



Application Decision

by **Richard Holland**

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

Decision date: 13 January 2016

Application Ref: COM 751

Land by the side of the road (known as Mill Green Common) Fryerning, Essex

Register Unit No: CL453

Commons Registration Authority: Essex County Council

- The application, dated 29 October 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 Freedom Group, on behalf of UK Power Networks.
 - The works comprise introducing a new stay wire coming off of an existing low voltage wooden electricity pole. A new overhead aerial bundled conductor will replace the existing overhead conductor currently in place. Approximately 13m of the full 20m span will oversail the common land. Following the excavation works and installation of the new infrastructure, all land will be returned to its former condition. The working site will cover a total area of approximately 5m² and will be cordoned off with safety barriers for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 29 October 2015 and the plan submitted with it subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision;
 - ii. the temporary 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 proposed works is shown in red 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 and Natural England.
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 has been consulted about the proposed works and has 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

8. The applicant has advised that the proposed works are required in order to provide a new electricity supply to a residential property along Mill Green Road. To facilitate this, a heavier, insulated conductor wire is required across Mill Green Road to the existing wooden electricity pole on the common. This requires a new stay wire from the pole to counterbalance the extra force generated from the new overhead conductor. The applicant has considered alternative proposals, but has rejected them as they were unsuitable. The minimum amount of temporary plastic safety barriers will be used around the working site to ensure public safety for the duration of the works only, which is expected to be one day.
9. The Open Spaces Society has no objection to the application provided the common is fully reinstated. Natural England (NE) considers that the effect the proposal will have on those wishing to use the common for recreation and access will be inconsequential.
10. There is no evidence before me that the works will interfere with the way local people use the common, and even if there is some disruption to free access over the common while the works are being undertaken, this will only be to a relatively small area for a very short time, after which the land will be reinstated and full access restored. I consider therefore that there will be no long term harmful effect on the interests of the neighbourhood or public rights of access.

Nature Conservation and conservation of the landscape

11. By their nature, electricity supply structures will have some impact on an open landscape. However, the works will take place on a roadside verge in a relatively built up area, where a wooden electricity pole and overhead conductor are already in place.

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 installation works will be of short duration and the land will be restored and temporary barriers will be removed when the works are finished.

12. Natural England has advised that neither benefits nor any significant impacts to nature conservation or the landscape are anticipated from carrying out the proposals.
13. In view of the above, I am satisfied that the works will not harm any statutorily protected sites or other nature conservation interests nor have a significant visual impact on the common.

Archaeological remains and features of historic interest

14. 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.
15. Defra's guidance says that consent for works may be appropriate where they are of temporary duration, they will be installed underground or where their physical presence would be so slight as to cause negligible impact, the common will be restored and they confer a public benefit. The application works will not confer a public benefit as such since they serve only a single property. However, because their impact on the common and its users will be insignificant I consider that it would not be in the public interest to withhold consent.

Conclusion

16. I conclude that consent should be granted for the works subject to the conditions set out in paragraph 1.

Richard Holland