation for the road scheme and I note that the planning permission for the scheme (17/000036/REG3) includes conditions designed to protect any archaeological remains. On the basis of HE's advice and the evidence before me, I am satisfied that the works will not harm any archaeological remains and features of historic interest.

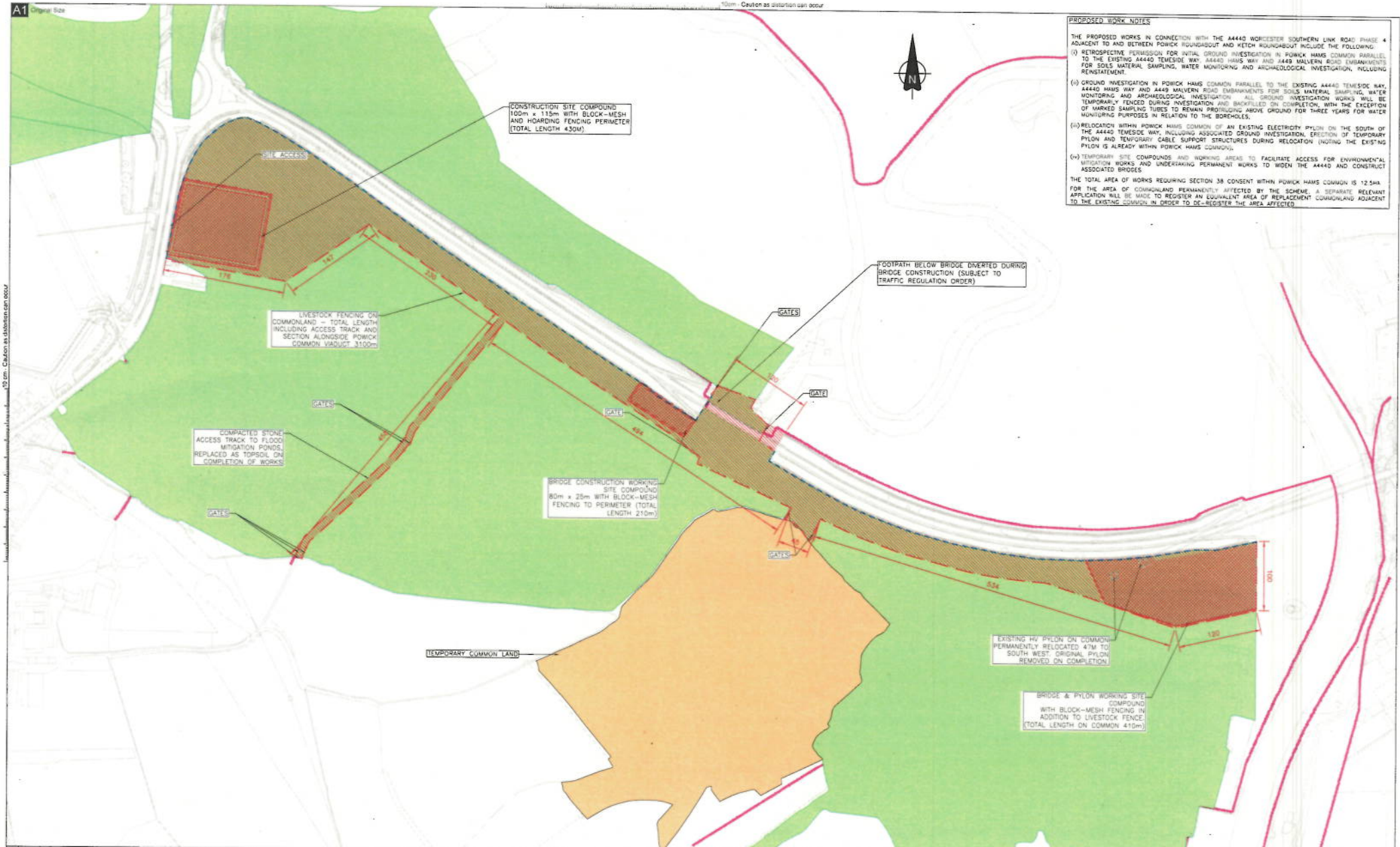
Conclusion

16. 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."* I am satisfied that the works ensure the full restoration of the land affected and confer a public benefit by facilitating improvements to the Worcester Southern Link Road.
17. I conclude that the works will not adversely impact on the interests set out in paragraph 6 above and are consistent with Defra's policy guidance. Consent is granted for the works.

Richard Holland

A1 Original Size

10m Caution as distortion can occur



PROPOSED WORK NOTES

THE PROPOSED WORKS IN CONNECTION WITH THE A4440 WORCESTER SOUTHERN LINK ROAD PHASE 4 ADJACENT TO AND BETWEEN POWICK ROUNDABOUT AND KETCH ROUNDABOUT INCLUDE THE FOLLOWING:

- (1) RETROSPECTIVE PERMISSION FOR INITIAL GROUND INVESTIGATION IN POWICK HAMS COMMON PARALLEL TO THE EXISTING A4440 TEMESIDE WAY, A4440 HAMS WAY AND A449 MALVERN ROAD EMBANKMENTS FOR SOILS MATERIAL SAMPLING, WATER MONITORING AND ARCHAEOLOGICAL INVESTIGATION, INCLUDING REINSTATEMENT.
- (2) GROUND INVESTIGATION IN POWICK HAMS COMMON PARALLEL TO THE EXISTING A4440 TEMESIDE WAY, A4440 HAMS WAY AND A449 MALVERN ROAD EMBANKMENTS FOR SOILS MATERIAL SAMPLING, WATER MONITORING AND ARCHAEOLOGICAL INVESTIGATION. ALL GROUND INVESTIGATION WORKS WILL BE TEMPORARILY FENCED DURING INVESTIGATION AND BACKFILLED ON COMPLETION, WITH THE EXCEPTION OF MARKED SAMPLING TUBES TO REMAIN PROTRUDING ABOVE GROUND FOR THREE YEARS FOR WATER MONITORING PURPOSES IN RELATION TO THE BOREHOLES.
- (3) RELOCATION WITHIN POWICK HAMS COMMON OF AN EXISTING ELECTRICITY PYLON ON THE SOUTH OF THE A4440 TEMESIDE WAY, INCLUDING ASSOCIATED GROUND INVESTIGATION, ERECTION OF TEMPORARY PYLON AND TEMPORARY CABLE SUPPORT STRUCTURES DURING RELOCATION (NOTING THE EXISTING PYLON IS ALREADY WITHIN POWICK HAMS COMMON).
- (4) TEMPORARY SITE COMPOUNDS AND WORKING AREAS TO FACILITATE ACCESS FOR ENVIRONMENTAL MITIGATION WORKS AND UNDERTAKING PERMANENT WORKS TO WIDEN THE A4440 AND CONSTRUCT ASSOCIATED BRIDGES.

THE TOTAL AREA OF WORKS REQUIRING SECTION 38 CONSENT WITHIN POWICK HAMS COMMON IS 12.5HA FOR THE AREA OF COMMONLAND PERMANENTLY AFFECTED BY THE SCHEME. A SEPARATE RELEVANT APPLICATION WILL BE MADE TO REGISTER AN EQUIVALENT AREA OF REPLACEMENT COMMONLAND ADJACENT TO THE EXISTING COMMON IN ORDER TO DE-REGISTER THE AREA AFFECTED.

10m Caution as distortion can occur

NO.	DESCRIPTION	DATE	BY	CHKD

GENERAL NOTES

A THIS DRAWING SHOULD BE READ IN CONJUNCTION WITH ALL OTHER PROJECT DRAWINGS.

B DO NOT SCALE FROM THIS DRAWING. USE FIGURED DIMENSIONS ONLY. ALL DIMENSIONS ARE IN METRES.

C ALL LEVELS ARE IN METRES.

D

LEGEND:

- [Green area] REGISTERED COMMON LAND
- [Blue dashed line] EXISTING TIMBER FOUR RAIL FENCE
- [Red dashed line] TEMP BLOCK-MESH / HOARDING FENCING 2.4 HIGH
- [Red solid line] EXISTING PUBLIC RIGHT OF WAY
- [Brown area] SITE COMPOUNDS FOR PYLON, BRIDGES AND WORKS
- [Orange area] TEMPORARY COMMON LAND REPLACEMENT

- [Red dashed line] 2No. TEMP. THIN LEAF STEEL GATES ON THE PUBLIC RIGHT OF WAY, PRIORITISED FOR THE PUBLIC. ANY P.R.O.W. DIVERSIONS SUBJECT TO TRAFFIC REGULATION ORDERS.
- [Red dashed line] TEMPORARY TIMBER FOUR RAIL FENCE
- [Red dashed line] TEMPORARY AREA FOR SECTION 38 APPLICATION

Designed by **Burroughs** **WHS**

Checked by **M. LEVINS**

Drawn by **M. OSOBY**

Approved by **M. OSOBY**

Client: **COWI** **IACP**

Client: **worcestershire county council**

GRIFFITHS
soil engineering and construction

Designed	M. OSOBY	Date	21 DECEMBER 2017	Project WORCESTER SOUTHERN LINK ROAD - PHASE 4	
Drawn	M. LEVINS	Date	21 DECEMBER 2017		
Checked	M. OSOBY	Date	21 DECEMBER 2017		
Approved	M. OSOBY	Date	21 DECEMBER 2017		
Scale	N.T.S.	Sheet	GUR	Part No	419999
Drawing Status				Drawing Number	
PLANNING				Client Reference	SLR4-GUR-ALL-HWV-DR-CH-101010-3