
Application Decision

by Richard Holland

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

Decision date: 20 January 2017

Application Ref: COM/3163213

Waste of the Manor of Hurley, Royal Borough of Windsor and Maidenhead

Register Unit No: CL 009

Commons Registration Authority: Royal Borough of Windsor and Maidenhead

- The application, dated 11 November 2016, 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 South East Water Limited.
 - The works comprise: installation of a new water main connection to the Nethercliffe Nurseries Development. The excavation of approximately 55 m of the eastern verge of Green Lane from Nethercliffe Nurseries to the existing water main to the south. Temporary 'heras' fencing will be erected to enclose an area of approximately 193 square metres. The works are expected to last no more than two weeks.
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Decision

1. Consent is granted for the works in accordance with the application dated 11 November 2016 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. any temporary fencing shall be removed within one month of completion of the works; and
 - iii. the common shall be restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works is shown as a red line 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.

¹ Common Land Consents Policy (Defra November 2015)

5. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE) and the Planning Officer at the Royal Borough for Windsor and Maidenhead (RBWM).
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;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, Hurleyford Farm Limited, has been consulted about the application and has not objected to the proposed works. Rights of grazing are registered in respect of the common. The applicant confirms that rights of grazing are not exercised over the area affected by the proposed works. The commoners have been consulted and there is no indication that the works will impact on their rights. I am satisfied that the proposed works will not 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 interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The applicant confirms that the proposed works are needed to provide security of supply to three new properties in the area. The new pipe will connect to an existing water main within Green Lane. The temporary fencing is needed for health and safety and will protect the public from accessing any open excavations.
9. The works are located on an area of verge within Green Lane which the applicant confirms is designated a restricted by way. Access over the common will be maintained outside the area of the proposed works. The Planning Officer at RBWM and the OSS do not object to the proposed works
10. All permanent works are underground and the temporary fencing will be removed upon completion of the works, which is expected to be within two weeks. I conclude that the works will not have a lasting or significant impact on the interests of the neighbourhood or unduly restrict public rights of access.

Nature conservation

11. NE confirms that they have no concerns or comments to make on the application. There is no evidence before me to indicate that the proposed works will 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 will be reinstated following completion of the underground works and, if necessary, reseeded. I consider that any visual impact on the landscape resulting from the works will be limited and short term. I am satisfied that works will conserve the landscape in the long term.

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.

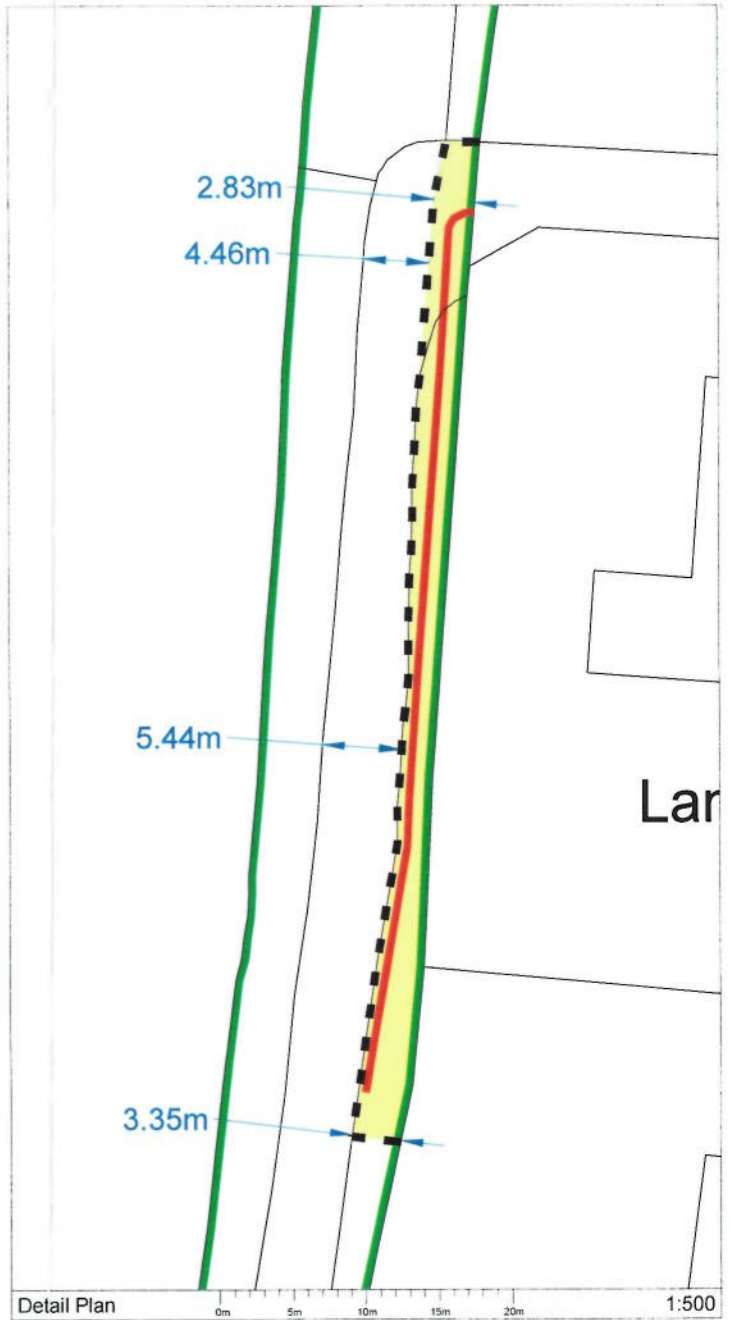
Other relevant matters

14. Defra's guidance says that consent for works may be appropriate where they 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 consider that the works accord with the policy guidance.

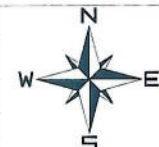
Conclusion

15. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will, in a limited way, confer a public benefit by ensuring the security of supply to three properties in the local area. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



Grantor:- N/A	Signed:-	
Location:- Land Adjacent to Green Lane, Maidenhead, Windsor and Maidenhead	Rev	Date
	A	11.11.2016
		Description Added Common Land
Scheme Name:- Nethercliffe Nurseries, Green Lane		
Drawing Name:- Highway Information Plan		
Drawing Number:- 161390-HIGH-INFO-001-A	Limit of Deviation = 10m	
	Drn. by	PJU/LB
NGR:- SU 8401 8059	App. by	FD
Issue Date:- 11.11.2016	Sht. No.	1 of 1
First Issue Date:- 04.11.2016	Sht. Size	A3



Key:-
 Common Land Boundary □
 Route Alignment —
 Temporary Fencing Area —
 Working Area □

south east water

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