
Application Decision

by **Richard Holland**

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

Decision date: 27 April 2018

Application Ref: COM 3195402

Roadside land in north east Thatcham (Marsh Meadow), Berkshire

Register Unit No: CL86

Commons Registration Authority: West Berkshire District Council.

- The application, dated 18 January 2018, 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 West Berkshire District Council.
 - The works of approximately 2 weeks duration comprise:
 - (i) A 10m wide, 0.5m deep swale (shallow grass covered depression designed to convey flood water) covering 1275 square metres; and
 - (ii) Temporary security/safety Heras fencing around a working area of 1462 square metres (86m x 17m) during the period of works.
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Decision

1. Consent is granted for the works in accordance with the application dated 18 January 2018 and accompanying plan, subject to the following conditions.
 - (i) The works shall begin within 3 years of the date of this decision.
 - (ii) All temporary fencing shall be removed upon completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

3. 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.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representation made by the Open Spaces Society (OSS), which does not object to the application.
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

¹ Common Land Consents Policy (Defra November 2015)

- 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

7. The land is owned by the applicant, West Berkshire District Council (the Council). The common land register records no rights of common. There is no evidence before me to suggest that the 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

8. The interests of the neighbourhood test relates 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. The area of land proposed for the swale is in the south west of the common within the section south of Harts Hill Road, which bisects the common. The Council has advised that it is a grassed area and its use appears to be for general recreational access.
9. The swale will be seeded with a native wild flower and grass seed mix so the surface of the land will not be radically changed and any current use will be able to continue. The Council has confirmed that there will be no delay in reinstating public access once the works of approximately 2 weeks duration are completed.
10. The purpose of the swale is to channel flood water away from up to 150 residential properties during an exceptionally severe storm. It forms part of the wider South East Thatcham flood alleviation scheme conceived in response to widespread flooding in 2007. The necessary angle of slope into the half metre deep swale will be one in three. Whilst this 'step' will make access across the south western part of the common slightly more difficult, I consider it unlikely to have a serious impact on public access, especially as most of this 2.29 Hectare common land unit will be entirely unaffected.

Nature conservation

11. There is no evidence before me to indicate that the proposed works will harm nature conservation interests. Wild flower seeding may bring conservation benefits in the longer term, although this is not a stated purpose of the application.

Conservation of the landscape

12. The swale will lower the level of the area concerned by half a metre, which will alter its appearance as viewed from the remainder of the common on the south side of Harts Hill Road. However, a planting plan submitted by the Council with the application (Drawing Ref KLP/276/17/01) shows that existing trees flanking most of the swale footprint will be retained, which will shield much of it from views from other angles. I am satisfied that any detrimental visual impact is unlikely to be significant.

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.

Archaeological remains and features of historic interest

13. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

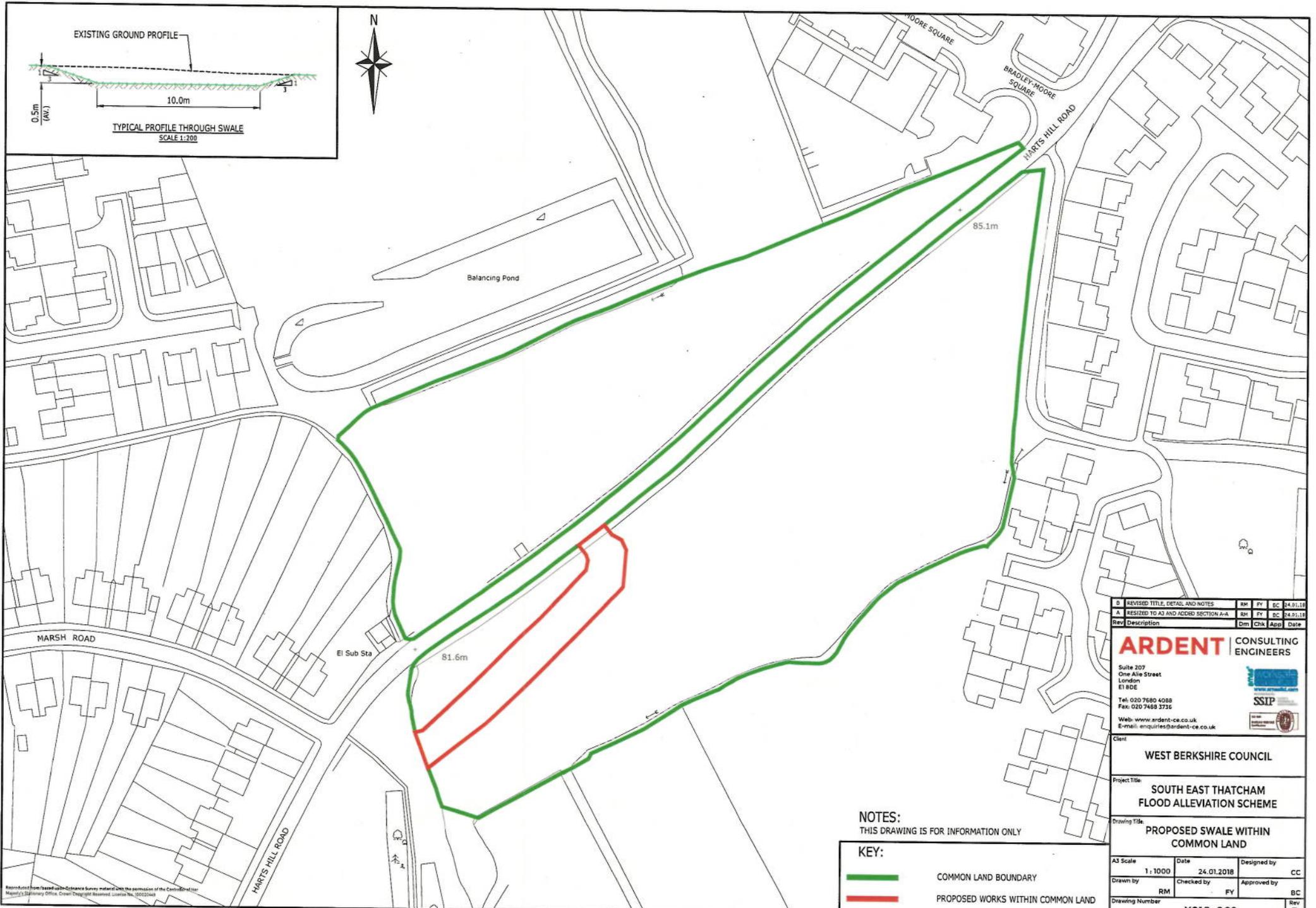
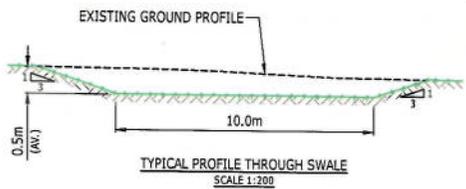
Other matters

14. The application is made for works that form part of a flood alleviation scheme. 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 to provide or improve the public service to local residents and businesses..... consent may be appropriate where the works are of temporary duration (such as a worksite), where their physical presence would be so slight as to cause negligible impact on the land in question, and the proposals ensure the full restoration of the land affected and confer a public benefit"*.
15. The impact of the proposed works on the common land will be small and they will confer a public benefit in protecting properties from flooding. I am therefore satisfied that the works accord with this policy objective.

Conclusion

16. I consider that the proposed works will not significantly harm any of the interests set out in paragraph 6 above. Furthermore, the works will benefit the local community by reducing the threat of flooding. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



B	REVISED TITLE, DETAIL AND NOTES	RM	FY	SC	24.01.18
A	RESIZED TO A3 AND ADDED SECTION A-A	RM	FY	SC	24.01.18
Rev	Description	Chg	App	Date	

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Client: **WEST BERKSHIRE COUNCIL**

Project Title: **SOUTH EAST THATCHAM FLOOD ALLEVIATION SCHEME**

Drawing Title: **PROPOSED SWALE WITHIN COMMON LAND**

A3 Scale	1:1000	Date	24.01.2018	Designed by	CC
Drawn by	RM	Checked by	FY	Approved by	BC
Drawing Number	X910-062				
				Rev	B

NOTES:
THIS DRAWING IS FOR INFORMATION ONLY

KEY:

	COMMON LAND BOUNDARY
	PROPOSED WORKS WITHIN COMMON LAND

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