
Application Decision

by Richard Holland

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

Decision date: 20 March 2019

Application Ref: COM 3219552
Stapeley Common, Shropshire

Register Unit No: CL 80

Commons Registration Authority: Shropshire Council.

- The application, dated 14 December 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 around six weeks duration comprise the construction of approximately 575m of water pipe and associated apparatus. Temporary barriers, each at approximately 5 m x 5 m around six drilling launch and reception pits during construction.
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Decision

1. Consent is granted for the works in accordance with the application dated 14 December 2018 and accompanying plans, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision;
 - ii. all fencing shall be removed and the common shall be fully restored within one month from the completion of the works; and
 - iii. the works shall be undertaken outside the lapwing nesting/breeding season.
2. For the purposes of identification only the location of the works is shown as a red line on the attached plans.

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 Shropshire Wildlife Trust (SWT).

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 landowner, the Trustees of the Powis Castle Estate, was consulted by the applicant about the application and has not objected to the application. The applicant confirms that some registered grazing rights are exercised over the common. However, whilst the commoners were consulted about the application none have objected to it. Given that the works are expected to be completed within 6 weeks, and only a very small proportion of the common as a whole will be temporarily fenced, I am satisfied that the works will not harm the interests of persons having rights over, or occupying, 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 land is used by local people and is closely linked with public rights of access. The works are part of a wider scheme to renew assets in the water network to ensure continued water supply to local residents. The works will be undertaken at two locations on the common and replace an existing water main which is prone to bursts resulting in interruptions to the supply of water. The pipe replacement work will be undertaken by way of a trenchless method which requires the excavation of pits (about 2.5m x 1.2m) at 6 points across the common; this reduces the need for fencing. Each pit will be temporarily fenced (5m x 5m) to meet health and safety requirements. The OSS does not object to the application.
9. I accept that the works are needed on the common and that fencing is required to meet health and safety requirements. 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 and conservation of the landscape

10. The common is located within the Shropshire Hills Area of Outstanding Natural Beauty (AONB) and an Environmentally Sensitive Area. The SWT comments that care is needed to avoid any negative impact on the local wildlife site 'Stapeley Hill' and that the nesting/breeding season is avoided as areas of the common support breeding lapwing. In response the applicant confirms that the works are scheduled to commence in August.
11. The permanent works will be underground, the temporary fencing removed and the common reinstated upon completion of the works. The working method will reduce disturbance to the surface of the land and the visual impact. In view of the applicant's response, supported by a condition attached to any consent, I am satisfied that the works

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.

will not harm nature conservation interests. The works will also conserve the natural beauty of the AONB in the long term.

Archaeological remains and features of historic interest

12. There is no evidence before me to indicate that the works will harm archaeological remains and features of historic interest.

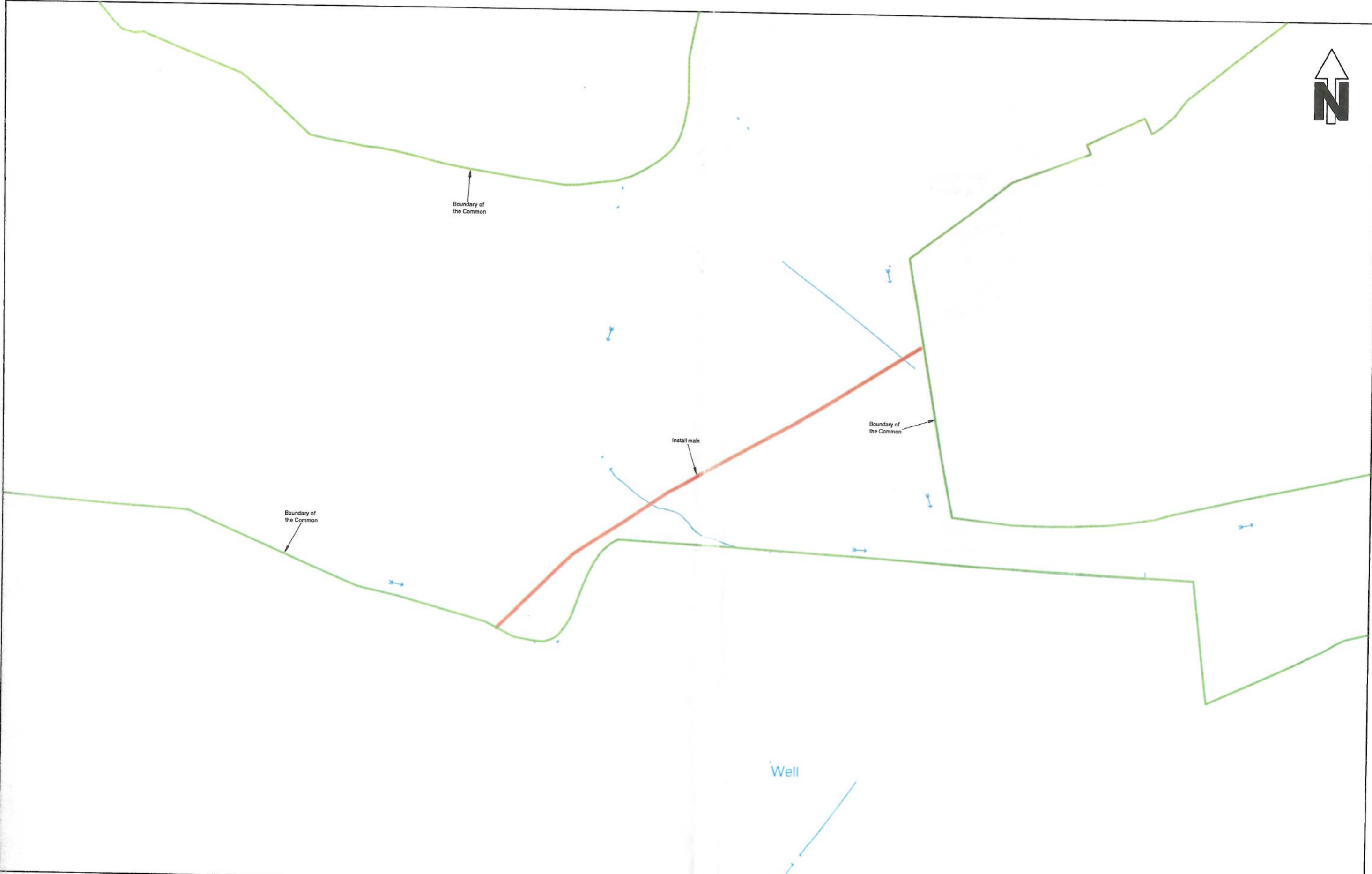
Other relevant matters

13. Defra's policy guidance 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 ... 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

14. I conclude that the proposed works will not have a significant or lasting impact or harm the interests set out in paragraph 6 above and will confer a public benefit by ensuring the continuation of the 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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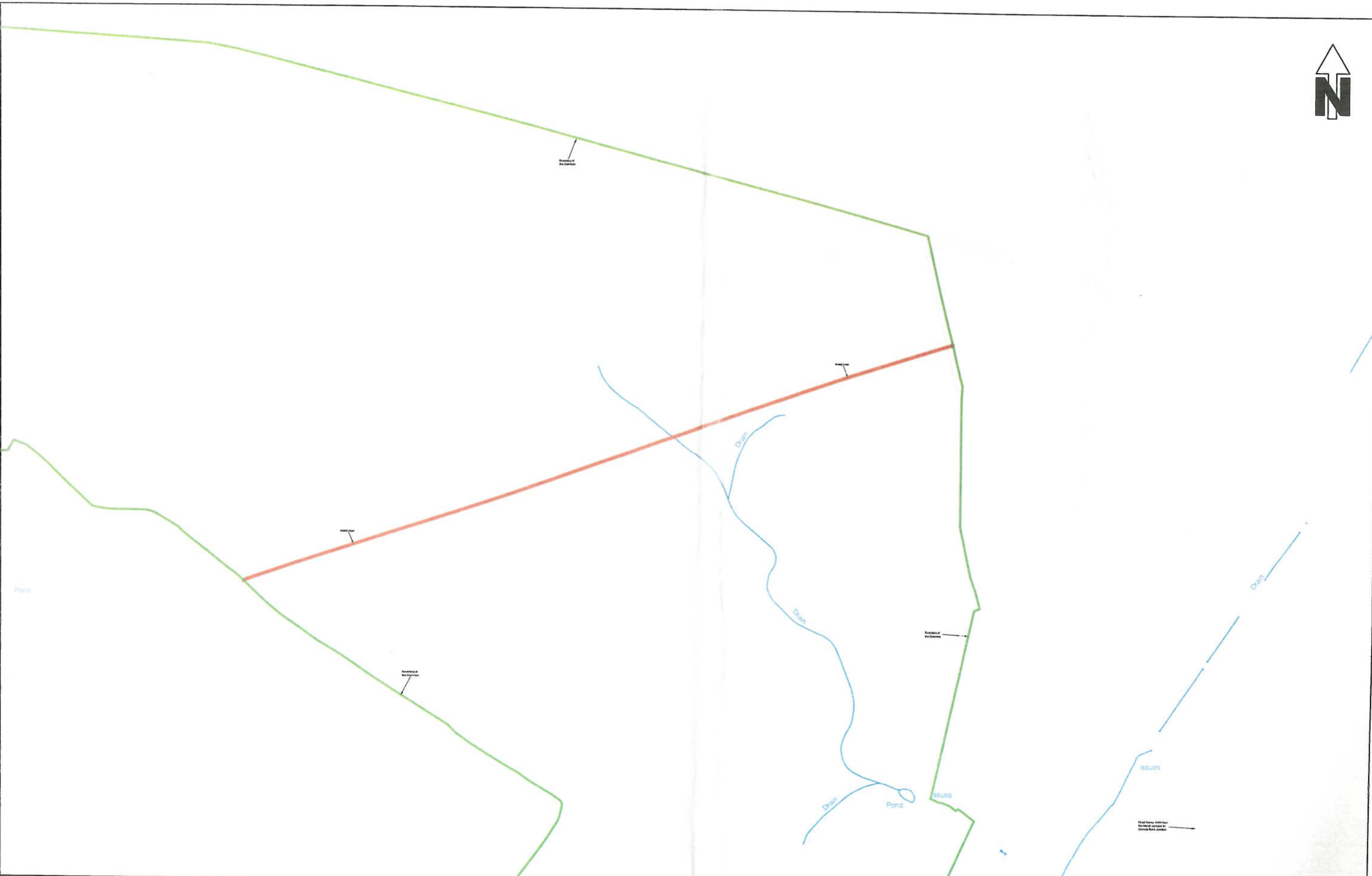
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SEVERN TRENT WATER Ltd
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