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

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| **Application Ref: COM/3317297****SOURTON COMMON, DEVON**Register Unit No: CL97Commons Registration Authority: Devon County Council |
| * The application, dated 21 February 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 Terence O’Rourke Ltd for South West Water Ltd (SWW).
* The works comprise:
1. the installation of two parallel below ground water pipelines of approximately 730m in length;
2. temporary 1.1m high wooden post and rail sheep netting fencing to create a 30m wide working corridor with public crossing points, enclosing approximately 21,900m² for up to 12 months following completion of the works; and
3. reinstatement of the common following completion of the works.
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Decision

* 1. Consent is granted for the works in accordance with the application dated 21 February 2023 and amended plan submitted on 15 September 2023, subject to the following conditions:
	2. the works shall begin no later than three years from the date of this decision; and
	3. the temporary fencing shall be removed and the common shall be restored within 12 months from the completion of the works.
	4. For the purposes of identification only the location of the works is shown on the attached plan, with the amendment shown in red dotted lines.

**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, as amended on 15 September 2023 to slightly reduce the extent of the proposed works, 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) and 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 land is owned by the Trustees of the Leawood Estate, who were consulted about the proposals but did not comment.
2. The common land register records numerous rights to graze cattle, ponies and sheep and other rights including turf cutting, the taking of rushes and bracken and the digging of stone, sand and gravel. The applicant understands that a number of active commoners exercise their rights to graze livestock on a regular basis although the exact number and extent of the rights being exercised is unknown. All known rights holders and the Sourton Commoners Association were consulted about the proposals but no comments were received from them.
3. The applicant advises that SWW has a right of way over the access road to the Prewley Water Treatment Works and, as described in the Rights section of the common land register, the Water Authority (WA) has a provision that rights shall not extend over the parts of the land in the register unit coloured green on the register map and lettered WA.
4. There is no evidence to suggest that the proposed works will harm the interests of those occupying or having rights over the land.

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

1. The applicant explains that the works are needed to increase water supply resilience in the operational area so that future generations can continue to depend on it. Water resilience has become increasingly important following a recent drought from which the area is still recovering. The proposals will improve SWW’s ability to transport water around their network.
2. 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.
3. NE advises that the area is open moorland within Dartmoor National Park and that the public has a right of access on foot and on horseback for the purpose of open air recreation under the provisions of the Dartmoor Commons Act 1985. NE further advises that there is a car park adjacent to the works site used by people accessing the moors. I consider that its closeness to the car park means the area is likely to be well used for public recreation.
4. The fenced off working strip will extend westwards for approximately 730m across the common from the Prewley Water Treatment Works to the A362 Road. It will have three crossing points where it meets existing tracks, one of which is Bridleway 16; a public right of way. Timber pedestrian gates will be provided where crossings are required for pedestrians use only. Where the passage of livestock and horse riders is also required then 13 ft gates will be provided and the width of the passage widened to suit. An information board will be erected at these locations to provide detail of the reasons for the activity, its progress and timeline for the works.
5. Whilst the fencing is expected to be in place for up to 12 months to allow the disturbed ground to recover, the works period during which contractors and machinery are likely to cause some disruption is expected to be around four weeks. Given that the timeframe for the proposed works is short and public access through the working strip will be appropriately maintained at all times whilst the fencing remains in place, I am satisfied that the works will not seriously harm the interests of the neighbourhood or public rights of access in the long term.

***Nature conservation***

1. NE advises that the works area is not subject to any statutory designations for nature conservation and does not anticipate any likely significant effect on the designated sites of North Dartmoor Site of Special Scientific interest and Dartmoor Special Area of Conservation, which lie approximately 500m to the south.
2. I am satisfied that the works will not harm Nature Conservation interests.

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

1. HE advises that based on the information received it has no comments to make other than to say that given the high archaeological potential of Dartmoor the applicant should consult Dartmoor National Park Authority (DNPA) if they had not already done so. DNPA was consulted about the proposals but did not comment.
2. No other representations have been received concerning archaeological or historical considerations and there is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

***Conservation of the landscape***

1. The applicant confirms that no permanent above ground equipment is required as part of the works. Once pipelaying is complete the excavated topsoil will be replaced and, under suitable weather conditions, will be harrowed/raked and the land left to regrow naturally. The temporary fencing will be left until the vegetation has sufficiently established itself, after which it will be removed from site. Any excavation arisings not used to backfill the pipe trenches will be removed from site to broadly maintain the original ground profile and levels.
2. I consider that temporary fencing in place for up to 12 months will have some harmful visual impact on the landscape of the National Park. However, I am satisfied that restoration of the works site, which can be ensured by attaching a suitable condition to the consent, will ensure that the natural beauty of Dartmoor National Park is conserved in the long term.

**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) […] 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 nature conservation interests or harm the other 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 increasing water supply resilience in the operational area. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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