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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: 24 January 2024** |

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| **Application Ref: COM/3327732****SPARROW LANE, HIGH MARNHAM, NOTTINGHAMSHIRE**Register Unit No: CL54Commons Registration Authority: Nottinghamshire County Council |
| * The application, dated 3 August 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 TLT LLP for Enso Green Holdings K Limited.
* The works of approximately one week’s duration comprise:
1. temporary trenching and installation of permanent underground ducting and cable within a working area of 76m²; and
2. approximately 30m of 1m high temporary plastic traffic barriers around the working area for the duration of the works.
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Decision

* 1. Consent is granted for the works in accordance with the application dated 3 August 2023 and a second plan submitted on 7 December 2023 at the request of the Inspectorate for greater clarity, 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 1 month from the completion of the works.
	4. For the purposes of identification only the location of the works is shown 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.
	2. Planning permission has been granted by Bassetlaw District Council for installation of underground cable (Decision 23/00090/FUL of 7 March 2023).
	3. Sparrow Lane is the name of both the common land unit and the highway. For the sake of clarity, I refer to the common land unit by is registration number, CL54.
	4. This application has been determined solely on the basis of written evidence.

1. I have taken account of the representations made by Nottinghamshire County Council (NCC), Natural England (NE) and Open Spaces Society (OSS).
2. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
3. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
4. the interests of the neighbourhood;
5. 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
6. 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 228/U/115 of 6 January 1986 following a hearing into the question of the ownership of the land, the Commons Commissioner was not satisfied that any person was the owner of CL54 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. The common land register for CL54 records no rights of common.
3. 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 works are needed in connection with a solar farm and battery storage development to be constructed on land adjacent to CL54. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way CL54 is used by local people and is closely linked with public rights of access.
2. Although it is registered common land over which the public has a right of access on foot, CL54 appears to comprise only the highway known as Sparrow Lane. Neighbourhood and public use of it is therefore limited to normal use of a highway and footway. The works within the CL54 common land boundary comprise only a small part of the duct and cable route into the solar farm. Most of the route runs outside of the boundary, with only a small section at the southern end of CL54 requiring s38 consent.
3. The works will occupy only 76m² of common land for approximately one week and the applicant confirms that pedestrian access through the area will be maintained at all times.
4. I am satisfied that the works will not seriously harm the interests of the neighbourhood or public rights of access.

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

1. NE advises that the works area is not subject to any statutory designations for nature conservation and, provided that all of the works are undertaken in accordance with planning permission, it has no concerns.
2. The land has no particular landscape interest designation. The works will be carried out within the highway, will take only a matter of days and the land will be re-instated on completion of the works. The installed ducts will remain underground for the lifetime of the solar and battery farm, with no parts visible at ground level.
3. I am satisfied that the works will not harm nature conservation or landscape interests.

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

1. Historic England was consulted about the proposals but did not comment. NCC raised no archaeological or historic interest concerns. There is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

**Other matters**

1. NCC contends that the use of Sparrow Lane for vehicular access to the work site is incompatible with its designation as common land. Furthermore, wheel cleaning of vehicles and temporary storage of excavated material should not be sited on CL54. The application includes no proposals to store materials on common land and the other matters are not for my consideration in determining this application for restricted works.
2. OSS asked what powers the applicant is relying on to lay its apparatus in what appears to be a private street with no known owner. Notwithstanding the Commons Commissioner decision of 6 January 1986, it is the applicant’s responsibility to ensure that any necessary additional permissions are obtained before carrying out works for which s38 consent has been granted.

**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.

1. I conclude that the works will cause only negligible and short-term harm to the interests set out in paragraph 7 above. I am satisfied that the works accord with Defra’s policy and will confer a public benefit by facilitating the generation of solar energy. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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