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# Application Decision

by **Richard Holland**

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

Decision date: 12 September 2018

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**Application Ref: COM 3205937**  
**Baddesley Common, Warwickshire**

Register Unit No: CL7

Commons Registration Authority: Warwickshire County Council.

- The application, dated 22 June 2018, 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 for Severn Trent Water Limited.
  - The works of approximately 3 days duration comprise:
    - (i) installation of a control kiosk (1200mm high x 750mm wide x 400mm deep) on a 200mm deep concrete base;
    - (ii) underground installation of 5m of cable ducting; and
    - (iii) Heras type temporary fencing enclosing the working area for the duration of the works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 22 June 2018 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 Policy<sup>1</sup> 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 representation made by the Open Spaces Society (OSS), which does not object to the application.

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<sup>1</sup> 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;<sup>2</sup> 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 is owned by Park Top Limited, which was consulted by the applicant but has not commented on the application. There are no registered rights of common. 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***

8. A private sewerage pumping station currently serves a number of properties around Baddesley Common. The applicant has advised that the Private Sewers Transfer Regulations 2011 require the pumping station to be transferred to Severn Trent Water Limited (STW) as the relevant sewerage undertaker for the area concerned. STW is required to ensure that all sewerage pumping station equipment meets current health and safety standards and the works applied for are proposed to upgrade the equipment accordingly.
9. 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 the interests of public access. The works straddle the common land boundary and encroach approximately 5 metres into the common. The affected land would appear to be roadside verge that is subject to general public access and of little amenity value.
10. The cable ducting will be underground and will pose no impediment to access. All temporary fencing will be removed once the works are completed, which is expected to be within approximately 3 days, and will pose only a short term impediment to access. The control kiosk will be a permanent above ground structure and will therefore obstruct access to a certain extent. However, I consider its small size and position near the edge of the common means it will interfere only negligibly with the neighbourhood's use of the common and public access over it.

### ***Nature conservation and archaeological remains/features of historic interest***

11. There is no evidence before me to indicate that the proposed works will harm these interests.

### ***Conservation of the landscape***

12. The kiosk will be a fern green colour and will be placed close to existing vegetation and grass areas to mitigate the visual impact. Full reinstatement of the land disturbed during ducting installation can be ensured by attaching a suitable condition to the consent. The area has no special landscape designation and I am satisfied that the works will not impact significantly on landscape interests.

### ***Other relevant matters***

13. The works are required to ensure that private sewerage pumping equipment transferring to the statutory undertaker meets the required health and safety standards. Defra's policy guidance

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<sup>2</sup>Section 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.

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 am satisfied that the works accord with this policy objective.

## **Conclusion**

14. I conclude that the proposed works will not significantly harm the interests set out in paragraph 6 above and will confer a public benefit by ensuring that required health and safety standards in relation to sewerage pumping equipment are maintained. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



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Site Address: Oak Tree House, New Street, Baddesley  
 Ensor, Atherstone CV9 2DL  
 OS Grid Ref: SP271984

		Drawn	RM	Checked	GT	Date	10.05.18	Client	SEVERN TRENT WATER	The Owner / Occupier	
B	Ducting route and wet well added	RM	07.06.18	GT		Scale	1:500	Original Size	A3	Project Private Drains & Sewers (PDaS) Pumping Stations	
A	First Issue	RM	10.05.18	GT		Client Drawing No.	A6S/13109-04-89-PA-50-534	Status	LEGAL		
1	REV	DESCRIPTION	BY	DATE	CHKD	NMCNomenca Drawing No.	79019.009-PA-50-534	Revision	B	Title	PPS1598 Oak Tree House Proposed Kiosk Position



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