



Application Decision

by **Richard Holland**

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

Decision date: 11 December 2015

Application Ref: COM 724

Pensax Common, Stockton, Worcestershire

Register Unit No: CL59

Commons Registration Authority: Worcestershire County Council

- The application, dated 29 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 Fisher German on behalf of Severn Trent Water Limited.
 - The works comprise the replacement of the existing water pipeline, which includes the digging of five pits or trenches at five different locations on Pensax Common between the junction of C2024 to beyond the White House, Penn Hall Lane, to access services. The pits will measure approximately 1m x 1m. The land will be re-instated fully on completion of the works. Temporary safety fencing will be erected to enclose the working areas.
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Decision

1. Consent is granted for the works in accordance with the application dated 29 July 2015 and the amended plan received on 26 October 2015, 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 or safety barriers 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 in red on the attached plan.

Preliminary Matters

3. Since making the application, the applicant has amended it to include only those works which will be undertaken on the common, as described above. 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 Policy¹ in determining this application under section 38, which has been published for the guidance of both the

¹ Common Land Consents Policy (Defra November 2015)

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representation made by the Open Spaces Society.
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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. The landowners have been consulted about the proposed works and have not objected. There are no rights of common registered. There is no evidence before me therefore that the works will harm the interests of persons occupying or having rights over the land and I am satisfied that they will not.

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

9. The applicant has advised that the existing water main which supplies residents within and around Pensax Common (the common), is old, beyond its working life and is unable to cope with the quantity of water it carries, and suffers from regular bursts. The main is therefore being replaced to reduce the frequency of mains failures, reduce the number of discolouration complaints and to prevent long term water loss and loss of pressure. The works will enable the new pipe (which will be located in the Highway) to be connected to existing supplies to properties. Temporary fencing is necessary to enclose the working area for health and safety reasons. The works are expected to take place over a period of eight weeks.
10. The Open Spaces Society has no objection to the application provided the common is fully reinstated when the works are complete.
11. Although free access across the common may be disrupted while the works are being carried out, this will be to relatively small areas and for a short period. The land will be reinstated and access restored fully when the works are completed. Access outside of the temporary working areas will not be restricted. I am satisfied therefore that the works will not unacceptably harm the interests of the neighbourhood or public rights of access over the common. Furthermore, I accept

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.

the works are necessary to improve the water supply to residents local to the common, which outweighs any short term disruption to access.

Nature conservation

12. Natural England, which was consulted about the application, has not objected and there is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

13. The applicant has said that, where possible, the underground directional drill method will be used to avoid surface excavation and visual impact. Where this method is not suitable/feasible the open cut method will be used which will be done in short sections. However, this cannot be confirmed until consent has been given to undertake works on the common, as site investigations will be required to establish which method can be used. Where the ground is disturbed it will be reinstated once the works are completed.
14. As the land will be restored and the temporary fencing removed as soon as the works are completed, I consider that neither method of installation will have a lasting harmful impact on the common's appearance.

Archaeological remains and features of historic interest

15. There is no evidence before me of archaeological features within the application site or nearby and I am content, therefore, that the works are unlikely to harm any such remains or features.

Conclusion

16. 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. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits. However, 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"*.
17. I am satisfied that the application works accord with this policy objective because they will not materially harm the interests outlined in paragraph 7 above and will confer a wider benefit by helping to improve the water supply to the local community. I conclude therefore that consent should be granted subject to the conditions set out in paragraph 1.

Richard Holland