

|  |
| --- |
| **Application Decision** |
|  |
| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 May 2025** |

|  |
| --- |
| **Application Ref:** COM/3358919**Mellis Common, Mellis, IP23 8EB**Register Unit Number: CL18Commons Registration Authority: Suffolk County Council |
| * The application, dated 13 January 2025, 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 Eastern Power Networks PLC.
* The works comprise:
1. The excavation of the Common for the laying of underground electric cable measuring approximately 235m long;
2. The use of temporary heras fencing to create a safe working area around the excavations. The heras fencing will be 3.5m wide by 2m tall and up to 150m of fencing will be in place at any one time during the excavation.

  |

**Decision**

1. Consent is granted for the works in accordance with the application dated 13 January 2025 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 Mellis Common.

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 Mellis Common.

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 Mellis Common.

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

**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), Natural England (NE), Historic England (HE) and Babergh and Mid Suffolk District Councils (BMSDC).
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 required to resolve a voltage complaint with the existing cable running underneath the Common. The fencing is required on health and safety grounds to create a safe working area while the works are being completed.

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

1. The applicant states that Martin and Matthew Spence are the owners of the land linked to this application, although the wider Common and nature reserve is managed and owned by Suffolk Wildlife Trust. The owners of the land have been consulted by the applicant and have not provided comment. The common land register records multiple rights to graze for animals, including cattle, horses and bullocks over the whole of the Common land at Mellis Common.
2. The applicant suggests there is evidence of horses being grazed on the Common. The Suffolk Wildlife Trust website outlines that the Common is managed by grazing and hay cutting and this is further supported in the pre-consultation responses provided by the applicant. However, I am satisfied that the applicant has carried out the required consultation and no further comments were received regarding this application.
3. I am also satisfied that the planned works would not interfere with the interest of those occupying or having rights over the land if the works are carried out at a time which would not interfere with these rights.
4. The works are also planned to affect a small area of the common over a short timeframe and overall, I do not believe the works would prevent those with rights being able to exercise them.

***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. Mellis Common is largely a nature reserve measuring approximately 59 hectares and consists of natural open green space with large amounts of wildflowers and grasses being present. The works themselves cross a small stretch of land in the Common which is privately owned. I believe the Common is an active space for open air recreational activities for the public.
3. The applicant explains that excavation of the Common is required for the laying of new electric cables. Once the cables are installed the excavation will be refilled with the material extracted at the site. For the duration of the works, the excavation will introduce impediments to access across the Common. However, this impediment will be temporary in nature with the excavation being refilled on the completion of the works.
4. Overall, I do not view that the excavation will cause an unacceptable impediment to the public’s access of the Common.
5. The fencing would temporarily impact access to the Common by blocking access to the area of the Common where the works are taking place. However, the impact will be minimal when considering the overall size of the Common, which can still be accessed
6. 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.
7. NE have been consulted on the application and stated that they have “no concerns provided the fences are removed entirely on completion of the works. The works will also affect at least one Public Right of Way for which the applicant may need to apply to Suffolk County Council as the Local Highway Authority for a temporary closure and agree any necessary diversions.” We note NE’s advice here and highlight this is a matter for the applicant to address separately from this decision.
8. Overall, I do not believe the works as planned would create any unacceptable impediment to people’s access to and across the Common or affect 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. The proposed works within this application are either temporary in nature or will be a permanent feature not visible on the Common. Additionally, the applicant has outlined that the land will be restored once the works are completed which can be ensured by attaching the appropriate condition for the restoration of the Common. The applicant has also detailed their plan to mitigate the impact to the Common which includes the laying of “bog matting” to prevent damage from vehicle access.
2. NE have stated that they “…do not anticipate that the works will have any significant adverse effects on any such nationally protected sites. The Common is however a Suffolk County Wildlife Site (CWS) and it will be important to ensure the timing of the works and details regarding trenching and infilling of the soil are agreed in advance with the Suffolk Wildlife Trust who have a management interest in the site”. They also ask that the applicant take note of their published standing advice on protected species.
3. BMSDC welcome the use of underground cables as opposed to overhead cables but state that “thorough ecological assessment, mitigation, and compensation should be undertaken due to the Common being an important habitat for protected and non-protected species.” They suggest Horizontal Directional Drilling (HDD) should be used as opposed to open-cut or cut-and cover techniques for crossing sensitive areas of the Common
4. The applicant has stated that “Whilst HDD can be advantageous in certain contexts, in this particular instance it is not considered a practicable method. The scale of the required equipment, combined with the need for entry and exit pits, would result in a level of disturbance and logistical complexity that is not appropriate for this site, and may in fact lead to greater disruption than the proposed open-cut method.” The applicant further outline that the planned method will minimise environmental impact outlining a focus on sensitive timing of works, ecological supervision, and full reinstatement of any affected areas.
5. In this case I am of the view that the applicant should give careful consideration to the points made by the representing parties and work with Suffolk Wildlife Trust to ensure that the best method is used to carry out the works in the least detrimental method. However, on balance I am of the view that the works, if conducted following the advice from NE and with input from Suffolk Wildlife Trust, 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. HE has been consulted on the application and outlined that they do not consider that this proposal will harm any highly designated assets in the vicinity and in principle have no objection to the works. However, they have recommended that the applicant consult Suffolk County Council archaeological staff on the works.
2. Suffolk County Council have been consulted on the application and have not provided comment.
3. There is no evidence before me to suggest that these interests will be harmed by the proposed works and it is our understanding that the applicant will conduct their own investigation prior to conducting any works.

***Conclusion***

1. In this case I conclude that the works will not introduce an unacceptable barrier to public access to the Common as they are temporary in nature and the recreational value of the Common will not be affected. Additionally, the Nature conservation***,*** Landscape value and Historic interests of the Common will not be affected provided that appropriate guidance and methodology are followed with consultation from Suffolk Wildlife Trust. 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 the planned cable route

