
Application Decision

by Richard Holland

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

Decision date: 23 August 2018

Application Ref: COM 3203832
Semley and Gutch Commons, Wiltshire

Register Unit No: CL4

Commons Registration Authority: Wiltshire Council.

- The application, dated 17 May 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 Wessex Water.
 - The works of approximately 8 weeks duration to replace a water main comprise:
 - (i) excavation of two open cut trenches (30m and 75m long) with a working width of 0.5m covering a total of 52.5 square metres;
 - (ii) excavation of launch/reception pits for a 465m long section of pipe burst method pipe laying covering a total of 12 square metres at any one time; and
 - (iii) 111m of Heras type temporary fencing (no higher than 3m) enclosing working areas for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 17 May 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 temporary 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 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 Historic England (HE) and the Open Spaces Society (OSS), neither of which object to the application.

¹ Common Land Consents Policy (Defra November 2015)

6. I am required by section 39 of the 2006 Act 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 common land is owned by Richard John Tennant Arundell, who was consulted by the applicant but has not commented on the application. The common land register records numerous and varied rights over CL4, which comprises a large network of road verges over a wide area. The applicant has said that there are no active commoners to be affected by the works and no rights holders have made any comments about the proposals. There is no evidence before me to suggest that the works will 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 pipes to be replaced were installed in 1950 and are of asbestos-cement construction. They are degrading badly, causing regular bursts and making repairs very challenging. The applicant considers the replacement of the pipes to be part of an essential upgrade to the water supply system in the area of Semley.
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 and is closely linked with the interests of public access. The road verges affected by the works would appear to be subject to general access, with no particular local use made of them and have little amenity value. The works form part of other pipe replacement works in the area which do not require consent because they impact only on the roads which are not part of the registered common.
10. The main length of new pipe will be installed by way of pipe bursting, which removes the need for a continuous open trench and reduces restriction of public access. Its impact will be limited to the excavation of a series of roadside pits, with associated Heras fencing, each taking up 6 square metres. Only two pits will be open at any one time so that just 12 square metres of the common will be unavailable for public access. This section of works is likely to take five weeks but will impact separately on only very small areas of the common and I consider the likely impact on public access over the common land to be small.
11. The works involving the two open trenches will take approximately 3 weeks and are likely to have more of an impact on public access than the pipe bursting works although the shorter section, located south of Chaldicott's Barns, would appear to be positioned away from any obvious desire lines. There is no evidence to suggest that access on foot to residential properties south of Whitehorn will be greatly interrupted by the longer section and each trench will be excavated and backfilled in 20m sections to limit the impact on public access.
12. The permanent works will be underground, with no new above surface features to interfere with access over the common. All temporary fencing will be removed once the works are completed, which is expected to be within approximately 8 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.

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

13. The site lies outside of the Gutch Common Site of Special Scientific Interest (SSSI). Natural England was consulted about the application but did not comment. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

14. The site lies within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. The new pipes will be wholly underground. The fencing will be removed and the land will be re-instated on completion of the permanent works, which can be ensured by attaching a suitable condition to the consent. I consider that the visual impact on the landscape will be limited and short term and I am satisfied that the natural beauty of the AONB will be conserved.

Archaeological remains and features of historic interest

15. HE was consulted by the applicant and advised that it did not wish to comment on the proposals. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

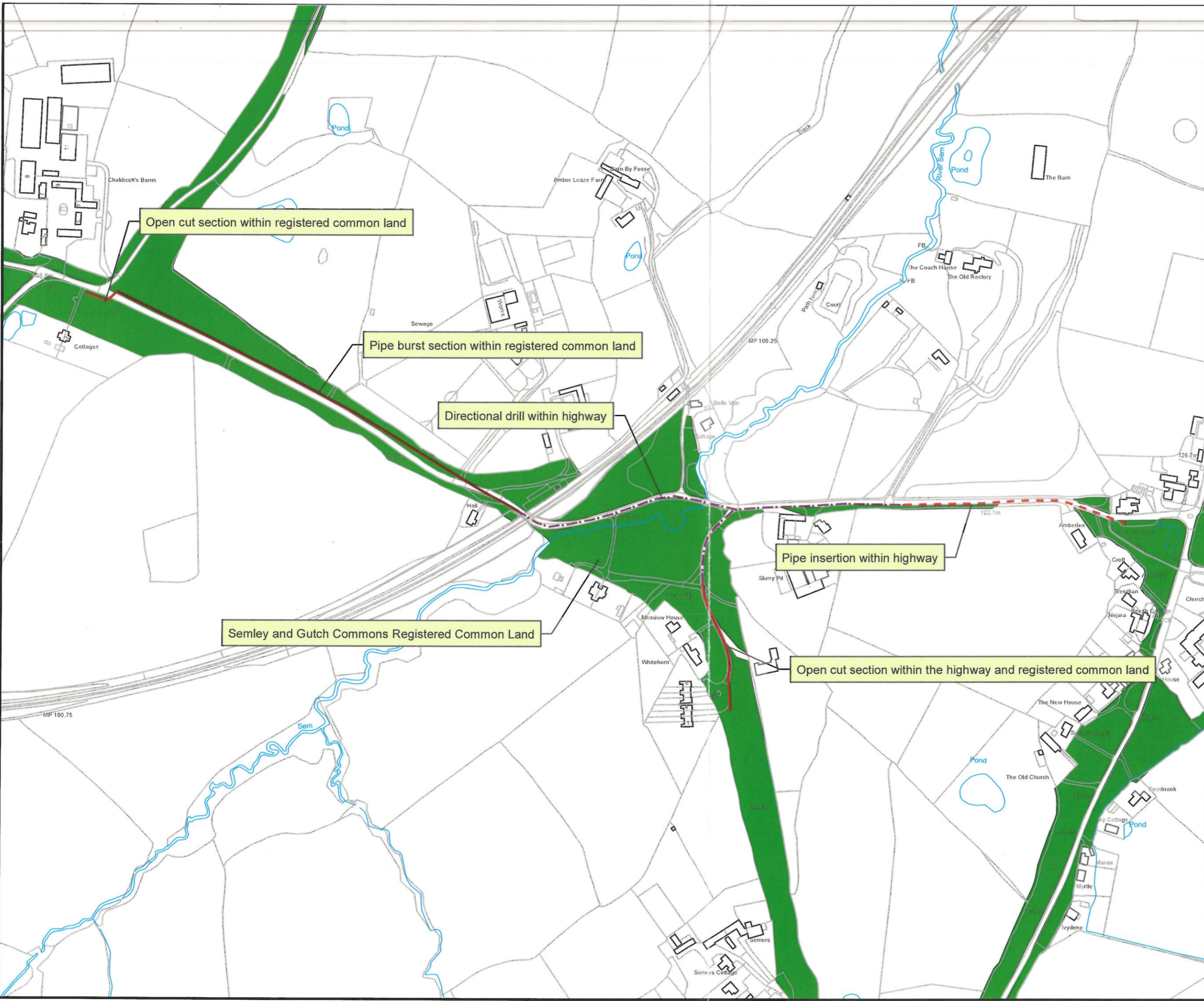
Other relevant matters

16. A solution is required to prevent further degradation of the existing pipe and to upgrade the water supply system in the area of Semley. 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 works accord with this policy objective.

Conclusion

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

Richard Holland



Legend

Method

- Directional Drill
- Open Cut
- Pipe Burst
- - - Pipe Insertion
- Registered Common Land

Open cut section within registered common land

Pipe burst section within registered common land

Directional drill within highway

Pipe insertion within highway

Semley and Gutch Commons Registered Common Land

Open cut section within the highway and registered common land

The Grange, Semley, Shaftesbury Registered Common Land Plan (A4)

Grid Reference: ST8806327191	Date: 17/05/2018
Drawing Number BL330/ENV/600/REV C	Scale 1:3,500

This map may be used for Wessex Water Projects only

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County Wildlife Sites: The County Wildlife Site Project is provided by the Environmental Records Centre. Further information on these sites are available from the relevant Records Centre.

Information in this plan is provided for identification purposes only. No warranty as to accuracy is given or implied. The precise route of pipe work may not exactly match that shown. Wessex Water does not accept liability for inaccuracies. Sewers and lateral drains adopted by Wessex Water under the Water Industry (Sewerage for Adoption of Private Sewers) Regulations 2011 are to be plotted over time and may not yet be shown. In carrying out any works, you accept liability for the cost of any repairs to Wessex Water apparatus damaged as a result of your works. You are advised to commence excavations using hand tools only. Mechanical digging equipment should not be used until pipe work has been precisely located. If you are considering any form of building works and pipe work is shown within the boundary of your property or a property to be purchased (or very close by) a surveyor should plot its exact position prior to commencing works or purchase. Building over or near Wessex Water's apparatus is not normally permitted.