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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 September 2024** |
| **Application Ref: COM/3342529**  **Whitcliffe Common, Ludford, Shropshire**  Register Unit No: CL16  Commons Registration Authority: Shropshire County Council.   * The application dated 11 April 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 Fisher German LLP for Severn Trent Water Limited. * The works comprise remedial works to the underground Whitcliffe Common District Service Reservoir (DSR), as follows. All measurements and timescales are approximate:  1. excavation of 8m² of land to seal a leaking upstand within a temporary Heras fenced area of 25m² with a perimeter of 20m. The upstand will increase in width by 15cm if a new concrete jacket is required for it. The work will take 7 days; 2. rake out, re-seal and re-bed an existing hatch within a temporary Heras fenced area of 36m² with a perimeter of 24m. The work will take 1 day; 3. trial holes to facilitate a condition survey of the reservoir roof within a temporary Heras fenced area of 25m² with a perimeter of 20m. 4. clearance of 200m² of vegetation to be carried out after the bird nesting season; and 5. closing off 270m of carriageway (500m²) with barriers and cones for up to 3 months. The closed section will be used for storage of equipment, contractor welfare facilities and Heras fencing. | |

**Decision**

1. Consent is granted for the works in accordance with the application dated 11 April 2024, as amended, and the plans submitted with it subject to the following conditions:
2. The works shall begin no later than 3 years from the date of this decision.

REASON: To provide certainty to users of Whitcliffe Common.

1. All fencing shall be removed and the land shall be fully reinstated within one month from the completion of the works.

REASON: To retain access to the public across Whitcliffe Common.

1. For the purposes of identification only, the location of the proposed works is shown on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land consents policy of November 2015 (the Defra policy) 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. The application, as made, advised that a section of carriageway will be closed off for up to 8 weeks. The applicant subsequently clarified that it could be closed off for a maximum of 3 months as agreed with the Shropshire Council highway authority. Both timescales are worst case scenarios as the remaining works are expected to be completed within a much shorter period. This being the case, I am satisfied that no interested party has been prejudiced by the amendment.
3. The application has been determined solely on the basis of written evidence.
4. I have taken account of the representations made by Open Spaces Society (OSS), which does not object to the proposals, and Natural England (NE).
5. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
6. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
7. the interests of the neighbourhood;
8. 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
9. any other matter considered to be relevant.

**Reasons**

1. The applicant explains that Whitcliffe Common DSR is an underground reservoir feeding directly into local distribution and is therefore critical to water supply. Remedial work is required to address water quality concerns. Consideration was given to permanently removing it from service instead, thereby eliminating the need to conduct works within the common. However, it was concluded that to do so would critically impact on water supply resilience.

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

1. The applicant claims ownership of the footprint of the DSR. The rest of the common is owned by the Trustees of the Plymouth Settled Estates.
2. The common land register for register unit CL16 records grazing rights in favour of two rights holders; these being Robert and Joan Wooley and Shropshire Council on behalf of the Burgesses and Inhabitant Householders of Ludlow. The applicant advises that none of the rights are exercised.
3. Shropshire Wildlife Trust (SWT) are the leaseholders for Whitcliffe Common and manage the common by cutting hay annually.
4. All of the above parties were consulted about the application and no comments were received. There is no evidence before me 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 public rights of access***

1. A 270m section of carriageway runs through the affected area of the common, with junctions at each end. It is proposed to close off the entire section to protect contractors during the works, to store materials and to locate contractor welfare facilities. The DSR is on the eastern side of the carriageway and is where all the proposed excavation works will take place.
2. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access on foot. The applicant advises that Whitcliffe Common is a popular dog walking destination, with the area affected by the proposed works being used as a walk-through to access the more open spaces to the east. NE advises that it is well used by the public for informal recreation and nature study.
3. The applicant explains that excavations will be backfilled at the end of each work day and the fencing around them will be removed and stored within the closed carriageway area until the next work day. Pedestrian access to connecting areas of the common will be maintained throughout the works where construction, design and management regulations allow. I take this to mean that pedestrian access may be temporarily impeded when contractors are moving around the site in order to carry out the works.
4. The excavation areas are small, will only be fenced during working hours and will be reinstated on completion of the works. I therefore consider that the excavation works will not unacceptably harm the above interests and that any minor harm caused will be outweighed by the wider public interest in maintaining a safe water supply.
5. The area of carriageway to be fenced off is much larger and is proposed to be enclosed for up to three months as a contingency measure “to protect the project from any unknowns”. Closing off the carriageway will restrict public vehicular access and requires permission from the highway authority. In agreeing a maximum timescale with the highway authority, the applicant has taken a cautious approach and it may be that the fencing will be removed much more quickly in line with the expected duration of the remaining works. In any case, public access on foot over the remaining application area will remain in place throughout the works period and I consider that the above interests will not be unacceptably harmed.
6. The proposed vegetation clearance may initially provide increased public access over the common, although that is not the purpose of the clearance and over time any increased access will diminish as the vegetation regenerates.
7. I conclude that the proposals as a whole will be short in duration and will not unacceptably impact on the interests of the neighbourhood and public rights of access.

***The public interest***

1. As well as the public interest in the protection of public rights of access, I must also have regard to the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

*Nature conservation*

1. NE advises that the common is managed by the Friends of Whitcliffe Common in conjunction with the leaseholder, SWT. Whilst neither made representations to the Planning Inspectorate about the proposals, the applicant advises that SWT said it had no concerns about the proposed vegetation clearance provided that it was not carried out during the bird nesting season between 1 March and mid-August. The applicant confirms that the clearance will not take place during this period and will be carried out with the oversight of a senior ecologist.
2. Part of the Teme Bank Geological Site of Special Scientific Interest (SSSI) falls within the north eastern part of the common and is approximately 50m from the proposed works at its nearest point. However, NE does not anticipate any likely significant impact on the SSSI or any other protected site for which it has a regulatory responsibility.
3. I am satisfied that nature conservation interests will not be harmed by the works.

*Conservation of the landscape*

1. The common is not subject to any formal landscape designation.
2. The applicant explains that a Record of Condition of all impacted areas will be completed before any excavation to ensure that the areas are returned to their original condition. The excavated areas will be reinstated in line with Severn Trent Water’s Code of Practice, which requires that topsoil is removed and stored separately from subsoil and then returned in order to preserve the soil structure. Once the excavated areas have been backfilled the land will be allowed to naturally regenerate so the visual impact of the excavation works will be short-term.
3. Some vegetation clearance will be necessary to facilitate the works and will have an immediate visual impact. However, the cleared ground will be left to re-generate so the impact of the clearance work will also be short-term.
4. Closing off the section of carriageway as proposed will create a storage area for equipment and removed fencing. The items stored and surrounding fencing will likely be of significant visual harm during the course of the works. However, the impact will again be short-term and the applicant confirms that once the stored items and surrounding fencing have been removed, the carriageway will be washed down to return it to its former condition.
5. I am satisfied that proposals as a whole will not impact significantly on landscape interests.

*Archaeological remains and features of historic interest*

1. Historic England and the local authority archaeological service were consulted about the application but did not comment. There is no evidence before me to suggest that the works will harm archaeological remains and features of historic interest.

**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 are unlikely to harm nature conservation or archaeological and historic interests and will cause only short-term harm to the other interests set out in paragraph 7 above. I am satisfied that the DSR remedial works accord with Defra’s policy and confer a public benefit by contributing to a safe and reliable water supply for local residents. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

**Plan referred to in Paragraph 2
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