
Application Decision

by **Richard Holland**

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

Decision date: **22 November 2017**

Application Ref: **COM 3183657**

Trewint Village Common, Parish of Altarnun, Cornwall

Register Unit No: CL230

Commons Registration Authority: Cornwall Council.

- The application, dated 31 August 2017, 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 West Water.
 - The works of approximately four weeks comprise:
 - (i) installation of a new 110mm underground water main extending approximately 12 metres into the common land; and
 - (ii) Heras type temporary safety/security fencing enclosing an area of approximately 110 square metres for the duration of the works.
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Decision

1. Consent is granted for the works in accordance with the application dated 31 August 2017 and accompanying plan, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. all temporary fencing shall be removed and 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. 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.
5. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS), neither of which object to the application.

¹ Common Land Consents Policy (Defra November 2015)

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 common land register notes that having held a hearing on 5 October 1982, the Commons Commissioner was not satisfied that any person was the owner of the land and that it remained subject to local authority protection under section 9 of the Commons Registration Act 1965 (now under section 45 of the Commons Act 2006).
8. There is one registered right to graze 11 cattle, 1 pig and 11 geese over the common land unit. The applicant has advised that the right is exercised on a daily basis. The rights holder was consulted about the application but made no comments about the proposals.
9. There is no evidence before me to suggest that the works will 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

10. The works are proposed in order to isolate and decommission an adjacent covered reservoir that is no longer in use. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access. Maps and plans submitted with the application indicate that the area to be enclosed by the temporary fencing straddles a hard surfaced access track serving the nearby properties 'The Mooring' and 'Mount Pleasant', which have rights of access across the common, and the land abutting the covered reservoir. The applicant has confirmed that access to these properties will be maintained throughout the works. The proposed pipe will be installed under the hard surfaced track. I do not consider that these short term works will impact greatly on local or public use of this part of the common.
11. The permanent works are underground and the common land affected will be reinstated upon completion of the works. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation

12. NE confirmed that it did not wish to comment on the application. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

13. The applicant has confirmed that the ground will be reinstated to its original condition after the works are completed. As the permanent works will be underground, I consider that any impact on the landscape will be small and short term. The common lies within the Bodmin Moor section of the Cornwall Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. I am satisfied that any visual intrusion will be of temporary duration and that the natural beauty of the AONB will be conserved in the long term.

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.

Archaeological remains and features of historic interest

14. 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

15. The works are necessary to isolate the decommissioned covered reservoir from the South West Water network. 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..... 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 consider the proposed works to be in the interests of water supply improvement and I am satisfied that they accord with this policy objective.

Conclusion

16. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will confer a public benefit by improving the water supply system. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

Common land

Working area

new Water main

scale = 1:370.370

