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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: 30 July 2024** |

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| **Application Ref: COM/3337492**  **Laindon Common, Billericay, CM12 9TB**  Register Unit Number: CL 229  Commons Registration Authority: Essex County Council |
| * The application, dated 15 January 2024, 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 UK Power Networks. * The works comprise:  1. the instillation of a ground mounted transformer on a concreate foundation. The transformer and foundation will cover approximately 2m by 2m of ground space; 2. the digging of a trench for the laying of approximately 150m of underground electric cables; 3. temporary fencing consisting of Chapter 8 compliant road barriers measuring 2m wide by 1m high. Approximately 350m of fencing to be in place at one time to create a working area. |

**Decision**

1. Consent is granted for the works in accordance with the application dated 15 January 2024 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than three years from the date of this decision;

REASON: To provide certainty to users of Laindon Common.

1. the land shall be fully reinstated within one month from the completion of the works.

REASON: To retain access for commoners, public and livestock across Laindon Common.

1. For the purposes of identification only the location of the works is shown in red on figure 1.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy Guidance (November 2015) (hereafter ‘the Guidance’) 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the Guidance.
2. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by the Open Spaces Society (OSS) and Natural England (NE).
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;
7. any other matter considered to be relevant.

**Reasons**

1. The applicant explains that the purpose of the works is to improve the local electricity network via the installation of the new equipment. The fencing is required on health and safety grounds to prevent access to the site during the installation.

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

1. The Church Commissioners for England are the owner of the land. They have been consulted by the applicant and provided no objection to the proposed works. The common land register records rights to graze one horse and one cow, or six sheep, or two donkeys, or six sows, or six full grown pigs over the whole of the land know as Laindon Common.
2. The applicant advises that the common rights are exercised over the Common. Due to the location of the works the applicant’s view that it is unlikely that grazing would occur in this area.
3. I am satisfied that all those with rights of common had the opportunity to comment about the potential impact of the application proposals on these rights and no such comments were received.

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

1. The interests of the neighbourhood relate to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access.
2. Laindon Common appears to be an area of dense forest with a public carriageway running through it, as well as large areas of open grassland for grazing. The carriageway is bordered at different points by high verges or dense tree lines. There are points along the main highway where routes for access on foot have been made.
3. The location of the works runs in parallel to the carriageway and is on overgrown and uncultivated greenspaces.
4. The planned works are for the laying of underground electric cables with an aboveground transformer.
5. The instillation of the transformer will introduce a new permanent feature onto the Common preventing access to the area of the Common it is located on. However, the transformer is of a small size and would not introduce an unacceptable impediment on the Common.
6. The digging of the trench would create an impediment to access of the Common where it is located. However, the trench will be temporary in nature and the applicant has outlined the works will be completed as quickly as possible to reduce the impact on access to the Common.
7. The temporary fencing would also impact access, blocking access to the areas of the Common where the works are taking place. The impact will be minimal and the Common will still be accessible via other routes. The fencing is also planned to be temporary in nature. I am satisfied that such fencing is appropriate on health and safety grounds and that it will be removed on completion of the works, which can be secured by attaching a suitable condition to the consent.
8. NE have stated that the works will involve temporary fencing to protect the public. Provided that all necessary consents are obtained from the Local Highway Authority and trenches are infilled from the excavated material at the site, they have no concerns about the proposed works.
9. In this case a new permanent feature is being introduced into the Common. The works will nonetheless provide wider benefit to the neighbourhood by improving and maintaining the local electricity network. I conclude the works will have minimal impact on the recreational value of the Common and will not unacceptably interfere with the interests of the neighbourhood or public rights of access.

***The public interest***

1. As well as the public interest in the protection of public rights of access, the Guidance outlines the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

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

1. NE have provided comment on the application and stated that they do not anticipate the works having any detrimental effect on these interests.
2. The Common has no special designated landscape value.
3. The proposed works would introduce a new permanent artificial feature onto the Common. However, this only covers a small area of the Common and it is not envisioned that this will harm the nature conservation or landscape value of the Common.

1. The applicant details that the aboveground transformer will have a concrete base and will have a metal casing. Due to the size of the transformer, there will be only a minor impact on the visuals of the common.
2. The underground electrical wiring will have no impact on the visuals of the common once the trench has been refilled and the ground restored.
3. I am satisfied that nature conservation interests will not be harmed by the proposed works and I consider that overall the works will have little to no effect on the landscape interests of the Common.

***Protection of archaeological remains and features of historic interest.***

1. The applicant has stated that there are no archaeological features within the proposed works area. Historic England and the local authority archaeological service have been consulted and did not comment.
2. There is no evidence before me to suggest that these interests will be harmed by the proposed works.

***Conclusion***

1. The Guidance advises that:

works may be proposed in relation to common land which 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.

1. I conclude that the permanent works will benefit the local community by improving the functioning of the local electricity network and the temporary fencing is required on health and safety grounds. The permanent works will not seriously harm the other interests set out in paragraph 5 above. Consent for the works is therefore granted subject to the conditions set out at paragraph 1.

Harry Wood

Figure 1 – location of the works

