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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 November 2024** |

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| **Application Ref: COM/3346105**  **WHITMOOR COMMON, WORPLESDON, SURREY**  Register Unit No: CL158  Commons Registration Authority: Surrey County Council |
| * The application, dated 7 June 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 Land Services Limited for Southern Gas Networks. * The works comprise (measurements are approximate):  1. laying by open cut trench of 100m of replacement gas main within a temporary 1100m² working area enclosed by Heras fencing and barrier fence panels; and 2. creation of a temporary fenced 260m² storage area for pipe storage, on/off loading and contractor welfare facilities. |

Decision

* 1. Consent is granted for the works in accordance with the application dated 7 June 2024, and accompanying plans, subject to the following conditions:

1) The works shall begin no later than 3 years from the date of this decision.

REASON: To provide certainty to users of Whitmoor Common.

1. All temporary fencing shall be removed and any common land impacted by the works shall be fully reinstated within one month from the completion of the works (note that this does not apply to any physical changes or permanent features introduced as part of the works for which consent is granted).

REASON: To retain access for the public over Whitmoor Common.

* 1. For the purposes of identification only the location of the works is shown on the attached plans.

**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. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Open Spaces Society (OSS), Natural England (NE), Historic England (HE) and Surrey County Council Archaeological Officer (SCCAO).
  3. 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. The applicant (Southern Gas Networks - SGN) advises that the works are required to replace a badly corroded and leaking section of the existing 12” diameter medium pressure gas main. The main provides a gas supply to the properties adjacent to the common and the wider area, forming part of the gas distribution network for this area of Surrey.
2. As a licensed gas transporter under the 1986 Gas Act, SGN is required to provide and maintain a safe and secure gas supply network. The application land is a triangular area at the northern tip of Whitmoor Common. The gas main lies just inside the eastern boundary of the common, to which there is no access from a public highway. Contractors will access it from an existing entrance in the common’s western boundary at Goose Rye Road, where the storage area will be positioned. From there, works vehicles will cross the common to the gas main site.

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

1. SGN advises that the owner of the land is Surrey County Council (SCC), which was consulted about the application but has commented only from an archaeological remains and historic features perspective.
2. The common land register records various rights of pasture and pannage over CL158. SGN advises that none of the rights are currently exercised but that the common is grazed by Surrey Wildlife Trust (SWT) on behalf of SCC. SWT and Whitmoor Common Association were consulted about the application but neither commented.
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. OSS does not object to the proposal. NE advises that Whitmoor Common is subject to section 193 of the Law of Property Act 1925, whereby members of the public have a right to access the land for air and exercise. The right includes access on horseback as well as on foot but there is no evidence to suggest any equestrian use of the application land.

1. The common extends to around 125 hectares, whereas the proposed works will occupy only a combined area of 1360m² and be contained within an area at its northern tip. The works will nevertheless have an impact on the interests of the neighbourhood and public rights of access to a certain extent, especially in respect of public access onto the common from the Goose Rye Road entrance, which will be used by works contractors.
2. Contractor vehicles will also cross the common between the storage area and works site for the duration of the works, which could be a hazard to the public. However, SGN has submitted a Risk and Method Statement (RMS) confirming that a ‘banksman’ will control the movement of vehicles and equipment between the sites and outside fenced areas.
3. I am satisfied that the proposed storage area is necessary to enable the replacing of the gas main and that the fencing and barriers required for public safety reasons at the storage area and gas main sites are appropriate in scale to the works.
4. SGN advises that the works will take around six weeks to complete, so any impediment to public access will be temporary and I conclude that the interests of the neighbourhood and public rights of access will not be seriously harmed in the long-term.

***Nature conservation***

1. The application land forms part of the Thames Basin Heath Special Protected Area (SPA), which includes the Whitmoor Common Site of Special Scientific Interest (SSSI). NE advises that the SSSI contains a range of heathland habitats as well as areas of woodland, grassland and both standing and running water. A mosaic of wet and acidic grassland dominates the open areas. There is also an extensive area of dry heath as well as smaller stands of bracken and neutral grassland.
2. NE advises that approximately half the site is covered with woodland of varying age and composition. The site is the location of a rare spider, a scarce beetle and plants that occur only rarely in Surrey. It supports many characteristic heathland birds, including a strong breeding population of Nightjar. In addition, Whitmoor Common has been designated as a Local Nature Reserve.
3. NE confirms that their Land Management Advisor for the site was consulted prior to submission of the application and made recommendations to avoid any adverse impacts to the designated sites. The recommendations include use of ground protection matting, ensuring oil spill kits are available, having a policy of no refuelling on site and operating a strict no smoking policy to avoid the risk of wildfire. The RMS addresses these and other issues.
4. SGN also submitted a Preliminary Ecological Appraisal and Habitats Regulations Assessment (HRA) carried out on their behalf by ecological consultants, Wessex Ecology. HRAs are required to be carried out to assess the likely significant effects of the proposals on designated nature conservation sites.
5. In commenting on the proposals NE has had sight of the HRA and RMS and advises that, provided all the Land Management Advisor’s recommendations are adhered to and that any other consents are obtained with respect to mitigating any adverse impact on Whitmoor SSSI, they do not anticipate that the works will have any significant adverse impact on any protected sites or the common’s biodiversity.
6. I am satisfied that the proposed works will not unacceptably harm nature conservation interests.

***Conservation of the landscape***

1. The common has no particular landscape designation. SGN advises that the gas main site is shielded from the nearby footpath by existing trees, which will lessen its visual impact. The storage area is likely to be much more visible during its temporary duration and ground disturbance is likely to be apparent for a period following removal of stored items and welfare facilities. However, protection boards will be laid within the storage area to limit such disturbance and allow the land to be reinstated more quickly.
2. On completion of the works the fencing will be removed and the surfaces reinstated, which can be ensured by attaching a suitable condition to the consent, under advice from the Countryside Team of SCC and NE.
3. The works will be temporary, with no permanent above ground features remaining on the common, and I am satisfied that the visual impact will be only short-term.

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

1. SCCAO advises that they have checked the County Historic Environment Record (HER) for the area of the works and there is no indication that the works will impact upon buried archaeological remains. They confirm that they have no archaeological concerns regarding the proposals. HE advises only that the HER should be checked.
2. 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 only temporarily harm the interests set out in paragraph 5 above and that the harm will not be unacceptable. I am satisfied that the works accord with Defra’s policy and confer a public benefit by ensuring a safe gas supply to local residents and the wider area. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Harry Wood**

**The first plan referred to in paragraph 2.
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**The second plan referred to in Paragraph 2.
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