
Application Decision

by **Richard Holland**

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

Decision date: 23 November 2016

Application Ref: COM 3157571
Malvern Common, Worcestershire

Register Unit No: CL 17

Commons Registration Authority: Worcestershire County Council.

- The application, dated 24 August 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 Fisher German LLP on behalf of Severn Trent Water Ltd.
 - The works of approximately one year's duration, including post-works testing and reinstatement of the land, comprise:
 - (i) construction and laying of 600m of new water main pipe and associated apparatus to be laid in two separate sections of approximately 300m; and
 - (ii) creating a temporary 20m wide working strip along the pipe route of approximately 12000sqm using approximately 1200m of 2m high Heras safety fencing and 1.1m high wooden stock fencing where necessary.
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Decision

1. Consent is granted for the works in accordance with the application dated 24 August 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. the common shall be restored within one month of full completion of the works; and
 - iii. public access on foot to all parts of the common land from within the common land, other than to the enclosed working strips, shall be maintained at all times during the works.
2. For the purposes of identification only the location of the works is shown in red within the working area edged green on the attached plan.

Preliminary Matters

3. The application originally included the possible installation of a small above ground kiosk and pole mounted solar panel. The applicant subsequently removed these elements from the application and confirmed that the only above ground features will be access covers installed flush to the ground.
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 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.

¹ Common Land Consents Policy (Defra November 2015)

6. I have taken account of the representation made by the Open Spaces Society (OSS), which does not object to the application.
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 Malvern Hills Conservators (MHC), which owns and manages the land, has been consulted about the application and has not objected to the proposed works. MHC advised the applicant that none of the various registered rights to graze animals over the common are exercised. 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

9. The pipe route will cross two sections of the common. The northern section will begin from where Thirlstane Road forms the common land boundary in the north eastern corner of the common and will run in a south westerly direction for approximately 300m, where it will cross the common land boundary into land owned by the Malvern Society. It will then re-cross the boundary back into the registered common at the southern edge of the Malvern Society land and continue, as the southern section, for a further 300m or so, turning in a westerly direction towards the A449 Wells Road. The safety fencing will surround both sections for the duration of the installation works, which are expected to take around seven months, and for a period thereafter whilst testing takes place and the land is reinstated to its former condition; the works will take some 13 months in all. The applicant confirms that the works are part of a scheme to replace assets in the water network as part of Southern Trent's strategy to improve and renew assets to ensure continuous supply of water for Malvern.
10. 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 has said that the common land is well used by ramblers and dog walkers so neighbourhood and public rights of access interests overlap considerably. The application plan indicates that in abutting Malvern Society land the safety fencing will create a large pocket of fenced off land at each of the two sites. I have no reason to believe that these two pockets will not be publicly accessible from outside the common from Thirlstane Road and Wells Road but the plan suggests that access into these pockets from within the common will be blocked by the fencing. However, the applicant has confirmed that the fencing will not block access to any land outside the works area and that gates may be used to allow the public to pass through the works area safely. This can be ensured by attaching a suitable condition to the consent.
11. The proposed fencing will impede access across a sizeable part of the common for more than a year. However, the applicant contends that the popularity of the common as a place for public recreation necessitates the extent and duration of the fencing on public health and safety grounds. I recognise that the applicant, as a utility company, has a statutory duty to ensure public safety and I accept that the fencing is proposed mainly for health and safety purposes. I also consider that as none of the permanent works will be above ground (access plinths will be flush to the ground), they will not

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.

impede public access once they are completed. Furthermore, the works will improve the local water supply and I consider them to be in the wider interests of the neighbourhood.

Nature conservation

12. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

13. The fencing is to be retained for some 6 months after the water main is laid so that the common land can be reinstated in line with guidance from MHC. In light of this, and as no permanent works will be above ground, I consider that any visual impact on the landscape will be limited. Whilst the duration of the works is not short, I am satisfied that there will be no lasting harmful impact on the common.
14. Malvern Common lies within the Malvern Hills Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. I am satisfied that any impact on the visual appearance of the common will be of temporary duration and that the natural beauty of the AONB will be conserved in the long term.

Archaeological remains and features of historic interest

15. 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

16. Defra's policy guidance advises that 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*". I am satisfied that the proposed works accord with this policy objective.

Conclusion

17. I conclude that the proposed works will not harm the interests set out in paragraph 7 above and will confer a public benefit by ensuring the continued integrity of water supply to the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



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One Supply Chain - Non-Infrastructure Delivery Team

Site Address :	Thirstane Rd Malvern, Worcestershire WR14 3PL	Rev	A	Date	02/08/2016	Description	For pipeline construction	Author	SJW	T. Chk	KC	B. Chk	/	App'd	RE	Title	PH25 Lower Wyche
OS Grid Ref :	SO 780 449	Rev		Date		Description		Author		T. Chk		B. Chk		App'd		Title	Lower Wyche to Cowleigh Pipeline Notice to: Malvern Hills Conservators Pipe Laying
MMB File Ref :	A6W11901-LA10104 Land Entry Malvern Hills Conservators Pipe Laying.dwg	Rev		Date		Description		Author		T. Chk		B. Chk		App'd		Title	Drawing No.
File Location :	04.6 CAD Working\Drawings	Rev		Date		Description		Author		T. Chk		B. Chk		App'd		Title	A6W11901/LA10104
Scale at A3	1:5000	Rev		Date		Description		Author		T. Chk		B. Chk		App'd		Title	Status
	Purpose of issue	Rev		Date		Description		Author		T. Chk		B. Chk		App'd		Title	LEG
	Legal	Rev		Date		Description		Author		T. Chk		B. Chk		App'd		Title	