**

|  |
| --- |
| **Application Decision** |
|  |
| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 4 March 2024** |

|  |
| --- |
| **Application Ref: COM/3327997****BOSPORTHENNIS COMMON, CORNWALL**Register Unit No: CL707Commons Registration Authority: Cornwall Council |
| * The application, dated 1 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 National Grid (NG).
* The works of approximately 5 weeks duration comprise the digging of a trench for the installation of 320 metres of 11kv underground cable to provide an electricity supply to Brook Cottage.
 |

Decision

* 1. Consent is granted for the works in accordance with the application dated 1 August 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. The full name of common land unit CL707 (the common), as given in the Land section of the common land register, is ‘A large tract of land which includes parts of Watch Croft, Nine Maidens, Ding Dong, Greenburrow, Boskednan and Bosporthennis in the parishes of Madron, Morvah and Zennor’.
	2. 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. I have taken account of the representations made by Natural England (NE).
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**

1. NG has been asked to provide an electricity supply to Brook Cottage, which lies on land adjacent to the common. There is no current electricity supply to Brook Cottage and, as a Distribution Network Operator, NG has an obligation to provide an electrical connection.
2. NG advises that the closest point of connection that can be used is an overhead line running north to south approximately 460m away. The underground connection will run from one of the overhead line poles and most of it will cross the common along the access lane to Brook Cottage.

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

1. The applicant advises that the application land is owned by Mr Mike Williams of The Cottage, Boskednan. Daniel Williams of the same address is recorded as having registered rights over part of the common. The current Mr and Mrs Williams were consulted about the proposed works but did not comment.
2. The register of common land records rights in favour of seven other rights holders. The registered rights include grazing of cattle, horses and pigs; the cutting and taking of peat or turf, tree loppings, gorse, bushes, furze and underwood; rights of common in the soil and the taking of stone; and the taking of game, ground game and wildfowl. All rights pertain to specific areas rather than to the whole of the registered common. The applicant advises that no rights of common are ever exercised.
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 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.
2. NE advises that whilst no public rights of way will be directly affected by the works, the access lane along which the works will take place provides a key link between public rights of way in the surrounding area. NE anticipate that the impact on users of the lane will be substantial and that during the period of works some form of management will be required to ensure that legitimate users of the common are not subject to any health and safety risks.
3. NG confirms that no temporary fencing works will be erected. The trench will be excavated along the middle of the lane and access along it will be available at all times, except for when the excavation machinery is being moved. Excavation will be in lengths of about 20 to 30 metres per day depending on the ground conditions and all back filling will be completed by the end of the working day with no excavations left open overnight. I am satisfied that the above measures will ensure that impediment to public access will be kept to a minimum throughout the works and that the interests of the neighbourhood and public rights of access will not be seriously harmed.

***Nature conservation and archaeological remains and features of historic interest***

1. NE advises that the works area lies within the West Penwith Moors and Downs Site of Special Scientific Interest (SSSI) and confirms that NE assent for the works has been given. NE further advises that provided the works are carried out in accordance with the Cornwall Environmental Consultants’ Ecological Method Statement (EMS - updated April 2023) they have no outstanding concerns.
2. NG commissioned South West Archaeology Ltd to prepare a Written Scheme of Investigation (WSI) for Archaeological Monitoring and Recording, which was drawn up in consultation with Cornwall Council. It details the mitigation strategy and methodology to be employed for archaeological monitoring and recording to be carried out during groundworks for the installation of an underground power cable for Brook Cottage.
3. NG confirms that the recommendations made in the EMS and WSI will be adhered to by the contractors to minimize the impact of the works and I am satisfied that adherence will ensure that the above interests are not harmed by the works.

***Conservation of the landscape***

1. The works area lies within the Cornwall National Landscape (formerly the Cornwall Area of Outstanding Natural Beauty (AONB)). The Cornwall AONB Partnership was consulted but did not comment. The works will be wholly underground and the land will be restored on completion of the works, which can be ensured by attaching a suitable condition to the consent. NG confirms that the backfill surface will match the existing surface and I am satisfied that the natural beauty of the National Landscape will be conserved.

**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 short-term harm to the interests set out in paragraph 6 above. I am satisfied that the works accord with Defra’s policy and confer a public benefit by providing an electricity connection to a residential property. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

****