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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: 8 March 2024** |

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| **Application Ref: COM/3327737****FARNDON COMMON, CHESHIRE**Register Unit No: CL57Commons Registration Authority: Cheshire West & Chester Council |
| * The application, dated 10 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 Fisher German LLP for Severn Trent Water Limited.
* The works comprise (measurements are approximate):
1. the laying by open cut trench of 60m of water pipe;
2. a small excavation to allow re-lining of 55m of existing pipe;
3. three temporary working areas with up to 211m of 2m high Heras fencing and plastic barriers enclosing 477m²;
4. subject to weather conditions, access through the working areas may be temporarily surfaced with steel or geotex track matting with flood protective wrapping; and
5. temporary laying of a slope with locally sourced and approved MOT Type 1 stone material.
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Decision

* 1. Consent is granted for the works in accordance with the application dated 10 August 2023, as amended (see paragraph 4), 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 on the attached plan.

**Preliminary Matters**

* 1. The full name of common land unit CL57, as given in the Land section of the common land register, is ‘The piece of land adjoining the River Dee north and south of Farndon, Cheshire’.
	2. The application, as made, proposed up to 258m of fencing/barriers enclosing up to 2275m². The applicant, Severn Trent Water Limited (STW), subsequently amended the application to reduce the length of the fencing/barriers and the area to be enclosed.
	3. 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.
	4. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS).
	5. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
1. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
2. the interests of the neighbourhood;
3. 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
4. any other matter considered to be relevant.

**Reasons**

1. Farndon common is linear and runs along the north bank of the river Dee. The centre of the river marks the border between England and Wales. STW has two water mains crossing under the river between Farndon on the north side (England) and Holt on the south side (Wales) near to Farndon Bridge, which links Bridge Street on the Holt side with High Street on the Farndon side. This water supply is critical to the village of Farndon. Due to increased burst risk, STW is required to replace this crossing to ensure a safe and reliable source of water to approximately 1,100 local residents. It will also improve local water pressure and capacity, thus maximising the benefits of replacement.
2. The works will also resolve a temporary solution that uses the public highway over the bridge, causing disruption to local residents. The relining element of the works is required to ensure that residents fed by the pipe have a continued supply of water.

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

1. Pursuant to Commons Commissioner Decision 205/U/37 of 14 October 1980 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 CL57 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 commons registration authority confirms that there are no registered commoners and no Rights section to the common land register for CL57. 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. All the proposed works are on the Farndon side of the river and affect areas of CL57 on both sides of High Street. A public right of way (PROW) runs through the area of common to the west of High Street and continues westwards beyond the common land boundary. There is also a PROW and a small picnic area on the common near the bridge to the east of High Street. It seems likely that the affected common land on both sides of High Street is well used for recreation by local people and visitors to Farndon.
3. The open cut trench works will be on the west side of High Street over two areas (Areas 1 and 2). STW advises that these works will require perimeters of approximately 47m and 101m of Heras fencing covering 99m² and 269m² respectively. In each case the works are expected to take approximately 6 weeks. Area 2 will cross the public right of way, which will be ‘temporarily moved’ by 7m to allow public access along it to continue.
4. The pipe re-lining works will be on the east side of High Street over two areas (Areas 3 and 4). STW advises that these works will require perimeters of approximately 32m and 31m of Heras fencing and safety barriers covering 47m² and 62m² respectively. In each case the works are again expected to take approximately 6 weeks.
5. STW advises that the PROW on the east side of High Street cannot be safely kept open due to the limited space within the entrance to the common. Existing vehicular access will be maintained throughout the works for the properties along this route via the use of road plates. However, if contractors were required to cease construction activities to secure the working area for footpath users it would have a significant impact on the time required to complete this section of works and pose a potential hazard to the safety of the public. Therefore, a yet to be identified diversion will be required for the PROW.
6. The application plan shows no obvious alternative for public access from High Street onto the eastern area of the common. STW advises that there is an informal walking route under the bridge linking the two sides of the common but, whilst this is likely to be more regularly used during the works period, it is not recorded as a PROW.
7. I conclude that the works will have a harmful impact on the interests of the neighbourhood and public rights of access to a certain extent, especially in respect of formal public access on foot to the eastern area of common. However, I consider that the proposed fencing and barriers are required for public safety reasons and are appropriate in scale to the work areas they will enclose for approximately six weeks.
8. I am satisfied that impediment to public access will be kept to a minimum throughout the works period and that the interests of the neighbourhood and public rights of access will not be seriously harmed in the long term.

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

1. NE advises that common itself is not subject to any statutory or non-statutory designations for nature conservation and is not aware of any notable level of biodiversity interest. However, the common lies between two Sites of Special Scientific Interest (SSSI). Adjacent to its north is Dee Cliffs SSSI and to its south is the River Dee SSSI.
2. Dee Cliffs SSSI is notified for its geological interest. NE confirms that no likely significant effect will arise from the proposed works as the drilling and the laying of pipelines is unlikely to impact in any way on the notified geological exposures. I am satisfied that the proposed works will not harm the Dee Cliffs SSSI.
3. The River Dee SSSI is notified for various features and species, including Atlantic salmon (*Salmo salar*) and otter (*Lutra lutra*) and is overlaid by the River Dee and Bala Lake Special Area of Conservation (SAC), which straddles the border between England and Wales. Plans submitted by STW show that the common generally abuts the SSSI but not at any of the four proposed works locations, where narrow strips of land separate the common from the SSSI. I am satisfied that the proposed works within the common will not harm the River Dee SSSI or the SAC.
4. The associated river works may impact on the SSSI/SAC but it is not a matter to be given weight in deciding whether consent can be granted for works on the common. NE advises that Natural Resources Wales (NRW) will be taking the lead as a statutory authority with regard to the necessary licences and consents for the river works.
5. The common has no particular landscape designation. The works will be temporary, with no permanent above ground features remaining on the common, and the land will be restored on completion of the works, which can be ensured by attaching a suitable condition to the consent.
6. STW advises that a detailed photographic record of condition will be completed prior to the works to accurately record the condition of the common and to ensure reinstatement is completed correctly in line with STW’s Code of Practice. I am satisfied that landscape interests will not be harmed in the long term.

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

1. Farndon Bridge is a Scheduled Ancient Monument (SAM). It is close to the proposed works but STW confirms that it will not be affected. English Heritage (EH) and Historic England (HE) were consulted about the proposals but did not comment. There is no evidence before me to suggest that the above interests will be harmed.

**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 not harm nature conservation interests and will cause only short-term harm to the other interests set out in paragraph 7 above. I am satisfied that the works accord with Defra’s policy and confer a public benefit by ensuring a safe and reliable source of water to local residents. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

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