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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: 29 January 2025** |

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| **Application Ref:** COM 3349061  **Yew Hill Reservoir, Silkstead Lane, Compton and Shawford, SO21 2LG**  Register Unit Number: CL307  Commons Registration Authority: Hampshire County Council |
| * The application, dated 25 July 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 Southern Water Services Limited. * The works comprise:  1. The temporary widening of an existing gravel track of approximately 2m to create a 5m wide haul road; 2. Trimming of the existing ground surface to a depth of approximately 200mm to create a formation for the haul road surface with the works for the roads covering a length of approximately 60m. 3. The use of temporary Heras fencing to enclose the working area. Each panel will measure approximately 3.5m wide and 2m tall and will be used to fence off approximately 542m² of the Common. A total of approximately 90m of fencing will be in place at any one time. |

**Decision**

1. Consent is granted for the works in accordance with the application dated 25 July 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 Yew Hill Reservoir.

1. the land 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 commoners, public and livestock across Yew Hill Reservoir.

1. Any temporary fencing shall be removed within one month of completion of the works.

REASON: To retain access for commoners, public and livestock over Yew Hill Reservoir.

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

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy Guidance (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 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 works are connected to a wider scheme to introduce new water supply connections and other works to Yew Hill Reservoir. The works as described in the application are required to improve access to the reservoir, which the applicant explains is limited, and to comply with health and safety regulations while the works are carried out.

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

1. Southern Water Services Limited are the owners of the land at this area of the Common and it follows that the works are in their interest. The common land register records rights to graze thirty sheep over the whole of the common land at Yew Hill Reservoir.
2. I am satisfied that the applicant has carried out the required consultation and no further comments were received, and the planned works would not interfere with the interest of those occupying or having rights over the land.

***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. The common land at Yew Hill Reservoir is a small parcel of land separated from a larger area of common land located to the south of Winchester. There is a nature reserve present in this section of the Common (operated by Butterfly Conservation) with a public bridleway running through it. The Common is largely rural, open and uncultivated land.
3. The applicant explains that the widening of the existing access track will be achieved with Type 1 stone which is the standard material used for this type of work. This would create a gravel like surface which would be easy to navigate on foot, meaning that the widening of the path would not introduce any impediments to public access of this area of the Common.
4. The trimming of the ground could lead to some impediments to access if the ground is left uneven or residue is left on the Common. However, the applicant has outlined that the trimming is being carried out to allow for the widening of the existing track. Therefore, it is likely that any impediment the trimming could cause would be mitigated by the creation of the haul road that will be a mostly level surface and traversable on foot. I do not believe the trimming taking place would introduce an unacceptable impediment to public access to this area of the Common.
5. The temporary fencing would impact access, blocking access to the areas of the Common where the works are taking place. However, the impact will be minimal when considering the overall size of the Common, which will also remain accessible via other routes. The applicant has also indicated that gates to areas through the works site will be left open to retain access across the bridleway in areas where there is no risk to the health and safety of the public. 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.
6. Overall, I do not believe the works as planned would create any unacceptable impediment to people’s access to and across the Common.
7. I am of the view that this area of common land has recreational value as an open area of green space for walking and for open air activities, as well as an educational space due to the presence of the nature reserve which contains informational signage. The aim of these works is linked to the introduction of new water supply connections and other works to Yew Hill Reservoir which the widening of the existing tack will help to establish. I do not believe the implementation of these works would interfere with the way the Common is currently used.
8. NE have been consulted on the application and stated that “the area of common land where the works are proposed is designated as open access land under the provisions of the Countryside and Rights of Way Act 2000, whereby a right of access on foot is available to the public at all times.” They are aware that the work requires diverting the bridleway and that all necessary approvals and consents should be obtained from Hampshire County Council before any works proceed.
9. In response the applicant has outlined that they “are in contact with Hampshire County Council’s Public Rights of Way Officer regarding the bridleway diversion.” Additionally, they confirm “that the diversion will be in accordance with a Temporary Traffic Regulation Order. We confirm that the diversion way will meet BS5709 where applicable.”
10. I believe the works will have a minimal impact on people’s ability to access the Common or to the recreational value of the Common.

***The public interest***

1. As well as having regard to 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 and conservation of the landscape***

1. NE have stated that “although the site is not subject to any statutory designations for nature conservation, we are aware that the site is a part of the Yew Hill Butterfly Conservation reserve and is managed for its ecological significance.” They expressed their hope that the reserve has been consulted for their comments. They continued that “provided that consultations have been duly considered and based on the information available to us, we do not anticipate that the works will have any significant adverse effects on any protected sites, or the common’s biodiversity, landscape or accessibility for the public”.
2. The applicant in response has outlined that they had contacted the reserve and “Southern Water has considered the opinions of […] Butterfly Conservation to reduce the impact of the proposed works and to find opportunities for butterfly enhancement through landscape design. Examples of this include enhancements to calcareous grassland habitat and exposing bare chalk to encourage nutrient-poor plants to establish which benefit butterflies.”
3. Regarding protected species, the applicant explains they have undertaken an UK Habitat Classification Survey to identify the baseline habitats present.
4. The proposed works within this application are all temporary in nature and their impact on the Common will be minor. Additionally, the applicant has outlined that the land will be restored once the works are complete which can be ensured by attaching the appropriate condition for the restoration of the Common.
5. Overall, I am of the view that the works will not negatively impact on nature conservation interests of the Common or impact the landscape interests of the Common once the land has been reinstated.

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

1. The applicant has outlined that they have also undertaken archaeological assessment in consultation with Winchester City Archaeologist and the impact is considered negligible. Historic England were consulted on the application and did not comment.
2. There is no evidence before me to suggest that these interests will be harmed by the proposed works if the above conditions are applied by the applicant.

***Conclusion***

1. In this case I conclude that the works will not introduce an unacceptable barrier to public access to the Common and the 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 above.

Harry Wood

Plan 1 – Location of works on the common

