



Application Decision

by **Richard Holland**

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

Decision date: 28 November 2018

Application Ref: COM/3202683
Catsford & Wall Common, Somerset

Register Unit No: CL 84

Commons Registration Authority: Somerset County Council

- The application, dated 28 June 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 the Environment Agency.
 - The works comprise 170 m of temporary fencing surrounding a 1250 m² site compound.
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Decision

1. Consent is granted for the works in accordance with the application dated 28 June 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. the works shall be removed and the common reinstated within one month of the completion of the works.
2. For the purposes of identification only the location of the works is outlined 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 representations made by the Open Spaces Society (OSS), Natural England (NE) and Historic England (HE).
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);

¹Common Land Consents Policy (Defra November 2015)

- 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 Sharpham and Sheep Commoners Association is the landowner and has been consulted about the application. The landowner has not objected to the proposed works. The grazing rights are rented and exercised from April until the end of November. There is no indication that the works will have an adverse impact on the interest 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 land is used by local people. The works are needed to maintain the safety of the public during the construction of the Stolford flood defence scheme (application COM/3193619, granted consent on 2 August 2018). The compound will accommodate the project team, storage of materials and car parking. The works will be in place for 16 weeks.
9. I accept that the works are needed on the common to ensure the safety of the public and demarcate the construction site from areas that will continue to be available for public access. The temporary works will be removed upon completion of the scheme. I am satisfied that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation

10. The works are located within the Severn Estuary Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites (that form the Severn Estuary Natura 2000 site) and the Bridgewater Bay Site of Special Scientific Interest (SSSI). With one exception, NE does not wish to add to the comments it made on the flood defence scheme application COM/3193619 (when it said that the area proposed for the establishment of a temporary construction compound is a small proportion of the total area of the common and of low grazing value compared to the rest of the common). The additional comment made by NE is that the erection and dismantling of temporary fencing must not take place during the overwintering period for estuarine birds. The applicant has said that, due to unforeseen delays in procurement of the revetment blocks, the works will not be completed before November 2018; it is discussing the matter with NE and a variation to the current Marine Licence has been submitted to the Marine Management Organisation (MMO) to extend the works. I take it therefore that the timing of the erection and removal of the fencing is a matter to be agreed between the applicant, NE and MMO. With this in mind I am satisfied that the necessary steps will be in place to ensure that the works will not impact adversely on nature conservation interests.

Conservation of the landscape

11. The applicant confirms that the site compound will occupy the minimum amount of space needed to separate the working area from the public. The shingle ridge will help mitigate the

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.

visual impact to some extent by screening the works. The common will be reinstated once the works are removed. While the works will cause some visual harm, I am satisfied that because of their temporary nature they will have no lasting impact on the common; the landscape will therefore be conserved in the long term.

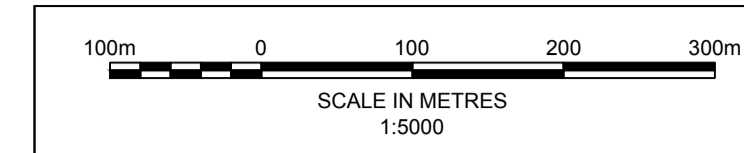
Archaeological remains and features of historic interest

12. HE confirms that it does not have any specific concerns about the proposed works but adds that any advice from West Somerset's Conservation Officer and the South West Heritage Trust should be taken into account. HE recommends that where works are conducted in close proximity to designated heritage assets, a robust strategy for the avoidance of collateral damage is adopted before the commencement of works. In response, the applicant confirms that pre-condition surveys of properties and highway infrastructure were undertaken prior to commencement of works and a traffic management plan to manage heavy goods traffic has been agreed as part of the planning application.
13. I note the county archaeologist at the Somerset Heritage Centre has been consulted and has not commented on the application. Based on the information before me, I am satisfied that the temporary works are not likely to harm any archaeological remains and features of historic interest.

Conclusion

14. 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."*
15. I consider that the works accord with Defra's policy and will not have a significant or lasting impact on the interests set out in paragraph 6 above and will confer a public benefit by facilitating the flood defence scheme. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

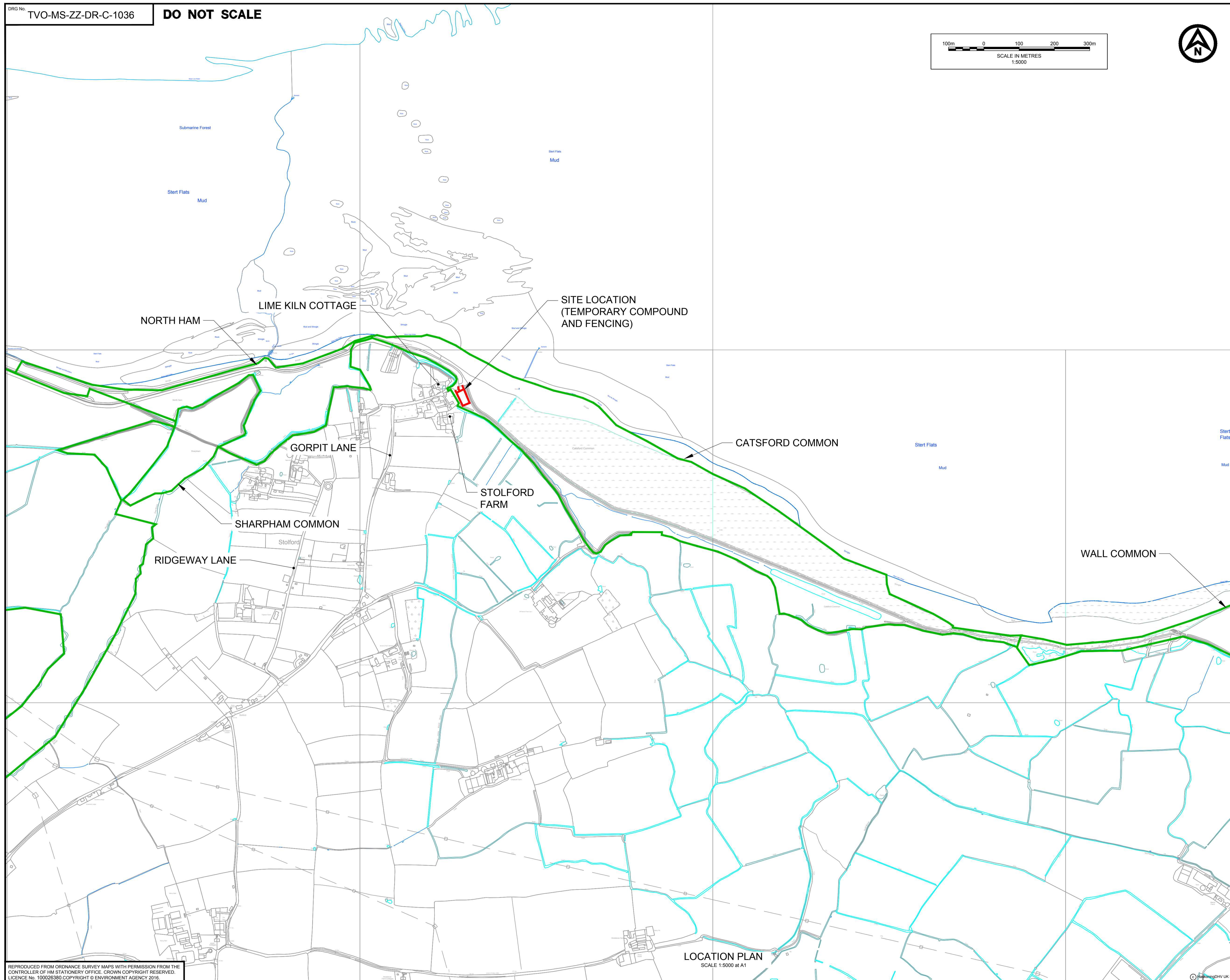
Richard Holland



- NOTES**
1. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS NOTED OTHERWISE.
 2. ALL LEVELS ARE IN METRES RELATIVE TO CHART DATUM (CD) UNLESS NOTED OTHERWISE.
 3. ALL COORDINATES ARE IN METRES RELATIVE TO WORLD GEOIDETIC SYSTEM 1984 (WGS84) UNIVERSAL TRANSVERSE MERCATOR (UTM) ZONE XXX.

COMMON LAND BOUNDARY

SITE BOUNDARY



P1	17/07/16	S2 - FIT FOR INFORMATION	JHG	AM	AM
REV	DATE	DESCRIPTION	BY	CHK	APP

REVISIONS

PROJECT
**SOMERSET PACKAGE
 STOLFORD FLOOD
 DEFENCE SCHEME**

CLIENT
Environment Agency

CLIENT REF.
IMSW002037

TITLE
**COMMON LAND
 TEMPORARY COMPOUND
 & FENCING LOCATION PLAN**

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DRAWN	GG	CHECKED	JG	APPROVED	AM
DATE	JULY 2017	SCALE	1:5000 @ A1	REF	PB4311

DRAWINGS No	TVO-MS-ZZ-DR-C-1036	SUITABILITY	S2	REVISION	P1
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LOCATION PLAN
 SCALE 1:5000 at A1