



Application Decision

by **Richard Holland**

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

Decision date: 13 November 2019

Application Ref: COM/3236091

Freemantle or Bitterne Common, Southampton

Register Unit No: CL 4

Commons Registration Authority: Southampton City Council

- The application, dated 20 August 2019, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Land Services Ltd for Southern Gas Networks PLC.
 - The works of approximately four weeks duration comprise:
 - i. replacement of an underground gas governor;
 - ii. replacement of existing associated above ground vent stack, control box, plinth and man hole covers; and
 - iii. a mixture of 1.2m high plastic security/safety fencing and 2m high Heras panel fencing temporarily enclosing 100 square metres (5m x 20m) during the period of works.
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Decision

1. Consent is granted for the works in accordance with the application dated 20 August 2019 and the plans submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision; and
 - ii. all fencing shall be removed, and the land shall be fully reinstated, within one month from the completion of the works.
2. For the purposes of identification only, the location of the proposed works is shown 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 representation made by the Open Spaces Society (OSS), which does not object to the application.

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 land is owned by Southampton City Council, which was consulted about the application but did not comment. The common land register records no rights of common. There is no evidence to suggest that the works are likely to harm the interests of those occupying or having rights over the land (and in particular persons exercising rights of common over it).

The interests of the neighbourhood and public rights of access

8. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access on foot. The common is bounded to the west by Peartree Avenue and the affected land lies just inside the unfenced boundary in a wooded area opposite the junction with Athelstan Road. Photographs provided by the applicant show the site to be one of several suitable pedestrian points of access onto the common from Peartree Avenue and I consider this to be its likely main use.
9. The existing gas governor is old and in need of updating to the latest control specification to ensure a safe and secure gas supply to the surrounding area. The proposal is to remove it and replace it with a new updated model within the existing governor pit. Small excavations will be carried out to expose the gas main to make the necessary connections. The above-ground works will be like-for-like replacements.
10. The permanent works will be mostly underground, there will be no additional above ground structures and all fencing will be removed once the works are completed, which is expected to be within four weeks. Nearby access points onto the common will not be affected by the works. I conclude that the works will not have an unacceptable or lasting impact on local and public access rights over the common.

The public interest

Nature Conservation

11. There is no evidence before me that leads me to think the works will harm any statutorily protected sites or other nature conservation interests.

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.

Conservation of the landscape

12. The common has no special designated landscape status and the affected land is next to a road junction in a suburban setting. New above-ground structures at the site nevertheless have the potential to cause some visual harm to the common. However, the existing structures are partially hidden from sight by tree and bush cover and the same will apply to the new like-for-like replacement structures. I am satisfied that their effect on the landscape will be negligible. Although the safety/security fencing will cause some visual harm it will be short term and the land will be re-instated upon completion of the works; this can be ensured by attaching a suitable condition to the consent.

Archaeological remains and features of historic interest

13. There is no evidence before me to suggest that the works will harm any archaeological remains or features of historic interest.

Other relevant matters

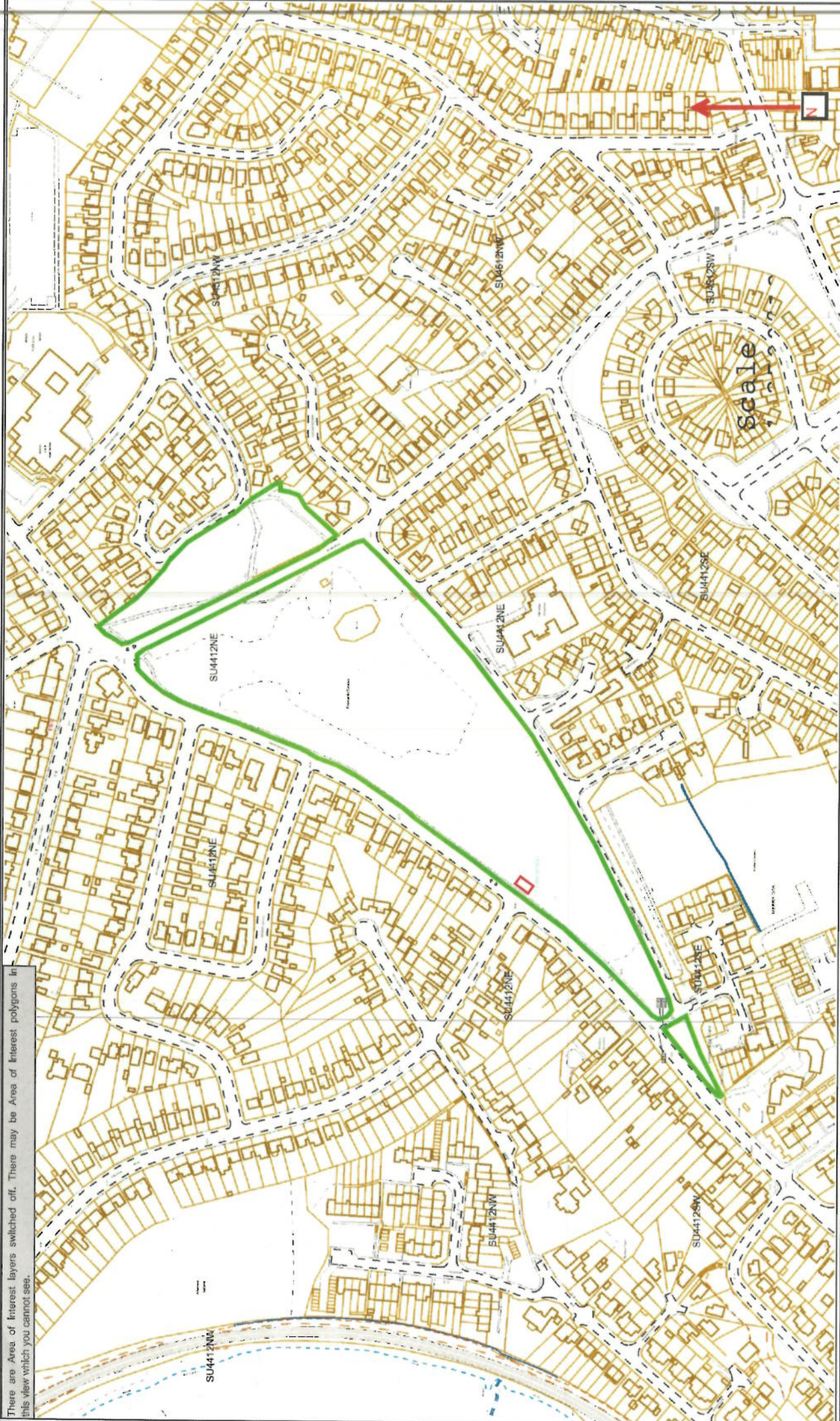
14. Defra's policy guidance advises that that "*works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service 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*". I am satisfied that the proposed works accord with this policy objective.

Conclusion

15. I conclude that the proposed works will not unacceptably harm the interests set out in paragraph 6 above and will confer a public benefit by ensuring a safe and secure gas supply to the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

There are Area of Interest layers switched off. There may be Area of Interest polygons in this view which you cannot see.



Freemantle Common
Peartree Avenue
Southampton
Hampshire
SO19 7RA

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DATE : 29/08/2019

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Some examples of print items

- Valve
- Syphon
- Depth of Cover
- Diameter Change
- Material Change