



Application Decision

by **Richard Holland**

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

Decision date: 23 July 2018

Application Ref: COM 3196953

Clee Hill Common, Shropshire

Register Unit No: CL 12

Commons Registration Authority: Shropshire Council.

- The application, dated 23 February 2018, 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 Fisher German LLP for Severn Trent Water Limited.
 - The works of approximately ten weeks duration comprise:
 - i. replacement of approximately 740m of existing 80mm uPVC water main with 90mm MDPE pipe; and
 - ii. temporary Heras type mesh barrier fencing with no more than 200m in place at any one time (either side of a 100m trench).
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Decision

1. Consent is granted for the works in accordance with the application dated 23 February 2018 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. all fencing shall be removed and 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 as a red 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) and Mr Ewan Gibb.
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 landowner, Mr C Woodward, was consulted by the applicant about the application but did not comment. There is no evidence to suggest that the works will harm the interests of those occupying the land.
8. The common land register records extensive grazing rights and a small number of rights of estovers over the common. The applicant has said that 18 rights holders actively exercise their rights and that all were consulted. The agent for all active commoners and the Commoners Association were also consulted. None have commented on the application and there is no evidence to suggest that the works will interfere with the exercising of registered rights of common. The occupiers of nine properties at Whatshill, including Mr Gibb, have a right of vehicular access over the land affected by the application and were also consulted by the applicant. None of them objected to the application and I am satisfied that the installation of a replacement pipe will not in itself harm the interests of those having access rights over the land.

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

9. The pipe to be replaced is approximately 50 years old and beyond its working life. It is no longer able to cope with the volume of water it carries and suffers from regular bursts. The applicant intends the pipe replacement work to be undertaken by way of directional drilling, which removes the need for a continuous open trench and reduces restriction of public access. However, it is possible that the more extensive open cut trench excavation method may need to be used for some sections. This being the case, excavation would be in 100 metre sections with the associated safety fencing removed as the works progress along the route.
10. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. The area of land affected by the works is the track linking the nine Whatshill properties to roads outside of the common land boundary to the east and south. The main local use of the track is for access to these properties, although it continues past the properties in a westerly direction and may be used more generally by the public for access on foot into the countryside. The applicant has confirmed that the majority of the pipe will be laid to the side of the track and only where the pipe crosses under it will the track be temporarily closed off. Access on foot to the side of the track will be maintained. Vehicular access will be maintained by use of metal plates over any section of the track that needs to be closed off.
11. The track provides the only means of vehicular access to the Whatshill properties. Mr Gibb sought assurances from the applicant that the works would be carried out with due care and not in a way that would compromise the integrity of the track; for example through damage caused by heavy plant vehicles or by reinstatement deficiencies. Mr Gibb is concerned about the exposed nature of the track to the elements and previous works that had damaged the track. I am satisfied from the applicant's response that a suitable work strategy is in place and that the carrying out of the works is unlikely to damage the track such that its legitimate vehicular use by local people would be detrimentally affected.

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.

12. The permanent works are underground, with no new above surface features, and the common land affected will be reinstated upon completion of the works. A maximum of 200m of temporary fencing will be erected at any one time (100m on each side of the trench) and it will be removed as soon as possible once the works are completed, which is expected to be within ten weeks. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation and archaeological remains/features of historic interest

13. Natural England and Historic England were consulted about the application but did not comment. There is no evidence before me that leads me to think the works will harm the above interests.

Conservation of the landscape

14. The applicant has confirmed that a photographic record of condition will be taken before the works begin to aid with the reinstatement of the land to an appropriate standard and to match the existing surround. Trackside pastureland will be backfilled, levelled and re-seeded. As all the permanent works will be underground, I consider that any impact on the landscape will be small and short term.
15. The common lies within the Shropshire Hills Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. I am satisfied that any visual intrusion will be of temporary duration and that the natural beauty of the AONB will be conserved in the long term.

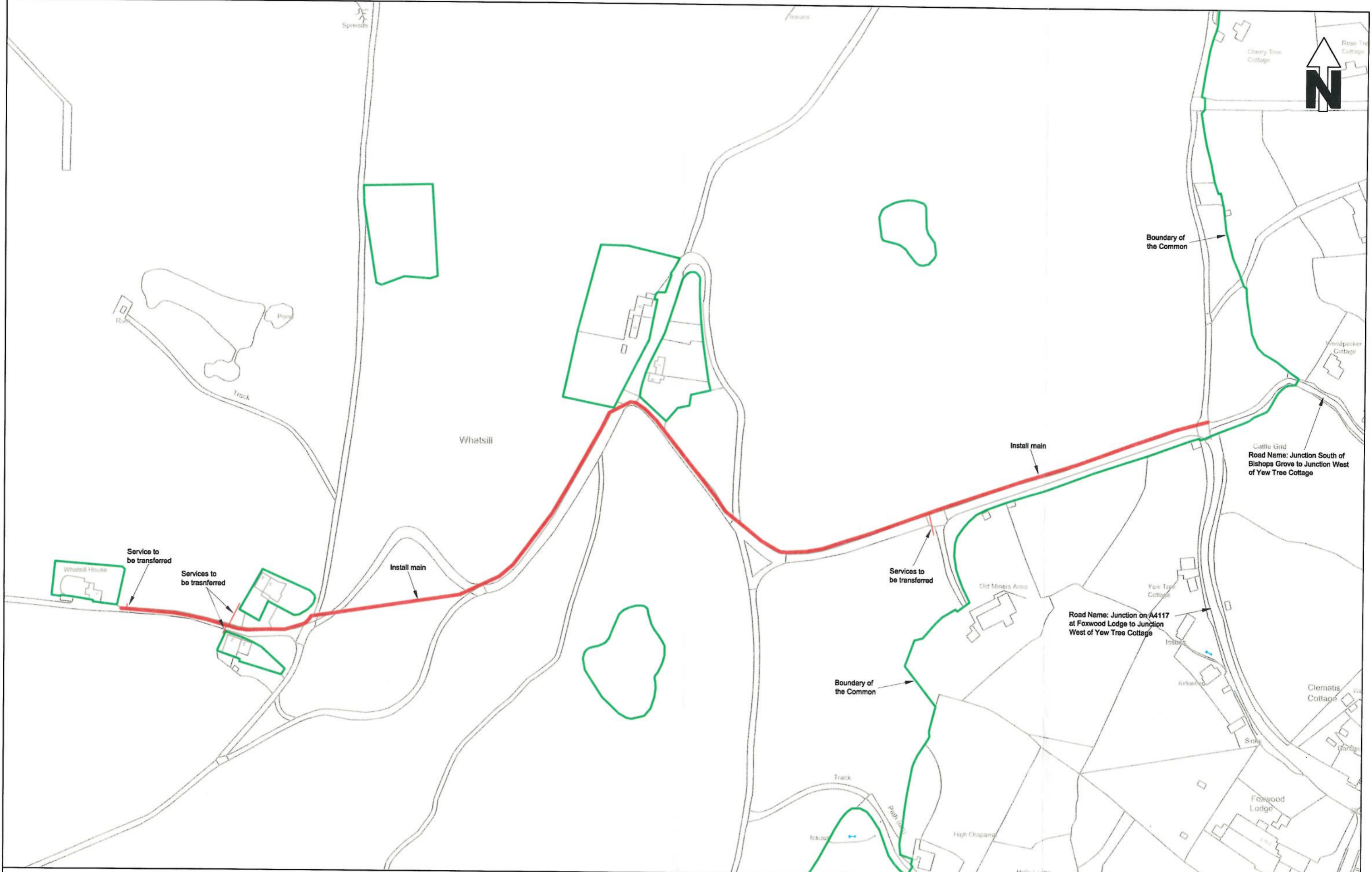
Other relevant matters

16. 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.....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 proposed works accord with this policy objective.

Conclusion

17. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will confer a public benefit by ensuring the continued integrity of water supply to the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



WORKING WIDTH OVER PIPE WILL BE APPROXIMATELY 20.0m

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