
Application Decision

by Richard Holland

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

Decision date: 18 November 2020

Application Ref: COM 3253521

Challock Lees, Kent

Register Unit No: CL68

Commons Registration Authority: Kent County Council.

- The undated application, received 28 May 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 UK Power Networks.
 - The works of approximately six to eight weeks duration comprise i) installation of a permanent compact substation in glass fibre (GRP) housing on a 9m² concrete stand; ii) underground installation of approximately 155 metres of low and high voltage electricity cables to connect to the existing network; and iii) temporary 2 metre high Heras fencing and/or approx. 1 metre high plastic orange warning fencing to enclose the working areas around the substation and cable routes during the works period.
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Decision

1. Consent is granted for the works in accordance with the application received 28 May 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;
 - ii. the common shall be fully restored within one month from the completion of the works; and
 - iii. the substation shall be coloured green.
2. For the purposes of identification only the location of the works is shown in pink (substation) and red (cable routes) 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 Historic England (HE), Challock Parish Council (CPC) and the Open Spaces Society (OSS), none of which object to the application.
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 application land is owned by CPC, which asked the applicant to reinstate the affected grass and roadway to its original state when carrying out the proposed works but otherwise raised no concerns about the application. The applicant confirmed in its email to CPC of 11 May 2020 that the land will be re-instated to its original condition.
- 8. The common land register for CL68, as supplied to the applicant by Kent County Council and submitted in support of the application, includes no Rights section. No-one has claimed that there are any registered rights of common over the land and there is no evidence to suggest that there are any such rights. The land section of the register records four claimed rights of vehicular access over the common. All four parties having such rights were consulted by the applicant but none have commented on the application. The Land section also records a claimed right to mines and minerals by the Church Commissioners for England, which advised the applicant in its email of 10 June 2020 that it has no interest in the land.
- 9. I am satisfied that the works are unlikely to adversely impact on the interests of those occupying or having rights over the land.

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

- 10. The applicant says the works are needed for health and safety purposes to allow removal of a pole mounted transformer located within the garden of a residential property. UKPN removes high voltage above ground equipment from residential properties where it can to ensure compliance with the Electricity Safety, Quality and Continuity Regulations 2002 and to ensure that required clearances are maintained between equipment and buildings.
- 11. 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 substation will be set back from the south side of the A252 Canterbury Road within an area of trees. Most of the temporary trenches and fencing for the underground cables will run from the substation to the road then run east along the roadside's southern edge. Two smaller sections of trenches and fencing will be needed further to the east on each side of the A252 at the junction with High Snoad Wood.
- 12. With a footprint of 9m² plus surrounding 0.5m wide hardstanding, the substation will take up a very small area of the common. The cables will be entirely underground, all excavated trenches will be backfilled and all temporary fencing will be removed once the works are completed, which is expected to be within eight weeks. The applicant has advised that public access to the common will be maintained at all times. I am satisfied that the works will not have an unacceptable impact on local and public access rights over the common.

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.

Nature conservation

13. There is no evidence before me to suggest that the works will harm nature conservation interests.

Conservation of the landscape

14. The substation is relatively small and will be screened from view by surrounding trees. Furthermore, the applicant says the GRP housing can be green to help it blend in with the surroundings. The cable trenching will be backfilled, the fencing removed and the land re-instated upon completion of the works based on a photographic record of the site made before the works begin. At CPC's request, the applicant has agreed to use turf rather than grass seed, which I consider will more quickly return the land to its former state. Re-instatement of the land and the use of green GRP housing in the interests of the conservation of the landscape can be ensured by attaching suitable conditions to the consent.
15. The proposed works lie within the Kent Downs Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted by the applicant about the application but has not commented. I consider that the works will conserve the natural beauty of the AONB.

Archaeological remains and features of historic interest

16. HE advised that it had no objection to the proposals but advised that archaeological staff at Kent County Council should be consulted, which the applicant has done. There is no evidence before me to suggest that the works will harm any archaeological remains or features of historic interests.

Other relevant matters

17. 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". I am satisfied that the proposed works accord with this policy objective.

Conclusion

18. 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 bringing above ground electricity apparatus into line with industry health and safety requirements. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

