
Application Decision

by Richard Holland

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

Decision date: 10 July 2019

Application Ref: COM 3208209
The Moor, Luton, Bedfordshire

Register Unit No: CL65

Commons Registration Authority: Luton Borough Council.

- The application, dated 22 February 2019, 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 Affinity Water Limited.
 - The works of approximately 12 weeks duration to restore the River Lea comprise:
 - i) construction of a new channel to re-meander 130 metres of the river;
 - ii) a temporary bridge over the river; and
 - iii) a temporary working area, including a works compound and the bridge, secured by 225 metres of 2 metres high Heras fencing covering 3416 square metres of the common for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 22 February 2019 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 from 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. The application was originally made on 24 July 2018 but was re-submitted on 22 February 2019 and advertised accordingly. The application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by Natural England (NE), Historic England (HE) and the Open Spaces Society (OSS).
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

¹ Common Land Consents Policy (Defra November 2015)

- 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 Moor common lies entirely to the west of the River Lea, with its west bank marking the common land boundary. It is owned by Central Bedfordshire Council (CBC). The land to the east of the river is a wooded strip separating the river from new Bedford Road. It is owned by Luton Borough Council (LBC) and is not registered common land.
8. Both Councils were formally consulted by the applicant about the application; CBC as landowner and LBC as commons registration authority and neighbouring landowner. CBC has not commented. LBC supports the proposals. The register of common land records no rights of common over the land. 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 public rights of access

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. The affected land is mostly that between the existing river channel and a riverside line of trees set approximately 15 metres from the bank. I consider it likely that this part of the common is mainly used for general access and dog walking. The works include lowering the river banks and creating a section of gravelled beach (described as an accessible berm) in the new channel to allow access into the water for dogs and walkers. I give weight to NE's view that this type of river restoration promotes community wellbeing and can give people an opportunity to have a connection with the natural world. I consider that the works will benefit the interests of the neighbourhood in this way.
10. The new channel will extend westwards into the common and meander close to the trees, narrowing the space between them and the river. Whilst the applicant has confirmed that there will still be space to walk alongside this stretch of river, the available riverside walking space will be somewhat reduced and an existing path will be interrupted. The works will also seemingly leave a small area of land between the channels, which would appear to be accessible from the common land side only by crossing the new channel. In these ways the works will negatively impact on public rights of access over the land.
11. However, at least part of the new channel (the beach section) will be accessible to walkers. Furthermore, it may be that the low banks will allow some access on foot across and along other parts of the new channel, which will have a lesser impact on rights of public access over the common as access will not be completely prevented.
12. I conclude that the works will benefit the interests of the neighbourhood by creating wellbeing features that will attract local people to the common. I also conclude that, on balance, this benefit outweighs the small harm caused to the interests of public rights of access even if access over and along the new channel will not be possible outside the beach area.
13. The temporary fencing will enclose approximately 17% of the common land for the duration of the works, which is expected to be approximately 12 weeks. I conclude that whilst this is a large area to be lost to public access, the loss will be temporary and will not have a 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

14. The application is made by Affinity Water Ltd in its capacity as the water supply company for the area. It has obligations to meet requirements under the EU Water Framework Directive and is regulated by the Environment Agency (EA) in this respect. The River Lea is failing to meet good ecological potential under the Directive and the section of river adjacent to The Moor Common, for which the applicant is responsible, has been selected by EA as an area needing improvement.
15. The proposed works are to restore and enhance the chalk stream habitat to support the River Lea in reaching good ecological potential by 2027. The stretch of river concerned is narrow, steeply sided and in the shade of large trees on the east bank. Meandering the river into the common will move it away from the shade, which prevents growth of aquatic plants and marginal vegetation on the river banks. In-channel features such as pools and riffles will be created to reinstate river processes and create new habitats for fish and insects. The new river banks and wetland areas will be planted with aquatic and marginal chalk stream plant species, providing further enhanced habitat for both aquatic and terrestrial species. A backwater will be created in the old channel to provide a refuge for fish in the event of a pollution incident upstream.
16. NE has advised that the proposals will almost certainly improve biodiversity and I am satisfied that the proposals are in the interests of nature conservation.

Conservation of the landscape

17. NE has also advised that at present the river flows through a deep ditch and is almost hidden from view. I consider that a new meandering channel with lower banks and a variety of new plants is likely to be an attractive additional natural feature in the landscape.
18. The applicant has confirmed that the land will be re-instated to its current state after the removal of the temporary compound, bridge and fencing and that such reinstatement is a condition of the access agreement with LBC. Re-instatement can additionally be ensured by attaching a suitable condition to this consent decision.

Archaeological remains and features of historic interest

19. HE raised no objections to the proposals, subject to full re-instatement of the land and the seeking of advice from CBC's Archaeological Service, which the applicant has done. I am satisfied that steps will be taken to prevent any potential harm the proposed works may have on any archaeological remains or features of historic interest.

Other matters

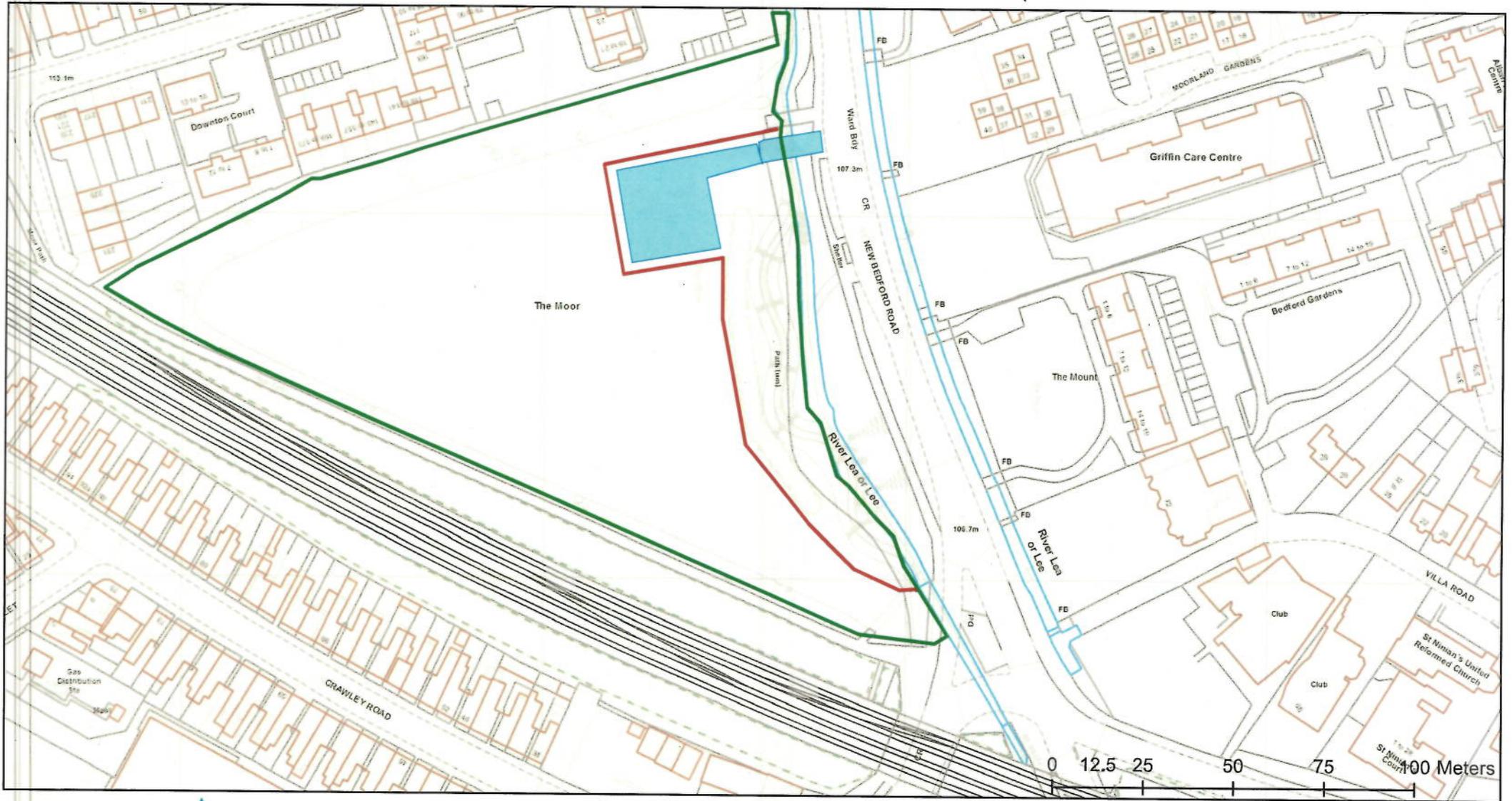
20. In commenting on this application OSS sought assurances from the applicant that LBC would honour a commitment to ensure that stopped-up land between the east side of the river and New Bedford Road is permanently protected for public enjoyment by means of its dedication as a town or village green or some other permanent process. This application decision is not concerned with the land on the east bank as it is outside the common land boundary. Whilst LBC has an interest in the river, and therefore an interest in the proposed works, any plans LBC may have for the east bank land is not a consideration in the determining of this application.

Conclusion

21. I conclude that the proposed works will not significantly harm any of the interests set out in paragraph 6 above. Indeed, some small harm to the interests of public access will be outweighed by new recreational benefits for users of the common and the works will be of benefit to nature conservation and landscape interests. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

The Moor Temporary Compound and Fencing



River Restoration Proposal for The Moor,



21/02/2019
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 NGR: TL0821SW
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Legend	
	Common Land Boundary
	Temporary Security Fencing
	Temporary Compound and Bridge