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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: 17 March 2023** |
| **Application Ref: COM/3309426**  **The New Forest, Hampshire**  Register Unit No: Exempt from registration under the Commons Registration Act 1965  Commons Registration Authority: Not applicable   * The application, dated 19 October 2022, is made under Section 38 of the Commons Act 2006 (the 2006 Act) and Section 23 of the National Trust Act 1971 (the 1971 Act) for consent to carry out restricted works on common land. * The application is made by National Grid. * The works at ten electricity towers comprise:  1. towers 4YB060 and 4YB064 – erection of temporary 2m high Heras fencing around box scaffolding enclosing 100m² at each tower; 2. towers 4YB061, 4YB062, 4YB063 and 4YB065 – erection of 1m high orange pig fencing secured with steel pins enclosing 125m² at each tower; 3. tower 4YB066 – erection of 400m of approx. 1.4m high temporary wooden post and stainless-steel netting stockproof fencing with a 16ft steel gate enclosing approx. 650m², upgrade of existing 150m long stone track and temporary aluminium road-way; 4. tower 4YB083 – erection of 400m of 1.2m high electric fencing with two 16ft steel gates enclosing approx. 600 m²; upgrade entrance to site with stone bell-mouth and temporary plastic road-way; 5. towers 4YB084 and 4YB085 - erection of 1m high orange pig fencing secured with steel pins enclosing 125m at each tower and temporary plastic roadway; and 6. vegetation clearance to aid access to all towers. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 19 October 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. all temporary fencing, posts, gates and surfaces shall be removed and 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. Secretary of State consent is required under Section 38(5)(c) of the 2006 Act to carry out restricted works on land that is not registered common land but is land within the New Forest that is subject to rights of common. Tower 4YB064 and a section of the track associated with the 4YB066 tower is located on such land.
2. Secretary of State consent is required under Section 23 of the 1971 Act to carry out restricted works on land owned by the National Trust (NT). The remaining nine towers and works areas are located on such land.
3. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) in determining this application, 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.
4. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by The New Forest National Park Authority (NFNPA), Natural England (NE) and the Open Spaces Society (OSS).
5. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
6. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
7. the interests of the neighbourhood;
8. 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
9. any other matter considered to be relevant.

**Reasons**

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

1. The land referred to at paragraph 3 above is owned by Forestry England (FE), which was consulted about the application but did not comment. The application describes the proposed vegetation clearance at the site as minor and there is no evidence to suggest that FE’s interests will be harmed by the proposed works.

1. The rest of the application land is owned by NT, which has confirmed that it considers the works to be desirable for the purpose of improving opportunities for the enjoyment of the property by the public and are in the interests of visitors to the common.
2. Rights of common are administered by the Verderers of The New Forest. The applicant advises that rights of common of pasture for commonable animals (ponies, cattle, donkeys, mules), the right of common of mast (to turn out pigs into the open forest in the autumn to devour acorns) and the right of estovers (the right to take firewood for some properties) are frequently exercised and are managed by the Verderers on behalf of the commoners. The applicant further advises that although some of the large estates have a right of common of pasture for sheep, this right is infrequently exercised.
3. The Verderers were consulted about the application but did not comment and there is no evidence to suggest that any rights of common will be harmed by the proposed works.

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

1. National Grid is refurbishing the 4YB overhead line to maintain a safe and secure electricity supply. The line runs east/west through the New Forest and crosses areas of land at Hale and Plaitford to which the 2006 Act and/or the 1971 Act applies. These are the two areas of land the subject of the application. Ten electricity towers occupy the areas and it is around these towers that the works are proposed. The works also include clearance of vegetation, temporary roadways and improvements to tracks to access some of the towers.
2. The works are proposed be carried out during an approximate 8-month period (from March to October 2023). 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.
3. Six of the towers will have fencing erected around them on specific days. It will enclose approximately 125m² in each case and will be taken down at the end of each day. Two other towers will be enclosed by fencing for the full duration of works to protect scaffolding and in each case will enclose approximately 100m². I consider that the fencing proposed for these eight towers will not seriously harm the above interests as it will be temporary.
4. The fencing proposed for the remaining two towers; one at Hale and one at Plaitford, will enclose areas of 650m² and 600m² respectively for the duration of the works. I consider that this fencing will be more harmful to the above interests as it will prevent public access to larger areas of land.
5. The applicant advises that fencing is required to prevent inadvertent access to work areas where danger may be present for members of the public or livestock. The type of fencing to be used has been chosen to reflect the level of work required at each tower. Whilst the proposed fencing will cause some harm to the above interests, I am satisfied that it is needed for public health and safety reasons.
6. The associated works to improve a 150m long track and a bell-mouth will further temporarily interfere with public access over the land to a certain extent. However, I am satisfied that the harm will not be significant or lasting. I am also satisfied that the proposed temporary plastic and aluminium roadways will not impede public access as they can be crossed on foot.
7. The works to improve the track include the laying of locally sourced stone, which will be removed on completion of the works so as not to encourage the introduction of permanent tracks. The stone will be retained by NT to upgrade areas of land, which NT considers will help to improve public access overall and which informs their view that the works are desirable as set out in paragraph 9 above.

***The public interest***

*Nature conservation*

1. The application land is within the New Forest Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site.
2. NE assent for the proposed works to be carried out within the New Forest SSSI has been granted. The applicant carried out a Habitat Regulations Assessment (HRA) of the impacts of the 4YB overhead line refurbishment project on the New Forest SAC, SPA and Ramsar sites. NE has confirmed that it agrees with the HRA’s conclusion that the project will not have an adverse effect on the integrity of the sites either alone or in combination with other plans and projects.
3. I am satisfied that nature conservation interests will not be harmed by the works.

*Conservation of the landscape*

1. The application land lies within the New Forest National Park. NFNPA’s Landscape Officer notes that the powerline refurbishment will lead to temporary visual intrusion by fencing and associated works. However, he advises that based on written descriptions of the proposed works and National Grid’s apparent agreement with the landowners to re-instate any damage to the landscape, he has no objection.
2. NT advises that refurbishment of the overhead line, as facilitated by the proposed works, will reduce the number of overhead cables from four to three, which will improve the aesthetics of the apparatus and further informs their view that the works are desirable.
3. The applicant confirms that all cut vegetation will either be allowed to regenerate naturally or will be reinstated as soon as possible after the works are complete. The applicant further confirms that no concrete footings are planned and that all fencing and posts will be removed at the end of the works, which can be ensured by attaching a suitable condition to the consent.
4. I am satisfied that the works will not harm the landscape in the long term and that the natural beauty of the National Park will be conserved.

*Archaeological remains and features of historic interest*

1. NFNPA advises that no Scheduled Monuments are affected by the overhead line route but that there are several non-designated heritage assets that may be affected by access routes and/or temporary fencing forming the proposed works.
2. These assets are identified in detail in a report commissioned by the applicant (Level 1 & 2 Archaeological Support: Historic Environment Report – Wood Group UK Limited January 2022). The report categorises the risk to each asset from the works as low, medium or high and sets out mitigation recommendations accordingly. I am satisfied that adherence to the recommendations will ensure that the identified non-designated heritage assets are not harmed by the works.

**Conclusion**

1. I conclude that although the proposed works will cause some harm to public rights of access, the harm will be temporary and is outweighed by the public interest in maintaining a safe and secure electricity supply. The other interests set out in paragraph 7 above will not be harmed and there may be some small benefits to public access and the landscape in the long term. Consent should therefore be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

**Plan referred to in paragraph 2
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