

|  |
| --- |
| **Application Decision** |
|  |
| **by Richard Holland** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 August 2022** |
| **Application Ref: COM/3293163**  **Semley and Gutch Commons, Wiltshire**  Register Unit No: CL4  Commons Registration Authority: Wiltshire Council   * The application, dated 16 February 2022, 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 4 weeks duration to install a new water main comprise:  1. excavation of a 0.6m wide open cut trench (approx. 25m long) to install a new water main; and 2. 50m of 2m high Heras fencing enclosing an area of 200m² around the trench for the duration of the works. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 16 February 2022 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. 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 (the Defra policy) 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), Partnership Board of Cranborne Chase Area of Outstanding Natural Beauty (‘Partnership Board’) and the Open Spaces Society (OSS).
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 application land is owned by Mr Alexander Allfrey, who was consulted about the application but did not comment. The common land register records numerous and varied rights over CL4, which comprises a large network of road verges over a wide area. The applicant advises that no rights are registered in respect of the area of land the subject of the application and no rights holders have made any comments about the proposals. There is no evidence before me to suggest that the works are likely to harm the interests of those occupying or having rights over the land.

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

1. The proposed works within the common form part of wider essential water supply upgrades to the local network. The proposed new pipeline will provide a more effective water supply and improve resilience for the supply network serving customers in the local area.
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 application land is grass verge on each side of the road running north into the village of Semley. Pedestrians will be excluded from the fenced areas during the works period. However, the verges appear to have little amenity value, especially the eastern verge which is very narrow, other than as providing general public access.
3. The permanent works will be underground, with no new above surface features to interfere with access over the common. All temporary fencing will be removed once the works are complete, which is expected to be within approximately 4 weeks. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

***The public interest***

*Nature conservation*

1. NE advises that the site of the proposed works is not subject to any statutory designation for which NE consent/assent is required and that it has no objection to the works being progressed as proposed. However, the application land may be within land designated as a Local Wildlife Site (LWS) by the Wiltshire Wildlife Trust (WWT). The applicant suggested that the application land also lies within a Site of Nature Conservation Interest (SNCI) and confirmed that consultation with WWT and the authority managing the SNCI is ongoing.

1. I am satisfied that the applicant is engaging with the relevant local organisations to ensure that the works will not harm any nature conservation interests.

*Conservation of the landscape*

1. The new water main will be wholly underground and the fencing will be removed and the land re-instated on completion of the permanent works, which can be ensured by attaching a suitable condition to the consent.
2. The application land lies within the Cranbourne Chase Area of Outstanding Natural Beauty (AONB). Whilst recognising that the application only affects a small area of common land, the Partnership Board raised concerns that a lack of pre-application consultation about the applicant’s wider project to install a water supply pipeline within the AONB left it being asked to comment without having had an opportunity to consider the wider project. The Partnership Board suggested it would be appropriate to allow more time to provide a considered response. However, I must confine my consideration to the works the subject of the application.
3. The Partnership Board has not objected to the application works specifically and I conclude that the impact of the proposals on the common will be limited and short term and I am satisfied that the natural beauty of the AONB will be conserved.

*Archaeological remains and features of historic interest*

1. Historic England (HE) and Wiltshire Council’s Archaeology Service (WCAS) were consulted about the proposals but did not comment on the application. However, WCAS advised the applicant directly in its email of 25 February 2022 that it had no comments to make about the proposed works above and beyond the previously discussed approach to archaeological works for the scheme as a whole, which I take to mean the applicant’s wider project referred to above.
2. I am satisfied that the works will not harm the above interests.

**Conclusion**

1. The Defra 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”*.
2. I am satisfied that the proposed works accord with the above policy objective and I conclude that they will not significantly harm the interests set out in paragraph 5 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

