



Application Decision

by Richard Holland

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

Decision date: 23 October 2019

Application Ref: COM/3235702 The Parks, Southampton

Register Unit No: CL 3

Commons Registration Authority: Southampton City Council

- The application, dated 8 August 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 Southern Water Services Limited.
 - The works comprise replacing a faulty existing meter and valve with a new distribution meter including installing a four-meter bypass pipe. Temporary fencing of up to 8 m in length and 2.5 m high will be used to isolate the working area (16 m²) during the installation of the new meter. The duration of the works is three weeks.
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Decision

1. Consent is granted for the works in accordance with the application dated 8 August 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 fencing 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 outlined in red 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.
5. I have taken account of the representations made by the Open Spaces Society (OSS) and Natural England (NE).

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 applicant confirms that a right to dig marl over part of the common is not exercised. The landowner, Southampton City Council, and the common rights holder have been consulted about the application and have not objected. 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 interfere with the way the common is used by local people. The works are needed to replace a faulty water meter and will be confined to the boundary of the common. Temporary fencing is needed to maintain health and safety. The applicant confirms that no rights of way will be affected during the works.
9. The works are of short duration and will be contained within a small worksite at the edge of the common adjoining East Park Terrace. The site amounts to less than 0.01% of the area of the common as a whole. I consider that the works will not materially interfere with the way the common is used by local people and will not harm the interests of the neighbourhood or public rights of access.

Nature conservation and conservation of the landscape

10. NE and the OSS do not object to the works but comment that the park must be returned to its original condition/reinstated. In response, the applicant confirms that the park will be fully reinstated and Southampton City Council has agreed to replace any vegetation removed as part of the works.
11. I am satisfied that, as all above ground works will be removed and the common fully reinstated upon completion, nature conservation interests will not be impacted and the landscape will be conserved.

Archaeological remains and features of historic interest

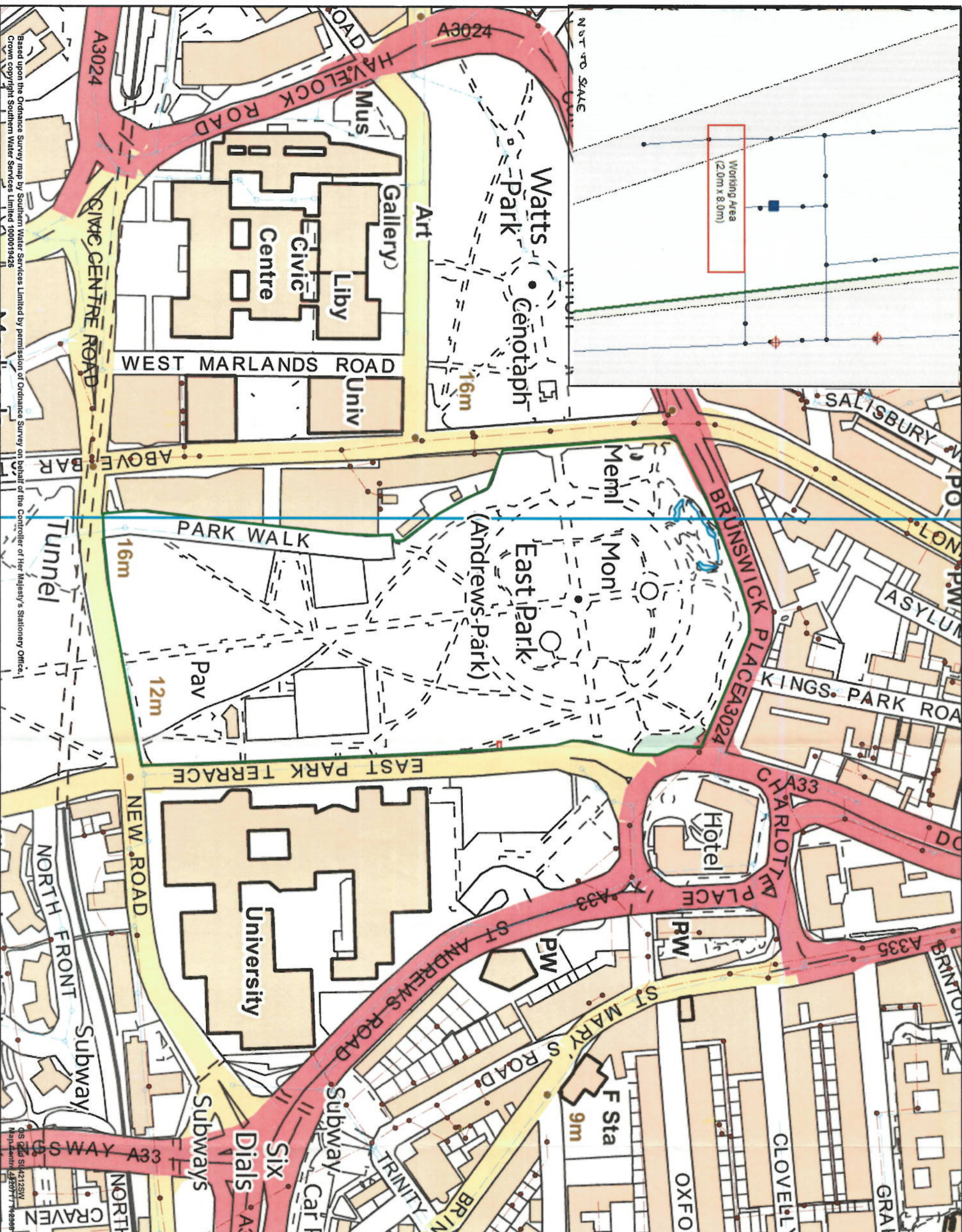
12. There is no evidence before me to indicate that the proposed works will harm archaeological remains and features of historic interest.

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.

Conclusion

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"*.
14. I consider that the works accord with Defra's policy 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



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<p>Project Title East Park Terrace</p>	
<p>Drawing Title s38 Common Land Application</p>	
<p>Scale 1:2500</p>	
<p>Drawn by NDA</p>	
<p>Date drawn 07/08/2019</p>	
<p>Designed by</p>	
<p>Checked by</p>	
<p>Approved by</p>	
<p>Sheet size A3</p>	
<p>Date approved</p>	
<p>Revision</p>	
<p>Drawing No 1</p>	

