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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: 30 September 2022** |
| **Application Ref: COM/3296311**  **Rye Common (Part) and Hillside Common (Part), Hampshire**  Register Unit No: CL194  Commons Registration Authority: Hampshire County Council   * The application, dated 31 March 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 Scottish and Southern Electricity Networks. * The works of approximately 12 weeks duration comprise:  1. underground installation by 2m wide open trench of 350m of 33kV high voltage cables; 2. removal of approximately 350m of overhead line, one wooden H pole and two wooden twin poles and retention or replacement of one wooden H pole; and 3. erection of approximately 720m of temporary 2m high Heras fencing or 1m high plastic safety barriers around a 10m wide working area of approximately 3,500m² for the duration of the works. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 31 March 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 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, Historic England (HE), Natural England (NE), 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 landowner, Hampshire County Council (HCC), has been consulted and has not objected to the application. There is one right of estovers registered over the common. The applicant advises that the right is not exercised. I am satisfied that there is no indication 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 area has electricity supply issues, with faults and risks of unforeseen outages affecting all local residents and commercial sites. The network has therefore been redesigned in the locality to allow a reinforced and more secure future network. The proposed works form part of the redesign. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access.
2. The common is separated into northern and southern sections by the A287 Farnham Road. No party has suggested that any particular neighbourhood or public use is made of the common and it would seem to be used for general access. It appears to NE that the works will not directly affect any public rights of way.
3. The proposed works will extend approximately north to south through the whole of both sections of common. In the interests of public safety the temporary fencing will prevent public access over the common from one side of the works to the other for the works period of approximately 12 weeks. I consider that in the absence of a staggered works programme or any crossing points through the works area, the works will be harmful to public rights of access interests. However, the harm will be temporary and is outweighed by the need to improve local electricity supplies in the public interest.

***The public interest***

*Nature conservation*

1. NE advises that the application land is not subject to any statutory designations requiring its consent/assent. The applicant advises that the site is however designated as the Brown’s Row and Rye Common East Site of Nature Conservation Interest (SINC); a non-statutory designation afforded to the site due to the presence of ancient semi-natural woodland, pasture woodland and wooded commons.
2. The applicant advises that works within the SINC will be subject to a method statement to avoid or reduce damage to the site. This will include minimising the works area, ensuring appropriate storage and re-instatement of soils, protecting trees and implementing pollution prevention measures. Some vegetation removal will be required around the works area. Whilst a 2021 survey found no evidence of dormice, which have historically been present, a precautionary methodology will be adopted during vegetation removal in accordance with good practice guidelines for the species. Vegetation removal will also be timed to avoid the bird nesting season. No other protected species constraints were identified by the applicant or NE.
3. The applicant further advises that the affected area will be left to regenerate naturally unless otherwise agreed with HCC. Biodiversity enhancements will comprise the creation of habitat piles and the installation of twenty dormouse nest boxes in adjacent woodland.
4. NE confirmed that it had no objection to the works but suggested that the applicant consult Hampshire Wildlife Trust (HWT). The applicant advises that HWT replied to say that it would not be commenting.
5. I am satisfied that suitable measures will be put in place to protect nature conservation interests and that those interests will not be seriously harmed by the works.

*Conservation of the landscape*

1. The common has no special landscape designation and the affected land is close to a major road. Two further overhead powerlines span the common nearby. I consider it to have low landscape value.
2. The landscape will be improved by the removal of a visually intrusive overhead electrical line, which will be made possible by the laying of new underground cables. Whilst the trenches and temporary fencing 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. The applicant advises that HCC has given consent to the replanting of suitable scrub and woodland plants along areas cleared of vegetation. I am satisfied that the works will bring some long term landscape improvements to the common.

*Archaeological remains and features of historic interest*

1. HE advised that it did not wish to offer any comments about the proposed works and there is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

**Conclusion**

1. I conclude that although the proposed works will be harmful to public rights of access the harm is outweighed by the need to improve electricity supplies to local homes and businesses and, to a lesser extent, by the enhancement of the landscape following the undergrounding of the overhead line. The other interests set out in paragraph 5 above will not be harmed. Consent should therefore be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

