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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: 1 March 2023** |
| **Application Ref: COM/3306325**  **Rye Common (Part) and Hillside Common (Part), Hampshire**  Register Unit No: CL194  Commons Registration Authority: Hampshire County Council   * The application, dated 2 September 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 Clearstone Energy Limited. * The works of approximately three to four weeks duration comprise:  1. underground installation by horizontal directional drilling of 350m of 33kV high voltage cables and one fibre optic cable laid at a depth of at least 1.2m; and 2. erection of approximately 720m of temporary 2m high Heras fencing or 1m high plastic safety barriers around a 5m wide working area of approximately 1,750m² for the duration of the works. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 2 September 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. The application as made includes the temporary fencing described above. The applicant subsequently confirmed that the entire cable route will not be fenced off for the whole working period as horizontal direct drilling allows cables to be installed without disturbing the surface. The applicant further confirmed that temporary fencing is only proposed for limited areas where works are taking place and above ground.
3. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS), neither of which object to the proposed works.
4. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
5. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
6. the interests of the neighbourhood;
7. 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
8. any other matter considered to be relevant.

**Reasons**

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

1. The land is owned by Hampshire County Council (HCC), which was consulted about the application but did not comment. The applicant advises that HCC has granted an easement to the developer along the proposed underground cable route and I am satisfied that HCC’s interests are unlikely to be harmed by the proposed works.

1. There is one right of estovers registered over the common. The applicant advises that HCC has no knowledge of any commoner being active and that the right is not exercised. The rights holder was consulted about the application but did not comment. There is no evidence before me to suggest that the proposed works will harm the interests of those having rights of common over the land.

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

1. The works form part of a wider project to install underground cables and associated works to connect the Fleet electrical substation to the nearby Chosley Farm Solar Park, which will generate enough energy to power 17,500 average homes whilst off-setting about 23,000 metric tonnes of C02 each year.
2. 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. 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.
3. The common is separated into northern and southern sections by the A287 Farnham Road. The proposed cable route will extend approximately north to south through the whole of both sections of common. However, the cables are to be installed underground by way of directional drilling, the route will be largely free of above-ground fencing and the applicant confirms that public access east-west across the common will be possible throughout the duration of works.
4. I conclude that the more limited fencing now proposed will cause some temporary harm to public access for up to four weeks but that the harm will not be significant.

***The public interest***

*Nature conservation*

1. NE advises that the application land is not subject to any statutory designations for nature conservation but forms part of the Brown’s Row and Rye Common East Site of Nature Conservation Interest (SINC). An NE desk-based survey indicates that the application land appears to consist predominantly of semi-natural woodland with denser areas of scrub occurring directly beneath electricity pylons. NE has no outstanding concerns about the proposed works and advises that it has no objection to consent for them being given.
2. The applicant has provided details of a Preliminary Ecological Appraisal (PEA) of the cable route, which identifies a number of constraints relating to designated sites, protected species and other notable habitats/species and confirms that the cable route and installation methods have been designed to avoid important habitats.
3. I am satisfied that nature conservation interests will not be harmed by the works.

*Conservation of the landscape*

1. Whilst the temporary fencing will cause some visual harm, it will be short term and limited to areas where works are active and above ground. No permanent above ground structures are proposed as part of the cable laying works. The land will be re-instated upon completion of the works, which can be ensured by attaching a suitable condition to the consent. I am satisfied that the works will not harm the landscape in the long term.

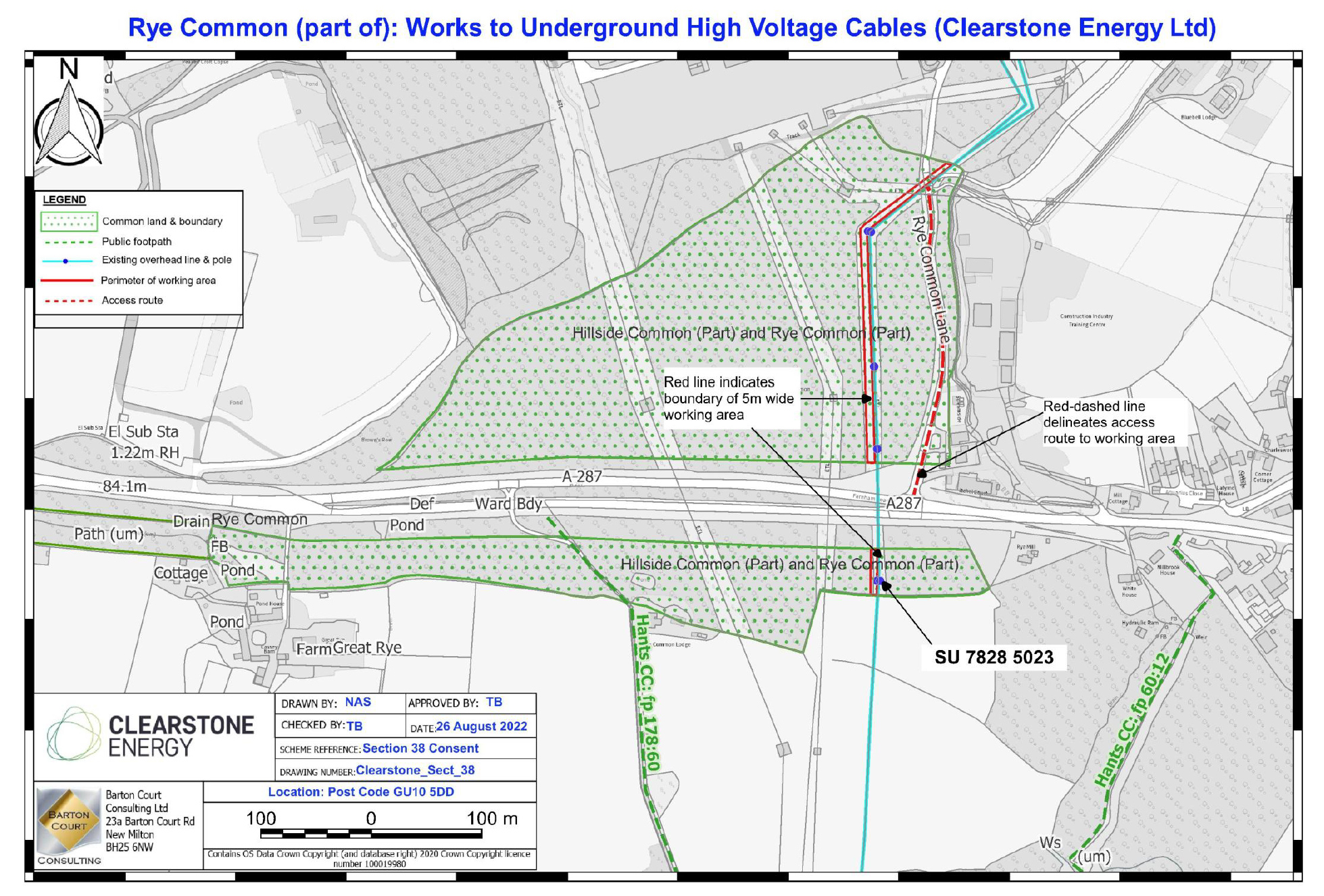
*Archaeological remains and features of historic interest*

1. HE advised the applicant that it had considered the information provided about the proposals and did not wish to offer any comments. There is no evidence before me to suggest that the proposed works will harm the above interests.

**Conclusion**

1. I conclude that although the proposed works will be harmful to public rights of access and the landscape, the harm will be temporary and small and is outweighed by the public interest in local generation of clean energy. The other interests set out in paragraph 6 above will not be harmed. Consent should therefore be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

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