



Application Decision

by Richard Holland

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

Decision date: 4 July 2018

Application Ref: COM/3200738

Goose Green Common, West Sussex

Register Unit No: CL 44

Commons Registration Authority: West Sussex County Council.

- The application, dated 17 April 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 Southern Water Services Ltd.
- The works comprise the laying of a new 730 m water main on common land and a replacement fire hydrant. Temporary fencing of up to 100 m in length (2 m in height) will be used during the laying of the water main.

Decision

1. Consent is granted for the works in accordance with the application dated 17 April 2018 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 full completion of the works.
2. For the purposes of identification only the location of the works is shown as a red line within the common land boundary coloured green 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 representations made by the Open Spaces Society (OSS) and Natural England (NE).
6. 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;

¹ Common Land Consents Policy (Defra November 2015)

- 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 landowner, Mr William Davey, has been consulted about the application and has not objected to the proposed works. There are no rights registered over the common. I am satisfied that the proposed 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

- 8. 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 proposed works are part of a wider renewal scheme to replace existing water mains. The current water mains have suffered numerous bursts since 2005 and interrupted water supply to over 19 properties. The works will reduce the number of bursts, maintain the water supply and avoid the need for further construction.
- 9. The works are expected to take approximately 8 weeks, during which temporary safety fencing will be placed around the excavations to protect the workforce and the public. Access for horses and the pedestrians will be maintained.
- 10. I accept that temporary barriers are required for health and safety purposes. The works, with the exception of the replacement fire hydrant, are underground, short term and the common will be restored upon completion. I conclude that the works will not impact upon the interests of the neighbourhood or public rights of access in the long term.

Nature conservation

- 11. NE does not object to the application. I am satisfied that the proposed works will not harm nature conservation interests.

Conservation of the landscape

- 12. The common lies within South Downs National Park. The works will take place along the carriageway and the roadside verge will be reinstated with topsoil and reseeded should any damage occur. I am satisfied that any impact on the landscape will be temporary and the proposed works will, in the long term, conserve the natural beauty of the national park.

Archaeological remains and features of historic interest

- 13. The applicant confirms that, following consultation with Archaeology South-East and the County Archaeologist, a watching brief is not required and any finds will be reported and the appropriate action taken. I am satisfied that 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

- 14. 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*

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.

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 the guidance.

Conclusion

15. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will confer a public benefit by protecting and maintaining water supply in the local area. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

