



Application Decision

by Richard Holland

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

Decision date: 25 January 2018

Application Ref: COM/3189910

Neatherd Moor, Norfolk

Register Unit No: CL 10

Commons Registration Authority: Norfolk County Council

- The application, dated 17 November 2017, 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 Anglian Water.
 - The works comprise the installation of a new foul sewer 225 mm diameter pipe between Dereham and Swanton Morley Water Recycling Centre (WRC). The pipe is approximately 700m long. The area will be fenced off temporarily whilst the work is taking place.
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Decision

1. Consent is granted for the works in accordance with the application dated 17 November 2017 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. all fencing shall be removed and the common restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works are hatched in red within the common land boundary outlined in green on the attached plan.

Preliminary Matters

3. The application form says that the sewer pipe crossing the common will be approximately 400m long. However, the application notice in the Eastern Daily Press says that it will be approximately 700m long. As the length of fencing applied for is also 700m I am assuming that the latter figure is correct.
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.
6. I have taken account of the representations made by the Open Spaces Society (OSS) and Historic England (HE).

¹ Common Land Consents Policy (Defra November 2015)

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. The landowner, Dereham Town Council, has been consulted about the application and has not objected to the proposed works. A number of people have a registered right of access to their properties over the track located on the southernmost part of the common; the applicant says that they will be able to access their properties during the works. No one with a registered right over the common has objected to the application. I am therefore satisfied that the works will not impact adversely on the interests of those occupying, or having rights over, the common.

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 works form part of a necessary upgrade to Swanton Morley WRC. The upgrade is intended to accommodate anticipated future growth of the Dereham catchment area, and address existing problems such as flooding along Norwich Road following heavy rainfall. The applicant confirms that every alternative to the works has been exhausted.
10. Temporary 'heras' fencing will be used for health and safety purposes, although, as I have said, access will be maintained for those wishing to access their properties. The nearby playground will be unaffected by the proposed works. The temporary works will be in place for 4-6 weeks.
11. I note that the works form part of a larger project connecting Dereham and Swanton Morley Water Recycling Centres. I accept that there is no viable alternative to installing the pipe on common land. The works will have a temporary, short term impact on access over the affected area of common, however I am satisfied that there will be no significant or lasting impact on the interests of the neighbourhood or public rights of access.

Nature conservation

12. I note that an ecological appraisal report produced on behalf of the applicant sets out protection and mitigation measures to be implemented at appropriate stages during the works. I am satisfied, on the basis of the proposed mitigation measures and the evidence before me, that the works will not 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. The works will be installed alongside a track on the common. There will be no permanent above ground structures and the common will be fully reinstated upon completion of the works. I am satisfied that the landscape will be conserved in the long term and the works will not have a lasting visual impact on the common.

Archaeological remains and features of historic interest

14. HE confirms that there are no Scheduled Ancient Monuments or Listed Buildings situated within the boundary of the common, or adjacent to it, however it advises that as the site may have some archaeological sensitivity, Norfolk Historic Environment Service is consulted about the application. I note that the applicant has consulted Norfolk Historic Environment Service and it has not objected to the application. I am satisfied that, on the evidence before me, the proposed works will not harm archaeological remains and features of historic interest.

Conclusion

15. Defra's policy advises 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."*
16. I consider that the works will have no significant or lasting impact on the interests set out in paragraph 7 above. Furthermore, the works accord with Defra's policy and will confer a public benefit by upgrading local sewer facilities. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

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