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# Application Decision

by **Richard Holland**

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

Decision date: **21 October 2015**

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## Application Ref: **COM 721**

### **PORTLAND URBAN DISTRICT, CHESIL BEACH, DORSET**

Register Unit No: CL 2

Commons Registration Authority: Dorset County Council

- The application, dated 31 July 2015, 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 the RSPB (Royal Society for the Protection of Birds).
  - The works comprise: (i) a temporary small observation hide of 4.41 m<sup>2</sup> (ii) a temporary electric fence covering 675 m in length and 1.82 ha (iii) a temporary outer single interpretation line of 1,193 m in length and (iv) a temporary small, portable observation hide of 4m<sup>2</sup>.
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## Decision

1. Consent is granted for the works in accordance with the application dated 31 July 2015 and the plan submitted with it, subject to the following conditions:
  - i. the works comprising the 4m<sup>2</sup> observation hide shall begin no later than three years from the date of this decision; and
  - ii. the works shall be removed no later than 2027.
2. For the purposes of identification only the location of the works are shown in red on the attached plan.

## Preliminary Matters

3. An application (COM 293) for consent to carry out works (i), (ii) and (iii) was granted on 20 January 2012. This current application seeks consent to retain those works, and consent for a second 4m<sup>2</sup> portable observation hide, for four to five months a year on a permanent basis from 2017 onwards. Since making the application the applicant has confirmed that time limited consent of ten years, rather than permanent consent, is sought. I do not consider that any interested party has been prejudiced by this amendment.
4. I have had regard to Defra's Common Land Consents Policy Guidance<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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
5. This application has been determined solely on the basis of written evidence.

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<sup>1</sup> Common Land Consents Policy Guidance (Defra July 2009)

6. I have taken account of the representation made by the Open Spaces Society (OSS).
7. 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***

8. The landowner has been consulted about the application and has not objected. A number of common rights are registered over the common but no rights holders have objected to the application. The applicant is unable to confirm whether rights of common are exercised over the application site, but advised that the works would not interfere with any rights of common. I conclude that there is no indication that any party occupying or having rights over the land will be adversely affected by the works.

### ***The interests of the neighbourhood***

9. The interests of the neighbourhood test relates to the way in which the works will impact on local people's use of the common. The application, with the exception of the second 4m<sup>2</sup> hide, seeks consent to retain works that have been placed on the common at the site occupied by a breeding colony of little terns between April and August each year. The applicant explains that the colony has suffered from predation and human disturbance but, thanks to a protection project begun in 2009, has begun to recover and has become a local attraction. The second hide is intended to enable visitors to view the birds without causing any disturbance. The applicant confirms that fishing, which is undertaken on the seaward side of the common, will not be affected by the works.
10. The fencing encloses less than 4% of the total area of the common and I do not consider that the works will unacceptably interfere with the way local people use the common. Indeed, the provision of the second portable hide is likely to improve the recreational value of the common by enabling visitors to view the birds without disturbing them.

### ***The public interest***

#### *Nature Conservation*

11. The area is part of the Chesil and the Fleet Site of Special Scientific Interest (SSSI) and Chesil Beach and the Fleet Special Area of Conservation (SAC), a Special Protection Area (SPA) and Ramsar site. Natural England considers that the little tern colony is an important feature of the SSSI and SPA and it is afforded protection from intentional and reckless disturbance whilst breeding under Schedule 1 of the Wildlife and Countryside Act 1981. The applicant explains that the colony is at risk from predators, particularly foxes, which has led to a decline in little tern numbers in previous years.

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<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.

12. Natural England supports the application and agrees that the fence has proved vital for the protection of the nesting birds, particularly at night. The applicant explains that the type of fencing used has been shown to be successful and confirms that recent years have recorded the best levels of breeding success for the colony since records began in the 1970s. I am satisfied that the works will continue to help protect the little tern colony and, in so doing, will benefit nature conservation interests by further conserving and enhancing an important feature of the SSSI and SPA.

#### *The protection of public rights of access*

13. To minimise disturbance to the colony the public will be excluded from the fenced area, which includes both the interpretation line and electric fence, from early April through to the end of the little tern breeding season which is usually in early August. The public will continue to have access to the rest of the common and full access outside of the breeding season to the fenced area.

14. The applicant confirms that no complaints have been received about the fencing erected under the COM 293 consent. As I have said, the fencing encloses only a small proportion of the common and I am satisfied that the works will not unacceptably interfere with public rights of access particularly as the application site will be out of bounds for only part of the year.

#### *Conservation of the landscape*

15. The fencing consists of nine strands of wire at high tension. The outer interpretation line is designed to minimise the visual impact whilst being effective in protecting the bird colony. By its nature, fencing will have some impact on the landscape. However, I conclude that any adverse visual impact will be minimal and is outweighed by the benefits to nature conservation that the works will help bring about.

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

16. There is no evidence before me of archaeological features within the application site or nearby and I am content, therefore, that the works will not harm any such remains or features.

### **Conclusion**

17. Having regard to the interests set out in paragraph 7, I consider that the works will benefit the public interest in nature conservation and enhance the recreational value of the common without unacceptably harming the other interests. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**