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# Application Decision

**by Richard Holland**

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

Decision date: 16 October 2019

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**Application Ref: COM 3234033**  
**Clee Liberty Common, Shropshire**

Register Unit No: CL 4

Commons Registration Authority: Shropshire Council.

- The application, dated 5 July 2019, 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 two weeks duration comprise:
    - i. replacement of approximately 20m of existing 4 inch uPVC water main with 90mm polyethylene pipe; and
    - ii. temporary 1m high plastic or 2m high Heras type galvanised mesh barrier fencing as necessary during the period of works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 5 July 2019 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 fencing shall be removed and the common shall be restored within one month from 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 representations made by the Open Spaces Society (OSS) and NATS Holdings (formerly National Air Traffic Services), neither of which 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 landowner, Cleve St Margaret Parish Council, was consulted by the applicant about the application but did not comment. There is no evidence to suggest that the works will harm the interests of those occupying the land.
8. The common land register records extensive grazing rights and a small number of rights of turbury over the common. The applicant has said that three rights holders actively exercise their rights but not over the section of land impacted by the pipe replacement works. None have commented on the application and there is no evidence to suggest that the works will interfere with the exercising of their rights.
9. The occupiers of six properties have a right of vehicular access over the common and were consulted by the applicant. None of them objected to the application. NATS Holdings, which rents an air traffic control mast installation and has access to it over the common, has advised that it anticipates no impact from the water mains replacement activity. I am satisfied that the installation of a replacement pipe will not harm the interests of those having access rights over the land.

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

10. The water main to be replaced is beyond its working life and suffers from regular bursts. It is due for replacement to prevent long-term water and pressure loss and to ensure a water supply is retained for the residents living on and alongside Cleve Liberty Common. A 20m section of the water main lies within the common land boundary and is the subject of this application.
11. The applicant intends the pipe replacement work to be undertaken by way of directional drilling, which removes the need for a continuous open trench and reduces restriction of public access. However, it is possible that the more extensive open cut trench excavation method may need to be used for some sections and this could include the 20m section within the common.
12. 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 public rights of access on foot. The area of common land affected by the works is within the highway known as Bent Lane, through which the common land boundary runs. Therefore, local and public use of the affected common land is largely restricted to its use as a highway; the site has little or no recreational value, apart from general pedestrian access which in any case is likely to be limited.

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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.

13. The permanent works are underground, with no new above surface features, and the common land affected will be reinstated upon completion of the works. Any temporary fencing required will be removed as soon as possible once the works are completed, which is expected to be within two weeks. The application plan indicates that the 20m section of pipe will lie beneath the centre of Bent Lane. Whilst the works and any associated temporary fencing might therefore disrupt vehicular traffic, the impact on pedestrian access will be minimal. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access over common land.

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

14. Natural England, Historic England and Shropshire Council's Natural Historic Environment team were consulted about the application but did not comment. There is no evidence before me that leads me to think the works will harm the above interests.

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

15. The applicant has advised that any excavations required will be backfilled and the land will be reinstated to match existing surroundings once the works are completed; this can be secured by attaching a suitable condition to the consent. As all the permanent works will be underground, I consider that any impact on the landscape will be small and short term.
16. The common lies within the Shropshire Hills 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.

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

17. 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 am satisfied that the proposed works accord with this policy objective.

### **Conclusion**

18. I conclude that the proposed works will not harm the interests set out in paragraph 6 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**

Drawing number / Rev  
A6W/12668/04/11/CA/00/100/LE

ottage



1.22m RH

Brook House

The Damson Patch

LB

272.1m

TCB

CG

Def

CS

1.22m RH

KEY	
	COMMON LAND BOUNDARY
	PROPOSED NEW MAIN

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**NOTES:**

1. LOCATION OF MAINS AND CONNECTIONS TAKEN FROM RECORD DRAWINGS, WHERE SURVEY UNAVAILABLE OR UNABLE TO LOCATE.  
 LOCATION: X: 368052 Y: 285041 POSTCODE: SY7 9DY

Rev	Rev. Date	Rev. Description	CS	RF	RF	MD
1	07.06.2019	FIRST ISSUE				



Project	STW WATER INFRASTRUCTURE DETAIL DESIGN	
Drawing title	BENT LANE, LUDLOW	
Drawing status	LEGAL	
Scale	1:1000 @ A1	DO NOT SCALE
Scheme no.	A6W/12668/04/11	
Drawing number	A6W/12668/04/11/CA/00/100/LE	
Rev	1	