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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: 28 September 2022** |
| **Application Ref: COM/3300294**  **The unnamed piece of land in the Parish of St Kew, Chapel Amble, Cornwall**  Register Unit No: CL262  Commons Registration Authority: Cornwall Council   * The application, dated 1 June 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 Western Power Distribution (South West Plc). * The works of approximately 3 working days duration comprise:  1. excavation of a trench for the underground installation of 15m of electricity cable; and 2. erection of safety barriers enclosing an area of approximately 45m² around the trench for the duration of the works. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 1 June 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 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 applicant, Western Power Distribution (WPD), advises that their enquiries found no known owner of the application land. Commons Commissioner Decision 206/U/247 of 13 March 1992 records that the land remains subject to (local authority) protection under Section 9 of the Commons Registration Act 1965. The common land register records no rights over CL262.
2. There is no evidence before me to suggest that the works will harm the above interests.

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

1. As the relevant electricity distribution company, WPD has a duty under the Electricity Act 1989 (the 1989 Act) to ‘supply on request’. Such a request has been made in relation to the property known as Lenora, which is situated outside the common land boundary adjacent to the application land. WPD confirms that providing a new electricity connection to the property falls under the remit of the 1989 Act. Connection to the property requires access to an existing electricity cable beneath the application land.
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 part hard surfaced highway and part grassed area beside the road running through the village of Chapel Amble. The grassed area, under which the existing electricity cable lies, appears to have little amenity value other than providing for general public access.
3. The permanent works include 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 3 days. 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. WPD advises that the application land is approximately 105m from the Amble Marshes Site of Special Scientific Interest (SSSI) and that the SSSI will not be affected by the works. Natural England was consulted about the proposals but did not comment.
2. I am satisfied that the works will not harm any designated nature conservation areas. There is no evidence to suggest that the application land has any particular features of nature conservation interest that may be harmed by the works.

*Conservation of the landscape*

1. The common has no particular landscape conservation designation. The permanent works will be wholly underground and the land will be re-instated on completion of the works, which can be ensured by attaching a suitable condition to the consent.
2. I am satisfied that proposed works will have only a very short term impact on the landscape.

*Archaeological remains and features of historic interest*

1. Historic England and Cornwall Council’s Archaeology Unit were consulted about the proposals but did not comment. There is no evidence before me to suggest that the proposed works will 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**

