



Application Decision

by **Richard Holland**

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

Decision date: 29 August 2019

Application Ref: **COM/3229611**

KENTS GREEN COMMON, GLOUCESTERSHIRE

Register Unit No: CL 312

Commons Registration Authority: Gloucestershire County Council

- The application, dated 17 May 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 Severn Trent Water Limited.
 - The works comprise the permanent and underground installation of approximately 20 m of new 180 mm internal diameter (DN180) medium-density polyethylene (MDPE) rising main on Kents Green Common, to include the digging of trenches and full reinstatement. 20 m of temporary barriers will enclose the working area for the approximately 3 weeks.
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Decision

1. Consent is granted for the works in accordance with the application dated 17 May 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. the temporary barriers 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 shown as a red line 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.

¹ Common Land Consents Policy (Defra November 2015)

5. I have taken account of the representations made by the Open Spaces Society (OSS), Historic England (HE), Taynton Parish Council (Parish Council) and Forest of Dean District Council (District Council).
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 Parish Council advise that the land impacted by the works is subject to protection by the local authority under section 9 of the Commons Registration Act 1965, which in this case is the Parish Council. There are no rights registered over the common.
8. I consider that as all permanent works are underground and of short duration the works will not impact on the management of the common. I am satisfied that the works will not harm the interests of those occupying the land and the interests of those having rights over the land is not at issue.

The interests of the neighbourhood and the protection of public rights of access

9. 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 applicant explains that the works form part of a scheme to alleviate flooding to properties in Tibberton and minimise pollution and flooding incidents in the area. Temporary fencing is required around open pits or open cut trenches for the health and safety of the public and workforce on the common. The OSS does not object to the application.
10. The Parish Council is concerned that access to the working area from the public highway is on a blind bend. The applicant in response advises that construction works within the carriageway of Kent's Green Road will be undertaken under full road closure and will not pose a health and safety risk.
11. I accept that temporary barriers are needed for health and safety. I am satisfied that safe public access will be maintained outside the working area and the common will be fully restored upon completion of the works. I conclude that the works will not have a lasting or significant impact and will not harm the interests of the neighbourhood or public rights of access in the long term.

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 and conservation of the landscape

12. The Parish Council and the District Council raise concerns about the potential impact of the works on the roots of a protected tree located near the common and advise that separate permission is required for works impacting on the tree. In response the applicant confirms that it is aware of the Tree Protection Order and an independent Arboricultural Impact Assessment Report will be commissioned to determine the root protection area and will secure any permissions necessary. The intention is to re-align the pipeline to minimise the impact on the tree and any excavation work undertaken within the precautionary zone will be carried out manually and no material/plant or spoil will be stored within it.
13. I am satisfied that any steps needed to protect the tree will be in place before the works are undertaken. The applicant confirms that any excavations required will be backfilled and compacted and the area reinstated to match the surrounding common once the works are complete. I consider that any visual impact will be of short duration given that the permanent works will be underground and the safety barriers removed upon completion of the works. I conclude that the works will not harm nature conservation interests and will conserve the landscape.

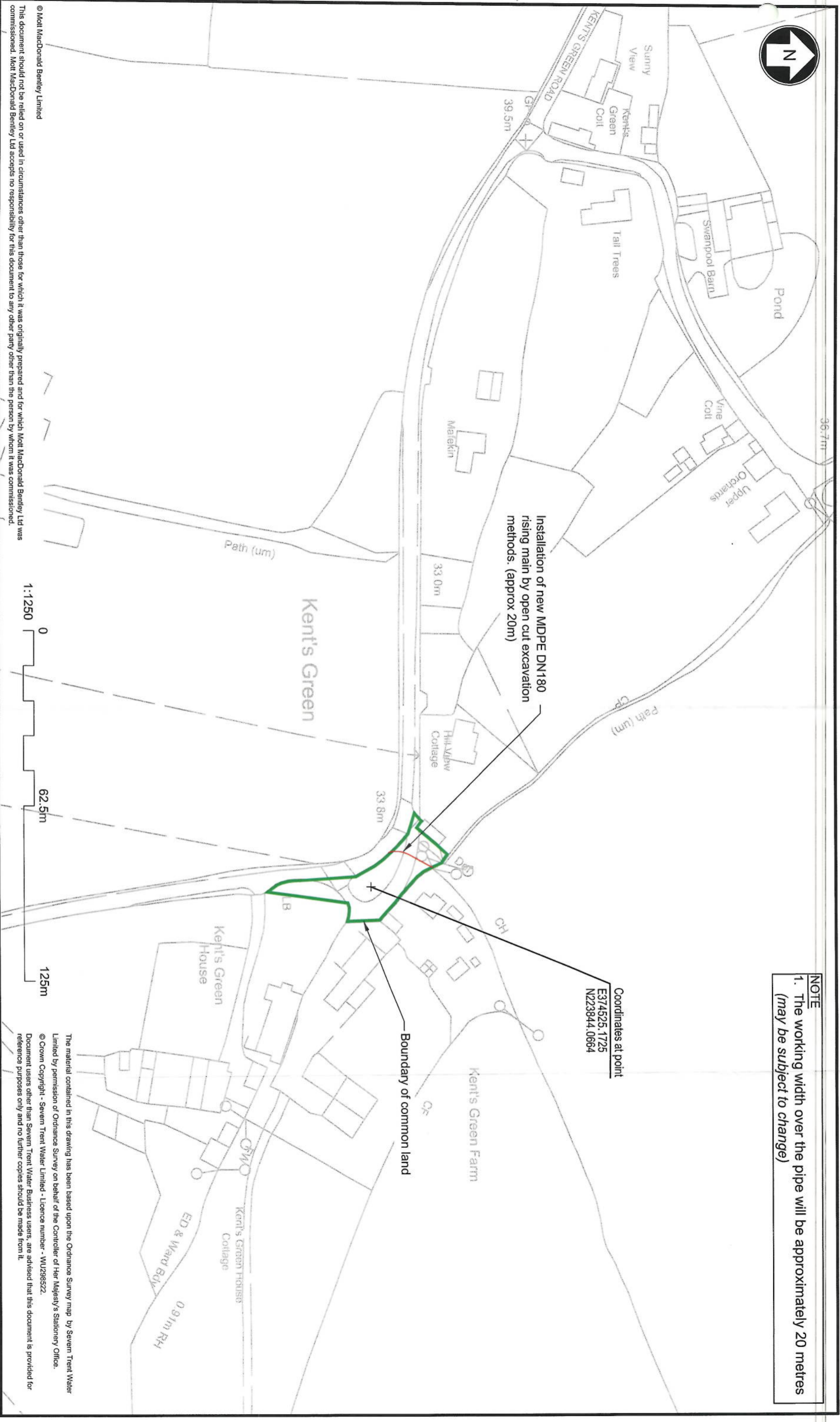
Archaeological remains and features of historic interest

14. HE does not object to the application. I am satisfied that there is no evidence before me to indicate that the proposed works will harm archaeological remains and features of historic interest.

Conclusion

15. 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"*.
16. I consider that the works accord with Defra's policy. I conclude that the works will not harm the interests set out in paragraph 6 above and will confer a public benefit by alleviating flooding and pollution in the area. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



NOTE
 1. The working width over the pipe will be approximately 20 metres (may be subject to change)

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1:1250
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 62.5m
 125m

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BENTLEY

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Site Address : Kent's Green, Tibberton
 GL19 3AJ
 OS Grid Ref : 374231, 223927
 MMB File Ref: A5S01786-LA000040
 File Location: pv:\MMB\JNBCDE\EUNA-UKS\HT07

Rev	Date	Description	Author	T. Chk	B. Chk	App'd
A	02/05/19	First Issue	DB	SH	AG	SH

Title
 Tibberton STW Raw Sewage Flooding
 Proposed Works On Common Land
 At Kent's Green

APPROVED

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Scale at A3
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