
Application Decision

by Richard Holland

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

Decision date: 19 May 2020

Application Ref: COM/3245531

Rye Common (Part) and Hillside Common (Part), Hampshire

Register Unit No: CL 194

Commons Registration Authority: Hampshire County Council

- The application, dated 22 January 2020, 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 Fisher German LLP for National Grid Electricity Transmission Limited.
 - The works of approximately 16 weeks duration comprise two areas of Heras fencing totalling 200m; one on the north side of the A287 road and one on the south side, each enclosing 600 square metres (approx. 30m x 20m) of land around temporary scaffolding to be erected below existing electricity lines.
-

Decision

1. Consent is granted for the works in accordance with the application dated 22 January 2020 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 restored within one month from full completion of the works.
2. For the purposes of identification only the location of the works is shown as red rectangles 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 Natural England (NE) 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 landowner, Hampshire County Council, has been consulted and has not objected to the application. There is one right of estovers registered over the common. The applicant advises that the right is not exercised. I am satisfied that there is no indication that the works will 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 proposed works are needed to maintain the condition and structural suitability of integral national grid infrastructure between the Fleet and Lovedean substations by allowing scaffold access to overhead electricity lines. Temporary fencing will be erected around the scaffolds to separate them from the public. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people and is closely linked with public access interests.
9. The common is separated into northern and southern sections by the A287 Farnham Road, with the common land boundaries and the proposed fenced enclosures set back a short distance from the road on each side. The application plan shows that the northern fenced area is just inside the common land boundary and that the southern fenced area straddles the common land boundary. There is no pavement on either side of the section of road next to the application sites and only a very short distance between the road and roadside vegetation. I consider it unlikely that local people and the public choose to access the common at this location or that they are likely to much use an area of common that is so close to the road.
10. As the works are located at the edge of the common, are not permanent and will temporarily enclose only a very small area as a proportion of the common as a whole, I do not consider that they will unduly interfere with access or local people's use of the common. I am satisfied that the works will not have a significant or lasting impact on the common and will not harm the interests of the neighbourhood or public rights of access.

Nature conservation

11. NE advises that the works are within an area designated as a Site of Importance for Nature Conservation (SINC) and that, if consented, they will be carried out during the bird nesting season. NE also points out that according to the ecological report drawn up for the applicant, the common has suitable habitat for several protected species including dormice, great crested newts, bats and reptiles. The applicant advises that the works will be undertaken in the least disruptive way, and as quickly as, possible and will, if any protected species are found, consult NE advisors and take account of all relevant statutory and non-statutory guidance before acting accordingly. I am satisfied that on this basis the works are unlikely to harm 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 landscape designation and the affected land is close to a major road spanned by overhead electricity cables. I consider it to have low landscape value. In any case the works are temporary and the common will be reinstated upon their completion, which can be secured by attaching a suitable condition to the consent. I am satisfied that the works will have no significant or lasting impact on landscape interests.

Archaeological remains and features of historic interest

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

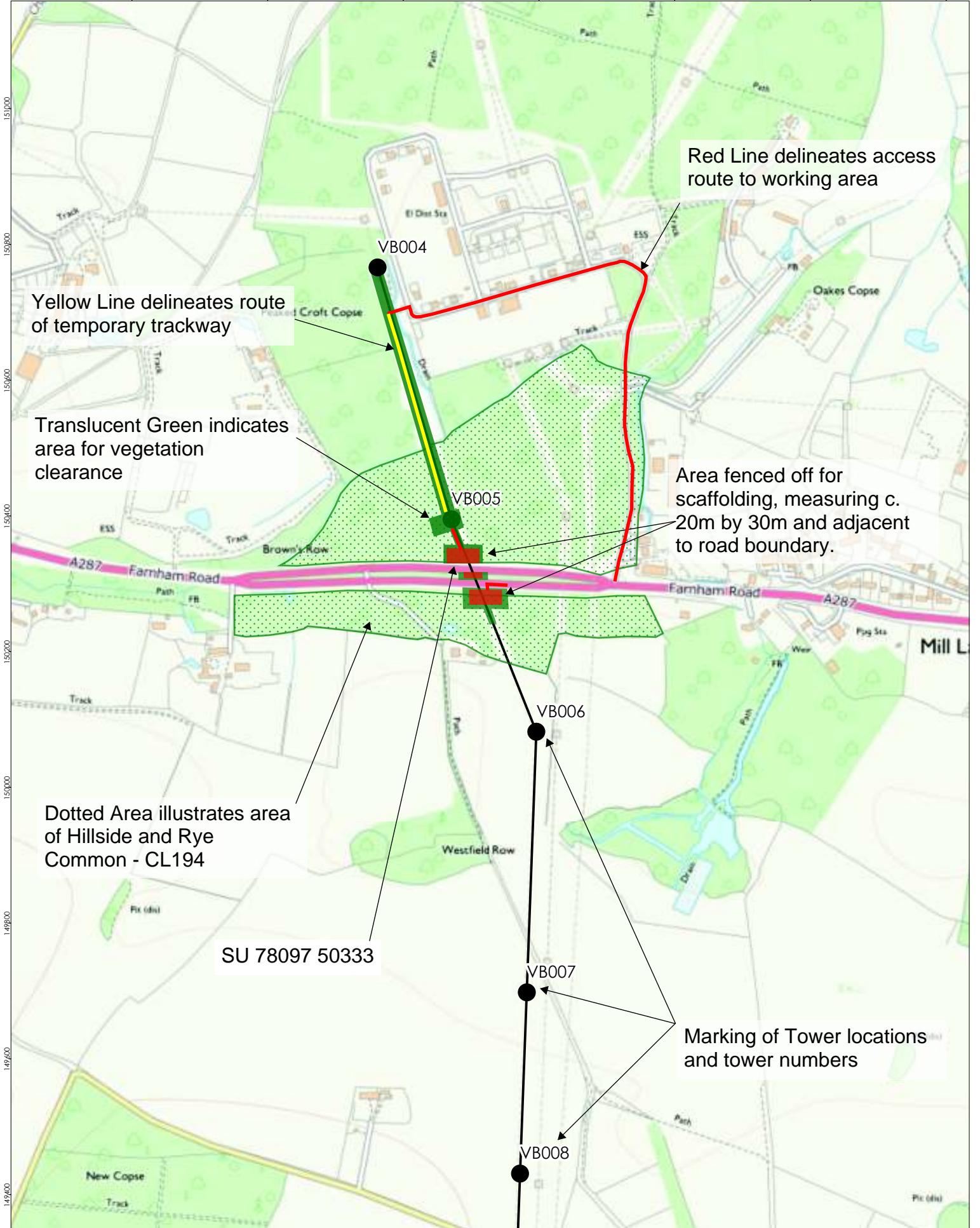
Other matters

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 ... However, 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 works accord with the policy guidance.

Conclusion

15. I conclude that the proposed works will not have a significant or lasting impact or harm the interests set out in paragraph 6 above and will confer a public benefit by facilitating the maintenance of electricity network infrastructure. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



Red Line delineates access route to working area

Yellow Line delineates route of temporary trackway

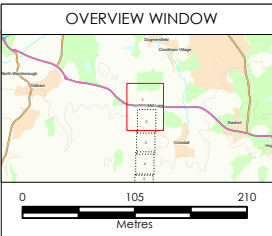
Translucent Green indicates area for vegetation clearance

Area fenced off for scaffolding, measuring c. 20m by 30m and adjacent to road boundary.

Dotted Area illustrates area of Hillside and Rye Common - CL194

SU 78097 50333

Marking of Tower locations and tower numbers



REVISION: A FP: 105089-083
 CLIENT: **nationalgrid**
 SCHEME: VB Refurbishment
 TITLE: Route Plan
 SCALE: 1:5,000 @ A3
 DATE: 25/10/2019

LEGEND:

- Tower
- Overhead Line
- ▨ CL194 Common
- Access Route
- Temporary Trackway
- ▭ Scaffolding Area
- ▨ Vegetation Clearance

FISHER GERMAN
 The Estates Office, Norman Court
 Ashby de la Zouch,
 Leicestershire, LE65 2UZ
 01530 412821
<https://www.fishergerman.co.uk>
ashby@fishergerman.co.uk

© Crown copyright and database rights 2019
 Ordnance Survey Licence Number AL100005237

THIS DRAWING IS PROTECTED BY COPYRIGHT. IT MAY NOT BE REPRODUCED IN ANY FORM OR BY ANY MEANS FOR ANY PURPOSE WITHOUT WRITTEN PERMISSION OF FISHER GERMAN LLP

DRAWING REF:
 NGET-2019-10-RW-RP-
 VB Fleet to Lovedean P1