

---

# Application Decision

**by Richard Holland**

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

Decision date: 27 May 2020

---

## Application Ref: COM/3246353

### Part of King's Mead, Hertford, Hertfordshire

Register Unit No: CL171

Commons Registration Authority: Hertfordshire County Council

- The application, dated 31 January 2020, 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 Thames Water Utilities Ltd.
  - The works of approximately 9 months duration at the New River intake at the River Lea comprise:
    - i) permanent steel MEICA (Mechanical, Electrical, Instrumentation, Control, Automation) kiosk approx. 3m x 3m x 2.5m (22.5m<sup>3</sup>) on an approx. 3m x 3m (9m<sup>2</sup>) concrete base;
    - ii) permanent concrete connection approx. 0.5m x 0.2m to towpath;
    - iii) approximately 150m of 2m high temporary Heras fencing around a construction compound of approx. 4,350m<sup>2</sup> (including vehicular and pedestrian access gates, lay down areas, crane pads and a site and welfare office with temporary water and power supply).
- 

## Decision

1. Consent is granted for works in accordance with the application dated 31 January 2020 and the plan 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. the land shall be fully reinstated within one month of completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land consents policy<sup>1</sup> 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. Whilst consent was sought for the diversion of the towpath, such consent is a matter for the relevant local authority and is not a matter for my consideration in determining this application. Also, the application plan shows a proposed limestone surfaced access track but the applicant has confirmed that this is not included in the application; I have not therefore considered it when deciding this application.

---

<sup>1</sup> Common Land Consents policy (Defra November 2015)

5. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS), neither of which raise objections to the proposed works.
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;<sup>2</sup> 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 the applicant, Thames Water Utilities Ltd, which confirms that there are no registered rights of common over the land and no Rights section to the common land register. I am satisfied that the works will not harm the interests of those having rights in relation to, or occupying, the land.

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

8. The works affect common land on each side of the New River where it spurs from the River Lea (the intake). The works are in connection with a project to install a new eel screen across the intake, which is outside the common land boundary. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people and is closely linked with public rights of access.
9. The permanent kiosk will occupy an area of 9m<sup>2</sup> close to the towpath and to the east of the Grade II listed 'New Gauge' Thames Water Building (the building), which is positioned over the New River next to the intake. This area will no longer be accessible to the public once the works are completed. However, as the kiosk will occupy only a small percentage of the common I am satisfied that it will not seriously harm the above interests. I consider that the permanent concrete connection to the towpath will have a negligible impact on the above interests.
10. The temporary works will enclose an area of 4,350m<sup>2</sup> of the common with fencing for approximately 9 months. I accept that the temporary fencing and works compound are needed to facilitate the eel screen installation project. The temporary works will be removed upon completion of the project and I am satisfied that they will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

### ***Nature conservation***

11. The works are proposed to meet requirements of the Eel (England and Wales) Regulations 2009, which require the protection of eels at all intake sites with an abstraction capacity exceeding 20m<sup>3</sup>/day. The New River intake exceeds this capacity and protection measures, in the form of a new eel screen, need to be in place to ensure that eels do not enter the intake, where they would be killed. The works are also proposed to comply with the Water Framework Directive (WFD), which requires

---

<sup>2</sup>Section 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.

an improvement to the condition of waterbodies, including protection of all fish at all life stages.

12. NE advised that as the proposed works are mainly temporary it had no comments to make. I am satisfied that the works are unlikely to harm the common land's conservation interests generally and will further the wider interests of eel conservation.

### ***Conservation of the landscape***

13. Whilst the land has no formal landscape designation, I consider it likely to draw visitors seeking attractive surroundings. The applicant advises that the kiosk will be partially screened by natural vegetation to minimise its visual impact on the riverside setting and to protect long distance views. The site was chosen in consultation with the local planning authority to which a related planning application has been made. Nevertheless, I consider that a permanent 2.5m high steel kiosk will be a visual intrusion that will cause some harm to the landscape. However, I accept that the kiosk needs to be positioned near to the river intake and that the proposed site offers some partial screening to lessen the harm. I conclude that the permanent visual harm will not be so great that consent for the works should be refused for this reason alone.
14. The temporary fencing will be removed once the works are complete and the land will be reinstated to its previous condition, which can be secured by attaching a suitable condition to the consent. I consider that the temporary works will not cause serious harm to the landscape.

### ***Archaeological remains and features of historic interest***

15. There is no evidence before me to suggest that the works will harm these interests.

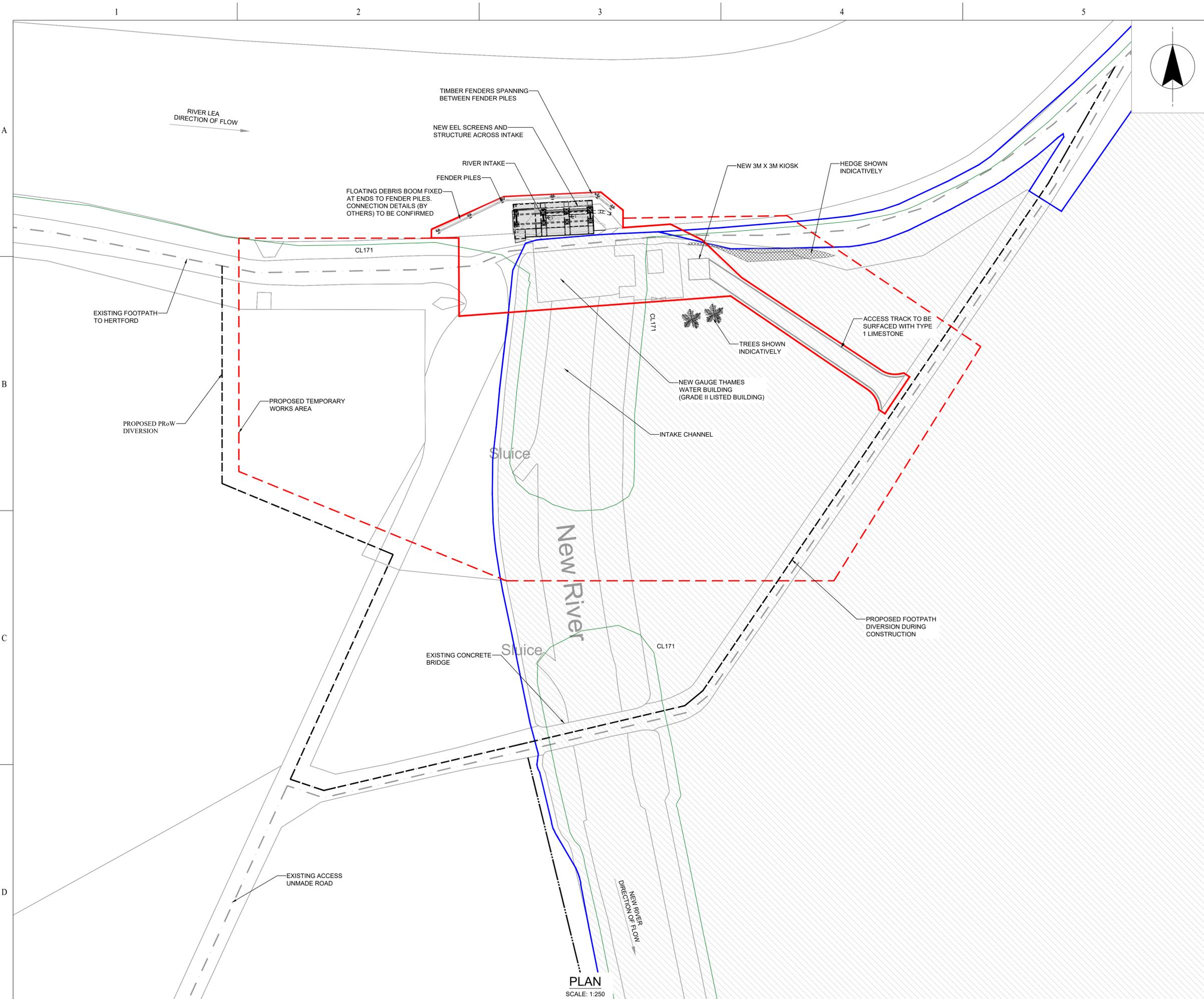
### ***Other matters***

16. Defra's policy advises that works may be proposed in relation to common land which do not benefit the common but confer some wider benefit. I am satisfied that, in helping to safeguard a protected species such as the eel, the proposed works accord with this policy objective.

### **Conclusion**

17. I conclude that the works will not seriously harm the interests set out in paragraph 6 above and that the low-level harm caused by the kiosk to public access and landscape interests is outweighed by wider benefits to eel conservation. Consent for the works is therefore granted subject to the conditions set out at paragraph 1.

*Richard Holland*



**NOTES**  
 1. ALL DIMENSIONS IN MILLIMETRES AND ALL LEVELS IN METRES ABOVE ORDNANCE DATUM UNLESS SHOWN OTHERWISE

**LEGEND**

- LAND IN THAMES WATER OWNERSHIP
- APPLICATION SITE
- PROPOSED TEMPORARY PRoW DIVERSION
- EXISTING PUBLIC RIGHT OF WAY (PRoW)
- NEW RIVER PATH
- PROPOSED TEMPORARY WORK AREA
- COMMON LAND BOUNDARY

Scale 1:250

**SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION**

In addition to the hazards/risks normally associated with the types of work detailed on this drawing, note the following:

**CONSTRUCTION**  
N/A - NOT FOR CONSTRUCTION

**MAINTENANCE/CLEANING**  
N/A - NOT FOR CONSTRUCTION

**DECOMMISSIONING/DEMOLITION**  
N/A - NOT FOR CONSTRUCTION

It is assumed that all works will be carried out by a competent contractor working, where appropriate, to an approved method statement

**NOT FOR CONSTRUCTION**

**CURRENT REVISION INFORMATION**  
COMMON LAND BOUNDARY UPDATED

Revision	Status	Suitability Description	Author	Checked	Approved	Date
P7	S2	FIT FOR INFORMATION	CC	KT		20/05/2020
P6	S2	FIT FOR INFORMATION	NH	KT	KW	22/01/2020
P5	S2	FIT FOR INFORMATION	MN	KT	KW	05/12/2019
P4	S2	FIT FOR INFORMATION	DM	KT	KW	04/12/2019
P3	S2	FIT FOR INFORMATION	KT	SB	MAH	29/11/2019
P2	S2	FIT FOR INFORMATION	OM	RR	KW	19/05/2019
P1	S0	WORK IN PROGRESS	MB	MH	SA	05/05/2016

**Thames Water Utilities**

Clearwater Court  
Vastern Road, Reading RG1 8DB

Location Code: NEWG1ZZ OS Reference: TL339137 Security Reference: UBR  
 Project Group: WNI Sub Process: N/A  
 Location/Town: NEW GAUGE  
 Site Name: NEW GAUGE  
 Project Name: EEL SCREENS PROGRAMME - NEW GAUGE  
 Drawing Title: PROPOSED SITE LAYOUT PLAN

Scale: 1:250 Sheet Size: A1 Status: S2  
 Drawing Number: H028-AC-NEWG1ZZ-SCS-DR-T-2004 Revision: P6