

Application Decision

by **Richard Holland**

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

Decision date: 07 October 2020

Application Ref: COM/3257233
Smithmoor Common, Worcestershire

Register Unit No: CL 32

Commons Registration Authority: Worcestershire County Council

- The application, dated 30 July 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 on behalf of Severn Trent Water Limited.
 - The works of approximately two to three days duration comprise the replacement of an existing sewer pipe and temporary working area with temporary fencing extending approximately 160 m² for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 30 July 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. all fencing shall be removed and the common shall be fully restored within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown in red within the common land boundary outlined in green 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).
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);

¹ Common Land Consents Policy (Defra November 2015)

- 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, Earls Croome Parish Council, confirmed that it was content for the works to go ahead and asked the applicant to inform residents who use the common to access their properties about the proposed works. Rights of grazing and estovers are registered over the common. The applicant has advised that it is not aware of any rights being exercised. I note that those with rights over the common, including two residents who use the common to access property, have been consulted and have not objected to the application. I am satisfied that the works will not impact 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 unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. The works will replace an existing pipe as part of a renewal programme to ensure the continued operation of Severn Trent's assets and reduce the risk of bursts. Temporary heras fencing is needed for site safety and security.
9. The works are located over a short section of an access track on the common and will be completed in approximately two to three days. 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

10. I am satisfied, based on the evidence before me, that there is nothing to indicate that the works will impact on nature conservation interests.

Conservation of the landscape

11. The pipe will be installed underground using an open cut method. An above ground washout valve chamber will be constructed from 1.2m diameter concrete rings with a 150mm concrete surround and metal lid and installed flush to the ground, in the track. The track will be reinstated and compacted and the temporary fencing removed upon completion of the works. I am satisfied that the works will not have a significant or lasting impact on the common and will conserve the landscape in the long term.

Archaeological remains and features of historic interest

12. There is no evidence before me to indicate that the works will harm 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,*

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.

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.

14. I conclude that the works will not harm the interests set out in paragraph 6 above and will confer a public benefit. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



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NOTES
1. THIS DRAWING IS PROVIDED AS PART OF COMMON LAND WORKS CONSENT APPLICATION FOR SMITHBOROUGH COMMON (L32)

LEGEND
 COMMON LAND
 PROPOSED RISING MAIN

DRAWING COORDINATES
 Drawing Centre - X:387320, Y:241751



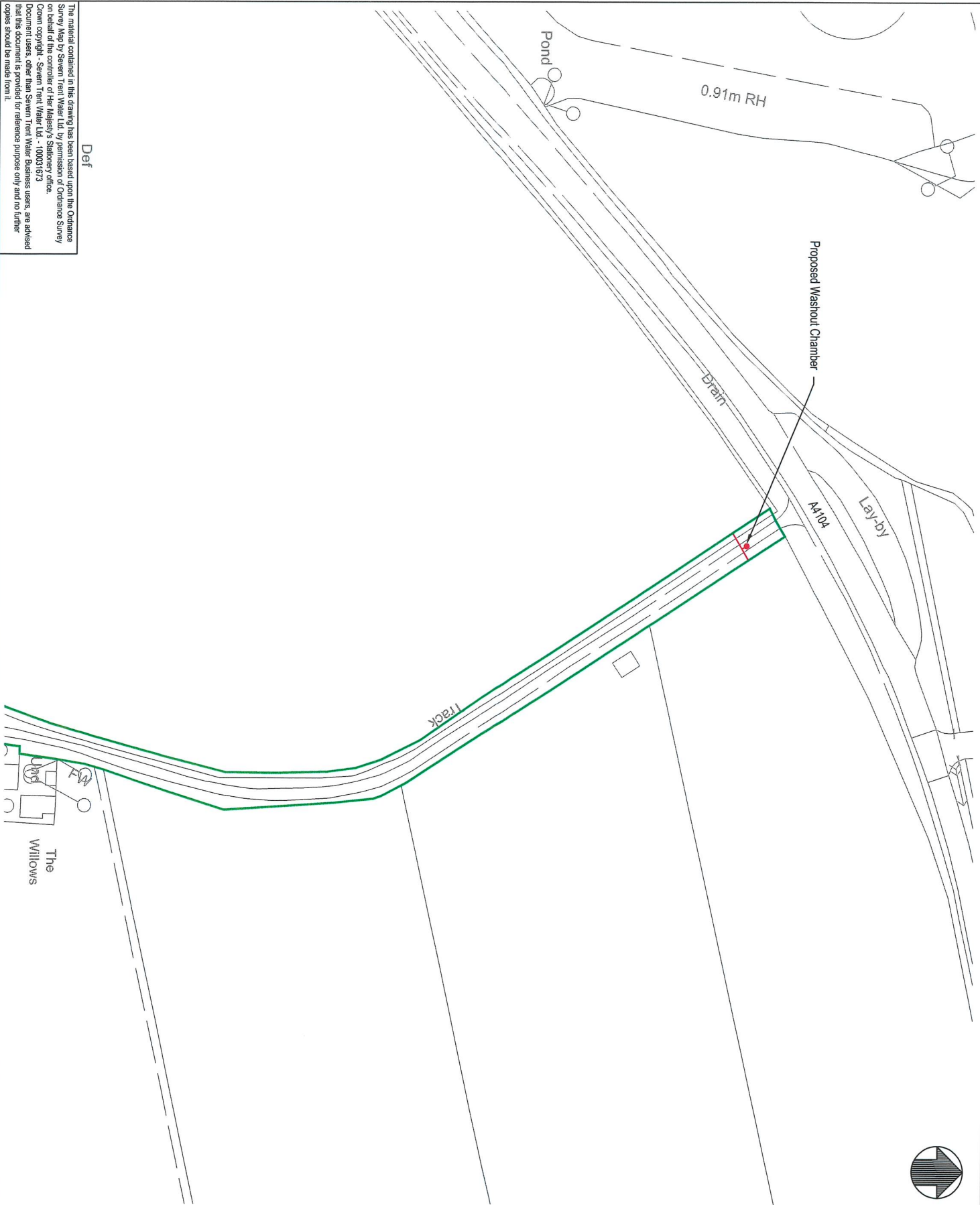
REV	NO	DATE	DESCRIPTION	DESIGNED BY	DATE
001	MA	19/03/2020	ISSUED FOR COMMON LAND APPLICATION	J CABLE	19/03/2020
002	MA	19/03/2020	ISSUED FOR COMMON LAND APPLICATION	J CABLE	19/03/2020

SEVERN TRENT
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PROJECT TITLE
BAUGHTON RISING MAIN

DRAWING TITLE
COMMON LAND APPLICATION

SCALE: 1:1000 SHEET SIZE: A3
 STATUS: A4 AUTHORIZED & ACCEPTED FOR DETAIL DESIGN
 DRAWING NO: A6S13177-STW-ZZ-XX-DR-C-0030 REVISION: P02.02



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