



# Application Decision

**by Richard Holland**

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

Decision date: 5 April 2019

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**Application Ref: COM/3221447**

**FLAXTON VILLAGE GREEN AND COMMON, NORTH YORKSHIRE**

Register Unit No: CL 54

Commons Registration Authority: North Yorkshire County Council

- The application, dated 5 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 Flaxton Meadows Development Ltd.
  - The works comprise the installation of 3 metres of 63 mm diameter water main.
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## Decision

1. Consent is granted for the works in accordance with the application dated 5 December 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 common shall be restored to original ground level and reseeded with a suitable hay making and grazing mixture, such as Emorsgate Seeds mixture EG26, within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown highlighted in red within the common land boundary outlined in dark green 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. 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 Dr Stephen Axford, Chair of Flaxton Green Gait Owners.

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<sup>1</sup> 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;<sup>2</sup> 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 Public Guardianship, has been consulted about the application and has not objected to the proposed works. Dr Stephen Axford confirms, on behalf of the commoners, that there are 22 grazing rights registered over the common that have not been exercised for 15 years. Dr Axford does not object to the works provided that they are temporary, taped off and the common restored as soon as possible after connection is made. The restoration should provide a common level to the surrounding land and be reseeded with a suitable hay making and grazing mixture, such as Emorsgate Seeds mixture EG26. In response, the applicant agrees that the works will be undertaken as early as possible and in accordance with Dr Axford's comments. In view of the applicant's assurances, I am satisfied that the proposed works will not 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 interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The proposed works are needed to connect a water main to supply a nearby campsite. The OSS does not object to the application.
9. I am satisfied that the works will not have a lasting or significant impact given that they will be completed within a day and are underground. I conclude that the works will not harm the interests of the neighbourhood or public rights of access in the long term.

### ***Nature conservation and conservation of the landscape***

10. The applicant confirms that the common lies within a mile of a Site of Special Scientific Interest (SSSI), however there is no indication that the works will impact on the SSSI. The works will take place along roadside verge; the verge will be restored and reseeded with a suitable hay making grazing mixture upon completion of the work. I am satisfied that the proposed works will not harm nature conservation interests and will, once complete, conserve the landscape.

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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.

### **Archaeological remains and features of historic interest**

11. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

### **Other relevant matters**

12. 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"*. The proposed works accord with the policy.

### **Conclusion**

13. I conclude that the proposed works will not have a lasting or significant impact on the common and will not harm the interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

WOODLANDS FARM

