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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: 16 May 2023** |

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| **Application Ref: COM/3315579**  **HARELEY AND ASSLEY COMMON, SOUTH GLOUCESTERSHIRE**  Register Unit No: G/CL38  Commons Registration Authority: South Gloucestershire Council |
| * The application, dated 25 January 2023, 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 Bristol Water PLC. * The works comprise the construction and laying of a 827m replacement water pipe (network water main) and below ground and surface apparatus/ancillary accessories (including service pipe connections, valves, chambers, protective covers at ground level etc) for the use and operation of the pipe. * Temporary fencing. Heras fencing around excavation pits and stock proof fencing either side of the working area (maximum of 10m width, with one 40m x 40m turning area) measuring approximately 11,544m² (2.85acres). |

Decision

* 1. Consent is granted for the works in accordance with the application dated 25 January 2023 and accompanying plan, subject to the following conditions:
  2. the works shall begin no later than three years from the date of this decision; and
  3. all fencing shall be removed and the common restored within one month from the completion of the works.
  4. For the purposes of identification only the location of the works is shown hatched green on the attached plan.

**Preliminary Matters**

* 1. I have had regard to Defra’s Common Land Consents Policy (November 2015) 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.

1. This application has been determined solely on the basis of written evidence.
2. I have taken account of the representations made by Natural England (NE), Historic England (HE), Robert Chappell and the Open Spaces Society.
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 has been consulted and has not objected to the works. The applicant confirms that those exercising their rights of common have been consulted and have not objected to the works. The works include the installation of temporary stock proof fencing to protect and restrict livestock from accessing the working area for six weeks. I accept that the fencing is required for health and safety purposes and consider that any impact is limited and of short duration. I am satisfied that the works will not harm the interests of those occupying the land or having rights over the land long term.

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

1. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The applicant explains that the works are required to replace an existing water main that has been subject to bursts resulting in disruption to water supply, waterlogging of the land and requiring entry onto the common to undertake repairs. The works will prevent further bursts and secure water supplies to local residents. The applicant confirms that all public rights of way will remain accessible and a 6m wide crossing point will be included in the working area.
2. The works will temporarily restrict public and grazing livestock access over the common, although I note that the public will be able to cross the working area via an access point. The temporary fencing will be removed upon completion of the works and all permanent works are underground. I conclude that the works will not seriously harm the interests of the neighbourhood or public rights of access in the long term.

***Nature conservation and conservation of the landscape***

1. NE has given formal assent for the works under section 28H of the Wildlife and Countryside Act 1981 in relation to two Sites of Special Scientific Interest, Lower Woods and Yarley Meadows, and approves the use of Emorsgate Seeds mix for the re-establishment of stripped turf areas. The common is not subject to any other statutory designation.
2. The applicant confirms that upon completion of the works the land will be reinstated. I am satisfied that the works are temporary in duration and, given that the land will be restored upon completion of the works, will have no lasting impact. I conclude that the works will not harm nature conservation and will conserve the landscape in the long term.

***Archaeological remains and features of historic interest***

1. HE confirms that the works will not impact on any designated heritage assets. I am satisfied that the works will not harm archaeological remains and features of historic interest.

**Other matters**

1. In response to a request by the commoner to install a water tank, the applicant has advised that an application for a new supply would be required. I am of the view that the request falls outside the scope of my considerations. I have therefore not given this matter any weight.

**Conclusion**

14. Defra’s 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.”*

15. I conclude that the works will not harm the interests set out in paragraph 6 above in the long term. I am satisfied that the works accord with Defra’s policy and will confer a public benefit by helping secure the water supply to residents. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

