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# Application Decision

by **Richard Holland**

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

Decision date: 7 December 2018

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**Application Ref: COM 3212483**  
**Layer Breton Heath, Colchester, Essex**

Register Unit Nos: CL13 and CL168

Commons Registration Authority: Essex County Council.

- The application, dated 19 September 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 Dalcour Maclaren Ltd for Cadent Gas Limited.
  - The works of approximately 12 weeks duration to an existing gas block valve comprise:
    - (i) Laying of 360m<sup>2</sup> of Type 1 (gravel type surface) and Terram (geotextile membrane) around the block valve site; and
    - (ii) Heras type temporary fencing enclosing a working area of 12 metres by 30 metres for the duration of the works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 19 September 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 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. The application form refers only to common land unit CL13 but the application site straddles the boundary with the adjacent common land unit CL168. Both units are known as Layer Breton Heath and both are affected by the works. The application plan shows both units but does not differentiate between them. However, as the plan clearly shows the location of the works on common land I am satisfied that no person with an interest in commenting on the application has been prejudiced by the omission of any reference to CL168 in the application form.

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representation made by the Open Spaces Society (OSS), which does not object to the application.
7. 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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

8. The area of CL13 affected by the works is owned by the applicant, Cadent Gas. The common land register records one right to graze 50 geese and 50 cattle over the whole of the land. It also records one right to graze 29 farm animals and to take peat, turf, wood for fire kindling and various fruits over the whole of the land. The applicant has said that these rights are not exercised.
9. Pursuant to Commons Commissioner Decision 212/U/107 of 5 December 1978 the common land register for CL168 records that the Commissioner could not identify the owner of the land now affected by the proposed works and instructed that it remain subject to protection under s9 of the Commons Registration Act 1965 (now under s45 of the 2006 Act). The common land register records one right to graze 50 geese and 50 cattle over the whole of the land. The applicant has said that these rights are not exercised.
10. 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***

11. The gas block valve (the valve) is an above ground infrastructure feature positioned at the edge of the common land such that it lies against the boundaries of both the common land units affected. The works will extend beyond the common land boundaries onto land that is not registered common. Works located outside of the common land boundaries cannot be considered when determining the application.
12. The interests of the neighbourhood test relates to whether the works applied for 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 purpose of the works is to facilitate access to the valve for inspection and maintenance by laying a hard surface around it to prevent bramble and undergrowth encroachment. The applicant has said that vegetation will have to be cleared before the works can begin, which indicates that the site is overgrown and is therefore not currently capable of supporting neighbourhood activities or public access.
13. The proposed fencing will be removed when the works are complete, leaving a hard surfaced area free of vegetation over which local people and the public will have access on foot. I conclude that the works are in the interests of the neighbourhood and public rights of access as they will open up previously inaccessible land.

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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.

## ***Nature conservation and archaeological remains/features of historic interest***

14. There is no evidence before me to indicate that the proposed works will harm these interests.

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

15. Layer Breton Heath has no special landscape value. Although surfacing 360m<sup>2</sup> of the common with membrane topped with Type 1 gravel will lead to a somewhat alien feature I accept that it is needed to facilitate access to the valve. It will not, in any event, be so visually intrusive that consent should be withheld for this reason alone. Being temporary, the fencing will have no lasting impact on the common.

## ***Other relevant matters***

16. The works are required to improve access at the valve site to the underground gas network in the local area. Access will allow the network to be routinely inspected and any issues identified. 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 on balance the proposed works will not seriously harm the interests set out in paragraph 7 above and will confer a public benefit by improving access to an existing facility for the inspection and maintenance of gas infrastructure. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

**Key:**

- Temporary Compound Area
- Gas Block Valve
- New Terram & Type 1 Surface
- Common Land

**Notes:**

**Grantor:**  
M Relf

**Signed:**

**Date:**

**Location:**  
Land east of Layer Breton Hill, Colchester, CO2 0NP

**Coords:** 594784, 218712

**Scheme Name:**  
Layer Breton Hill, Colchester

**Drawing Name:**  
Licence Plan

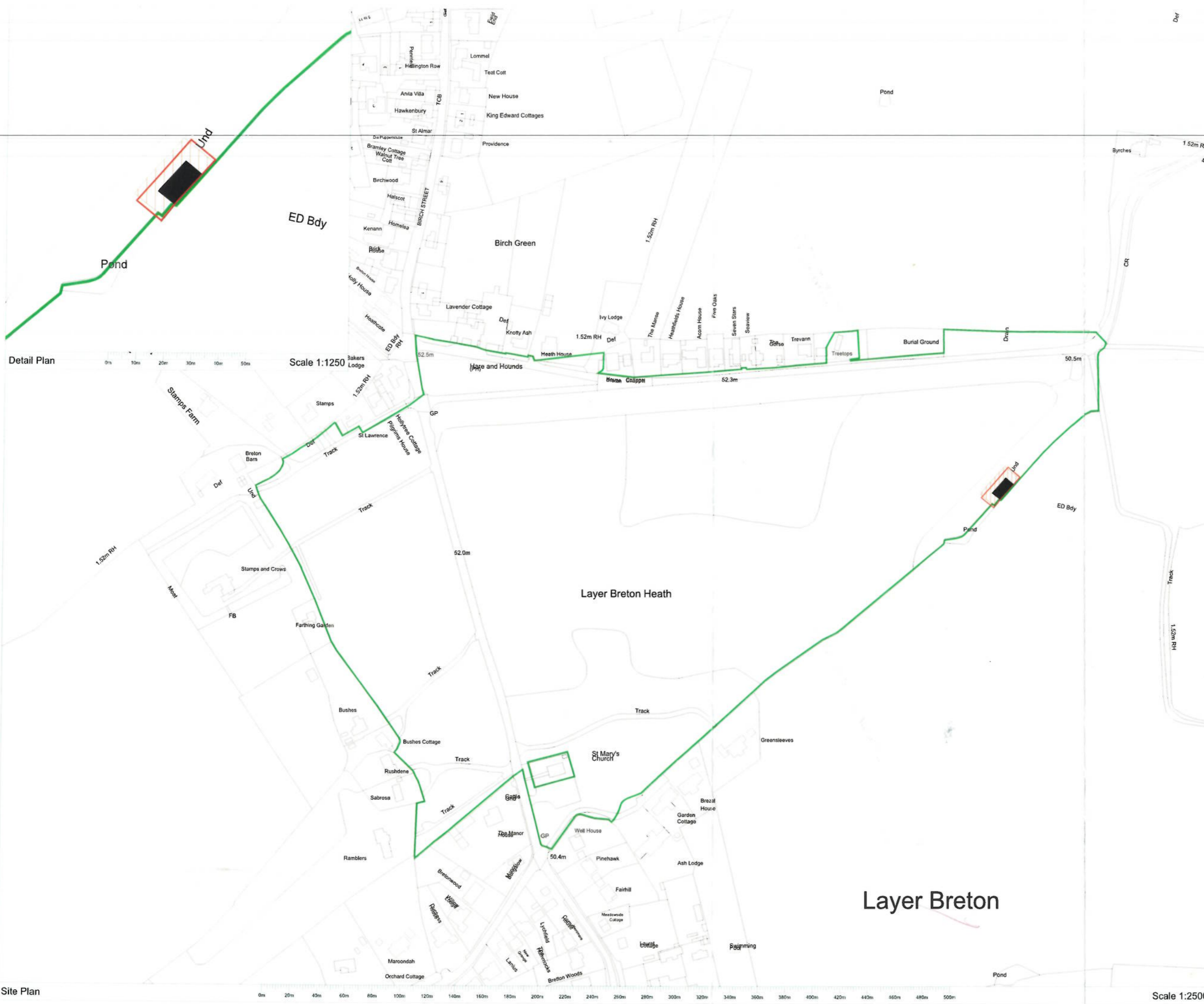
**Drawing No:** 182278\_PLN\_LI\_1.1

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**Approved:** HB  
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Site Plan Scale 1:2500