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| **Application Decision** |
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| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 April 2022** |
| **Application Ref: COM/3288530**  **Breach Common and St James Common, Shaftesbury, Dorset**  Register Unit No: CL41  Commons Registration Authority: Dorset County Council   * The application, dated 7 December 2021, 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 Wessex Water. * The works of approximately 10 days duration to an existing sewer main comprise:  1. flow meter frame and cover (1200mm x 675mm); 2. sluice valve frame and cover (380mm x 230mm); 3. data logger frame and cover (210mm x 210mm); and 4. erection of 2m high temporary Heras security/safety fencing around a total working area of 190.8m² during the period of works. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 7 December 2021 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than 3 years from the date of this decision; and
3. all temporary fencing shall be removed and the land shall be fully reinstated within one month from the completion of the works.
4. For the purposes of identification only, the location of the proposed works is shown in red on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 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.
2. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE), which does not object to the proposals.
3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
4. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
5. the interests of the neighbourhood;
6. the public interest. (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); and
7. any other matter considered to be relevant.

**Reasons**

***The interests of those occupying or having rights over the land***

1. The land the subject of the application is owned by Mr Keith Brooks of nearby Holm House, who was consulted about the application but did not comment. The common land register records numerous rights of grazing, which the applicant advises are not exercised. No rights holders have made any comments about the proposals. 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 public rights of access***

1. The applicant advises that the works are required by the Water Services Regulation Authority (Ofwat) as a public health measure and are part of a wider Wessex Water burst detection scheme. The new flow meter will be able to detect bursts along the sewer network, which will help reduce the risk of pollution.
2. 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. The works area lies partly within a small area of the common. It occupies rural roadside verge on the north side of the B3091 road and appears to have little recreational value other than for general access.

1. Plans submitted by the applicant show that the works area will take up the whole width of the verge. Whilst pedestrians will be excluded from a part of the common this will only be for around 10 days and I am satisfied that the fencing is needed for health and safety reasons by preventing public access over the working area whilst the works are in progress.
2. The flow meter, sluice valve and data logger structures will be underground with above ground covers flush with the surface, leaving no permanent impediments to access. I conclude that the works will not unacceptably interfere with the interests of the neighbourhood or public rights of access.

***The public interest***

*Nature conservation and conservation of the landscape*

1. NE advises that the application land is not subject to any statutory designations for nature conservation and does not see the works as having an adverse effect on the biodiversity of the common. I am satisfied that the works will not harm nature conservation interests.
2. The common land has no special designated landscape value. The permanent structures will be underground, the covers will be flush to the ground and the applicant confirms that the fencing will be removed as soon as possible after the works have been completed. Whilst the works will cause some visual harm, it will be short term and the land will be re-instated upon completion of the works, which can be ensured by attaching a suitable condition to the consent.

*Archaeological remains and features of historic interest*

1. There is no evidence before me to suggest that the works will harm these interests.

**Conclusion**

1. Defra’s Common Land consents policy advises 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.
2. I conclude that the proposed works will not seriously harm the interests set out in paragraph 5 above and will bring wider public benefits by assisting in the detection of bursts along the sewer network and helping to reduce the risk of pollution. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

