
Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 23 August 2016

Application Ref: COM 794
Peasmarsh Common, Surrey

Register Unit No: CL 288

Commons Registration Authority: Surrey County Council.

- The application, dated 20 May 2016, is made under Section 38 of 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 Thames Water Utilities Limited.
 - The works of approximately six weeks duration comprise:
 - (i) renewal of approximately 300m of existing water main and associated apparatus;
 - (ii) excavation of three temporary 5m x 5m (approximate) drill pits; and
 - (ii) 2m high steel mesh Heras fencing (less than 100m at any one time).
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Decision

1. Consent is granted for the works in accordance with the application dated 20 May 2016 and accompanying plan, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. the common shall be restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works is shown as a red line on the attached plan.

Preliminary Matters

3. The application is in respect of land along the eastern boundary of the common at Oakdene Road. The applicant has interpreted the commons registration authority map such that the road is within the common land boundary but the pavement on the eastern side, where all but a few metres of the proposed new pipe is proposed to be, is outside the boundary. The extent of the proposals wholly within the common land boundary are a few metres of underground pipe at the northern tip of the proposed working area and any temporary fencing to be erected on the road and to the west of the road.
4. I have had regard to Defra's Common Land Consents Policy¹ 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.
5. This application has been determined solely on the basis of written evidence.

¹ Common Land Consents Policy (Defra November 2015)

6. I have taken account of the representations made by the Open Spaces Society (OSS) and Surrey County Council Heritage Conservation Team (SCCHCT).
7. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - b. the interests of the neighbourhood;
 - c. the public interest;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. Guildford Borough Council, as landowner, has been consulted and has not objected to the proposed works. There is no evidence to suggest that existing grazing rights over the common are exercised. In any case, the proposed works are almost entirely within the hard surfaced highway (Oakdene Road). There will be no excavation of the grassed area of common to the west of the road that lies within the proposed working area. I am satisfied that the works will not 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

9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The application plan shows that the works will only directly affect pedestrian use of the pavement along the residential east side of Oakdene Road, which is shown on the application plan as being just outside the common land boundary. Whilst the recreational grassed area of common to the west of the road will not be excavated, the applicant has advised that there may be a need for the temporary free-standing safety fencing to be positioned there for the duration of the works. However, a drain gully already prevents direct access further onto the grassed area of the common from the west side of the road so any fencing there will not create an impediment to access that is not already present.
10. The proposed works involve the underground installation of High Performance Polyethylene Equipment (HPPE) pipe services to replace existing ductile iron and asbestos cement services. It is intended that the pipe laying work will be undertaken by way of directional drilling, which removes the need for a continuous open trench and reduces restriction of public access. The applicant confirms that the proposed works are needed as part of a larger, routine renewal program required to ensure the continued improvement to the water supply/quality and to reduce the chances of bursts.
11. The works are underground and the common land affected will be reinstated upon completion of the works. No more than 100m of the temporary fencing will be erected at any one time and it will be removed as soon as possible once the works are completed, which is expected to be within six weeks. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation

12. Natural England advised the applicant at the pre-application consultation stage that they would be unlikely to find problems with the proposals. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

²Section 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.

Conservation of the landscape

13. All the works will be underground and there will be no excavation of grassed area of common. Should any damage be caused to the grassed area by temporary fencing the contractors will reinstate the land in accordance with the industry code of practice. This will typically involve levelling, spreading grass seed, adding further topsoil if required and rolling to create a good seed bed. I consider that any visual impact on the landscape will be limited and short term. I am satisfied that there will be no lasting harmful impact on the common.

Archaeological remains and features of historic interest

14. SCCHCT has confirmed that the proposals will not impact upon any designated heritage assets and that it is highly unlikely that any currently unknown assets in the form of buried archaeological remains will be present within the area of impact. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

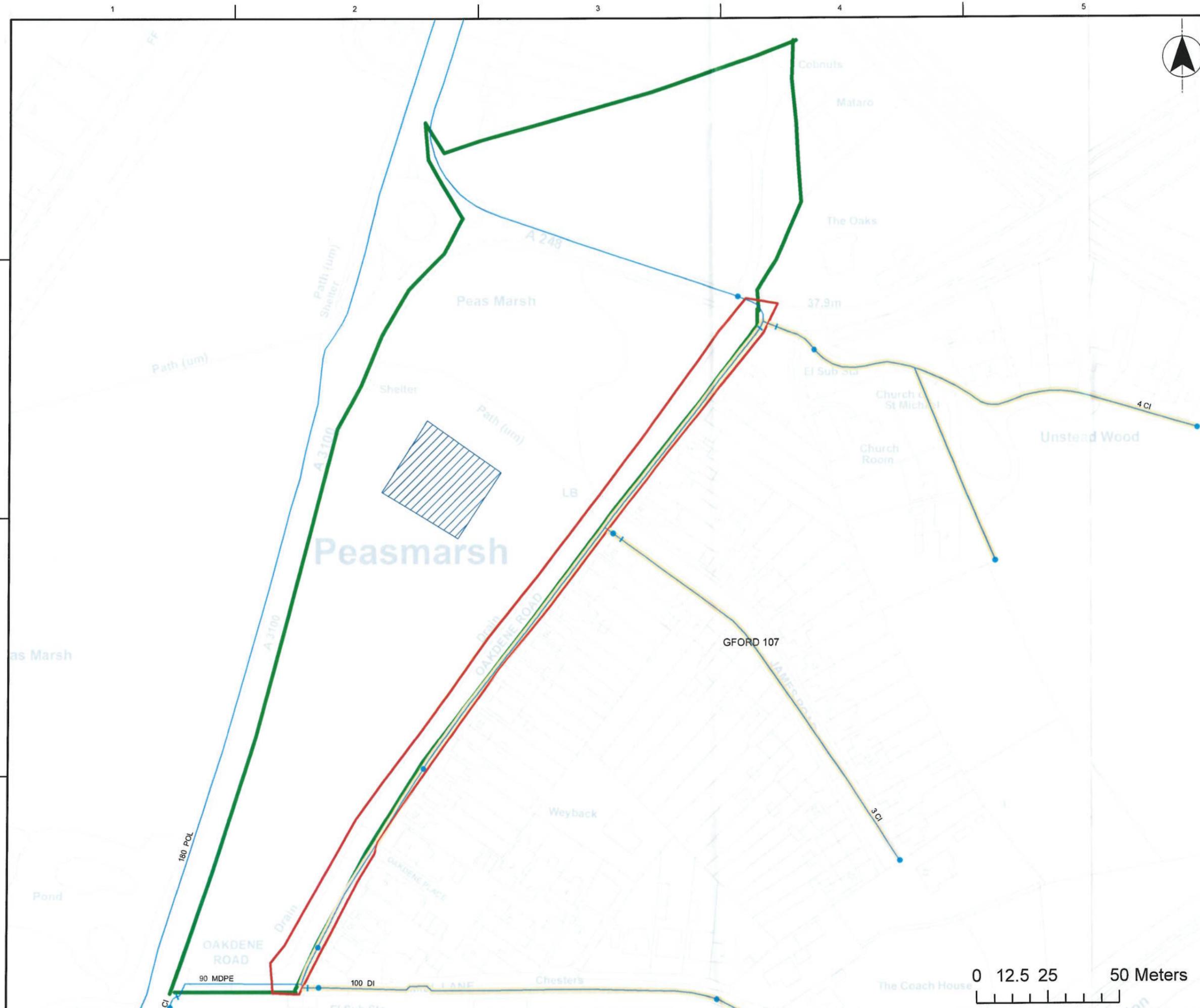
Other relevant matters

15. Defra's policy guidance advises that 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. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits. However, 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*". I am satisfied that the proposed works accord with this policy objective.

Conclusion

16. I conclude that the proposed works will not harm the interests set out in paragraph 7 above and will confer a public benefit by ensuring the continued integrity of water supply to the local community. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



DO NOT SCALE - IF IN DOUBT ASK


 CLEARWATER COURT
 VASTERN ROAD
 READING
 RG1 8DB

Legend

- Distribution Mains
- Distribution Valves
- Distribution Hydrant
- Extent of proposed scheme
- Playground
- Proposed Working Area
- Common Land



CURRENT VERSION INFORMATION

Based on the Ordnance Survey Map with the Sanction of the Controller of H.M. Stationery Office License Number 100019345

Rev	Description	Dsgnr	Chkd	Appd	Date
C	For Information	SF	RW	SM	14.05.2016
B	For Information	SF	RW	SM	13.05.2016
A	For Information	HJ	KA	RC	07.04.2016



Thames Water Utilities

Rose KIn Court
Rose KIn Lane, Reading RG2 0HP

Location Code:	OS Reference: TQ036455	Security Reference:	Drawn By: SF
Project Group:	Sub Process WATER		
Location / Town: Guildford			
Site Name:			
Project Name: THAMES VALLEY MAINS REPLACEMENT			
Contract Name: EIGHT20 AMP6			
Drawing Title: Common Land: GFORD 107 OAKDENE ROAD			
Drawing No.: C956.011-BSK-C9155- C	Scale: 1:1250	Sheet Size: A3	Rev: C

