*Planning Inspectorate logo*

|  |
| --- |
| **Application Decision** |
|  |
| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 19 September 2023** |

|  |
| --- |
| **Application Ref: COM/3318049**  **TREWINT VILLAGE GREEN, CORNWALL**  Register Unit No: CL230  Commons Registration Authority: Cornwall Council |
| * The application, dated 6 March 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 Vital Housing Group Ltd. * The works comprise the construction and laying underground of a 117M waste pipe to connect a residential property approved to be built to the mains sewer system. |

Decision

* 1. Consent is granted for the works in accordance with the application dated 6 March 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. the common shall be restored within one month from the completion of the works.
  4. For the purposes of identification only the location of the works is shown as a red line 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), Open Spaces Society (OSS), and Mr Andrew Smith.
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. Pursuant to Commons Commissioner Decision 206/U/47 of 20 October 1982 following a hearing into the question of the ownership of the land, the Chief Commons Commissioner was not satisfied that any person was the owner of the land and it remains subject to protection by the local authority under s9 of the Commons Registration Act 1965 (now under s45 of the 2006 Act).
2. Representations have been made by Mr Andrew Smith asserting that he owns the application land and has done so for 50 years since buying Trewint Farm from Mr William Jasper. However, no evidence has been supplied to confirm this assertion and the Commons Commissioner decision records that Mr W Jasper appeared in person at the hearing but had no evidence as to the ownership of the land.
3. The applicant contends that the proposed route of the pipe runs from the applicant’s title onto an unclassified tarmac road, which has been adopted by the Local Authority (Cornwall Council) and therefore, in the applicant’s opinion, falls outside of Mr Smith’s title. The applicant intends to make a separate application to Cornwall Council to excavate the highway.
4. Whilst the ownership of the pipe route land is disputed, I am satisfied that the temporary nature of the works above ground level will not seriously harm the interests of those occupying the land.
5. Mr Smith is recorded in the common land register as claiming similar grazing rights to those recorded in favour of Mr Jasper, who is the only other person referred to in the Rights section of the register. Whilst Mr Smith is concerned about the impact of the proposed works on his claimed grazing rights, the works area is hard surfaced highway which cannot be grazed. I am satisfied that the proposed works will therefore have no practical impact on grazing rights.
6. There is no evidence that the proposed works will harm the interests of those having rights over the land.

***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 and is closely linked with public rights of access. The applicant explains that the works are required to install a mains sewer connection for the residential property approved to be built on the site of the old South West Water reservoir.
2. The applicant stresses that, by using a directional drill to “mole” the pipe into position under the unclassified road, the works will take place in an area almost entirely covered by tarmac.
3. A public right of way on foot crosses Trewint Village Green from south-east to north-west. This footpath appears to run over the unclassified road from the south-west corner of the reservoir to the junction with Tor View. It is therefore likely that the proposed works will impede access to a highway, and the applicant may wish to consult with the relevant highway authority before proceeding further. Given the short timeframe of the proposed works, I am nonetheless satisfied that they will not seriously harm the interests of the neighbourhood or public rights of access in the long term.
4. The applicant estimates that the works will take “approximately one day” and will not involve any permanent fencing, meaning that “access will not be restricted to the adjoining common land.”

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

1. NE highlight that, while the village of Trewint is part of the Cornwall Area of Outstanding Natural Beauty, the area is not subject to any statutory designations for nature conversation. Acknowledging that the works are largely to take place under the unclassified road, NE confirm that they “do not see the works having an adverse effect on either landscape or access or the biodiversity of the common.”
2. The applicant states that on completion of the work “the site will be fully reinstated thus leaving almost no visible evidence” and that the works will not be “in any way damaging to the common or its natural environment”. 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.

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

1. No representations have been received concerning archaeological or historical considerations. I am satisfied that the works will not harm archaeological remains and features of historic interest.

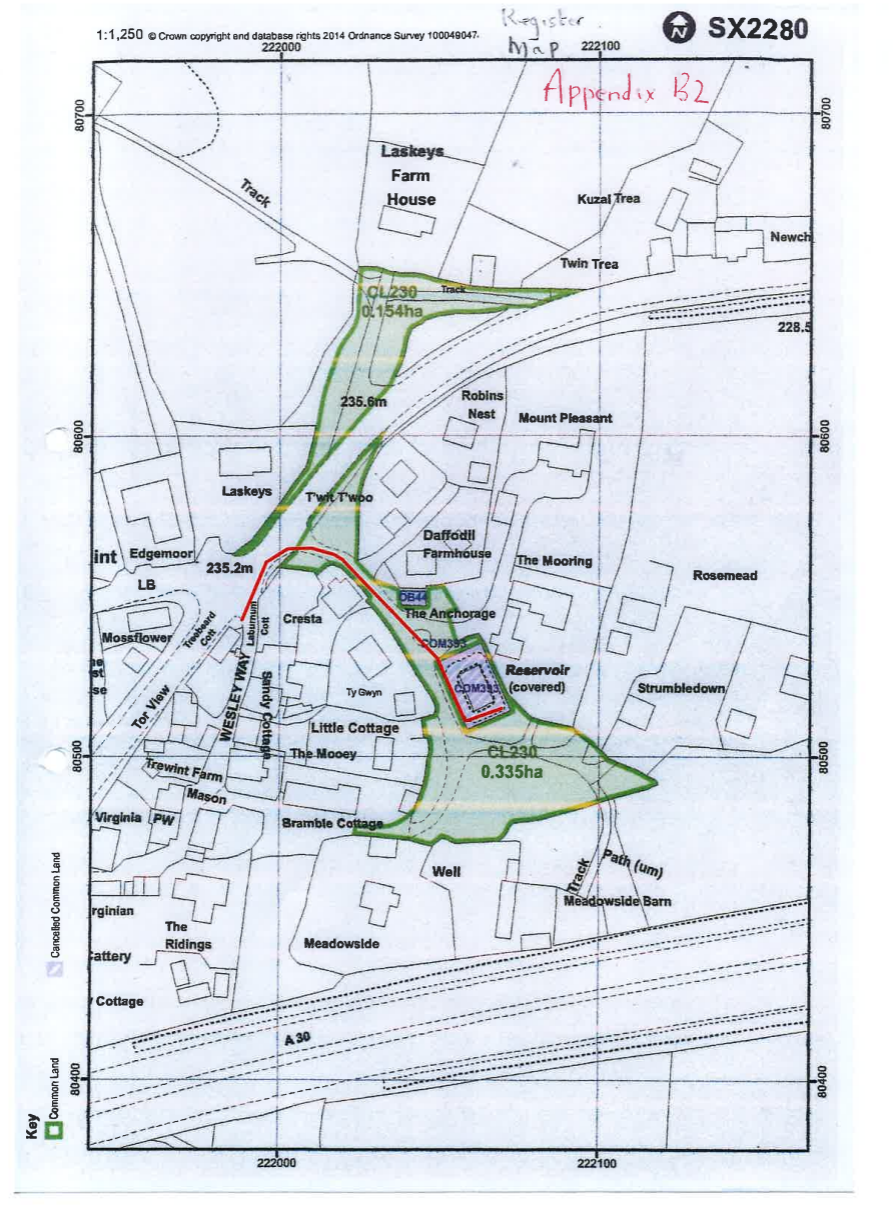
**Other matters**

1. OSS stated that they had no objections to consent being provided for the works, but recorded the view that they “do not believe that the works require s.38 consent, as they are so minor and transient that they appear to be *de minimis*”. Common Land Guidance Sheet 1b advises that consent is not needed for works that “are so small of such short duration that they do not impede access”. It is noted that the terms “so small” and “short duration” are not defined. While it is possible that the proposed works did not require section 38 consent, it is for the person wishing to carry out works on common land to decide whether consent is needed, having regard to independent legal advice if necessary.
2. Mr Smith claims that the road under which the proposed waste pipe will run was illegally constructed and is unadopted. I am satisfied that the land concerned is registered common land. The legality of the road’s construction is not a matter for my consideration in determining the application.

**Conclusion**

1. Defra’s Common Land Consents Policy advises that “works may be proposed in relation to common landwhich 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 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 connecting a future residential property to the mains sewer system. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

****