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| **Application Decision** |
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| **by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 August 2022** |

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| **Application Ref: COM/3284488****Therfield Heath, Baldock Road, Royston**Register Unit No; CL 092Commons Registration Authority: Hertfordshire County Council  |
| * The application, dated 8 September 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 Mr Robert Minshall of Affinity Water Limited (AWL)
* The proposed works are to raise the head-works of two existing boreholes located within the vicinity of the pumping station located on the eastern most boundary of Therfield Heath
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Decision

1. Consent is refused.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy dated November 2015 (the 2015 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 and an accompanied site visit undertaken on 26 April 2022.
3. For the purpose of identification only a copy of the application plan is attached to this decision.
4. 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. (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

d. any other matter considered to be relevant.

1. Any ownership issues are a private matter between the relevant parties and not within my jurisdiction on this application. However, the dispute between the applicant and the Conservators is noted. It is acknowledged that various parties have referred to a potential different scheme being brought forward under a section 16 application, but the merits of such a proposal are not for consideration under this section 38 application.
2. I have had regard to the representations made by The Conservators of Therfield Heath and Greens / The Regulation Trust (The Conservators); The Friends of Therfield Heath and Greens; Royston Wildlife Group; Natural England (NE); the Open Spaces Society (OSS); Historic England; The Ramblers’ Association; North Hertfordshire District Councillors; Royston Town Council; Therfield Parish Council and a number of local residents. I have considered all submissions in reaching my decision on this application.
3. At the start of the site visit and following a series of telephone conversations, it was established that the applicant would not be attending. Thus, as a number of interested parties were already present and in the absence of any substantive objection from the applicant, the site visit commenced accordingly.
4. Revised plans were submitted by the applicant the day before the site visit and on 3 May 2022. Interested parties were given the opportunity to comment on the revised plans and any comments received. Therefore, I will not prejudice any party by taking the revised plans into account in reaching my decision.

Reasons

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

1. There are a number of registered rights recorded over the land as outlined on the Register, which include grazing, the playing of cricket, golf and other games. I am satisfied that the works would also be in the interests of persons exercising rights of common over the land. Furthermore, I am satisfied that the development would not harm the interests of those occupying or having rights over the land.

***The interests of the neighbourhood***

1. The interests of the neighbourhood test relate to whether the works will impact on the way Therfield Heath (the Common) is used by local people. In general terms works should only be permitted if they maintain or improve the condition of the Common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact.
2. There is no definition within the 2006 Act of the term ‘neighbourhood’. The applicant submits that the priority water infrastructure works would provide a significant public benefit to the local water supply by ensuring an important water source for the local community that meets industry requirements. The applicant refers to the consensus reached by the United Nations General Assembly in 2010 where the right to water is “indispensable for leading a life in human dignity”. The applicant is of the view that any impacts on the Common would be outweighed by the benefits through the improvement of the water supply network.
3. Therefore, it appears to me that the benefits that would be derived by local people (and those living within the neighbourhood in particular) from the improvements to the water supply network are a factor to be weighed in the balance when determining this application.

***The public interest***

1. 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.

*Nature Conservation*

1. There is little evidence before me to indicate that the development harms nature conservation interests. However, I do have concerns regarding the assent that was obtained from NE dated 10 March 2021 (the assent), which specifically refers to the notice served by the applicant dated 23 February 2021. This assent was for the original proposal and not the revised proposal that was submitted the day before the site visit.
2. Thus, whilst there are some similarities between the schemes, the assent makes it clear that if there is a change to the proposed operations, further written notice should be given to NE. There is no evidence of any such written notice to NE or any agreement to the revised works from NE. This is a significant misgiving on the application given the protected status of the Common. Additionally, there is little detail surrounding the subsequent landscaping that would occur to re-grade the area surrounding the raised covers. Consequently, there is notable uncertainty surrounding the impact of the proposed works with regard to nature conservation and the Wildlife and Countryside Act 1981 (as amended).

*Landscape*

1. Although the proposed works would be located within the Common, the revised scheme would result in a significant reduction in scale, particularly through the omission of the kiosk’s and the installation of raised covers instead. These improvements in the revised design are acknowledged by the Conservators and the OSS. Thus, the development sought under this application would have a minimal impact and would not create any significant visual harm.

*Public Access*

1. The proposed works would require the enclosure of the site with fencing to ensure that health and safety is maintained during the period of construction works. Whilst this enclosure would only exist for a temporary period, it encloses sections of 2no. public footpaths. I do not have any details of a temporary closure notice or details of a diversion. I accept that the common to the west is relatively open, but the topography falls away. The footpath closest to the pumping station would be closed and the lower footpath would at a minimum, require people to walk in the area where taller vegetation exists.
2. During my visit, I observed that both footpaths are well trodden. The proposed works would not unacceptably restrict public rights of access or harm the interests of people from the neighbourhood wishing to use the common permanently. However, whilst this impact would be temporary, the estimated period of time for construction is not insignificant. Although, the applicant states that the works would be ‘No longer than 12 weeks’ on the application form, given the limited details in respect of this matter, I am not satisfied that anyone wishing to use these footpaths could reasonably do so. Additionally, I am not convinced that reasonable adjustments have been put in place to ensure compliance with the Equality Act 2010.

*Archaeological Remains and Features of Historic Interest*

1. There is no evidence to suggest that the development has an adverse effect on any archaeological remains or features of historic interest.

**Overall Balance and Conclusion**

1. The 2015 policy expects adherence to the policy but does allow for departures from it as appropriate based on the merits of the case. I have considered whether the wider public benefits arising from the proposed works would justify a departure in this instance. Whilst I accept that there would be some public benefits in respect of the water supply for the neighbourhood, I am not convinced that the potential permanent and temporary harms that would occur to Nature Conservation and Public Access would be outweighed.
2. Therefore, I conclude that the proposed works conflict with 2no. categories within the interests set out above in paragraph 5 c. Consequently, I conclude on balance that consent for the works applied for should not be granted.

W Johnson

INSPECTOR

