



Application Decision

by **Richard Holland**

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

Decision date: 5 August 2013

Application Ref: COM 476**Walkhampton Common, Devon**

Register Unit No: CL 192

Commons Registration Authority: Devon County Council

- The application, dated 26 April 2013, 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 Western Power Distribution, Lostiwthiel Road, Bodmin, Cornwall, PL31 1DE.
 - The works comprise: the removal of approximately 4 km of existing overhead cable and poles. Construction of a permanent 13 metre high wooden terminal pole and stay and a 400 metre underground cable on the common. 400 metres of temporary (12 month) stock proof fencing to enclose an area of approximately 2,400 square metres.
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Decision

1. Consent is granted for the works in accordance with the application dated 26 April 2013 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision;
 - ii. the fencing shall be removed no later than 12 months from the date it is erected; and
 - iii. the land shall be fully reinstated on completion of the works.
2. For the purposes of identification only, the location of the temporary fencing and permanent works are shown as a red line within the highlighted green common land boundary, and the overhead cable to be removed as a blue and black hatched line on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy Guidance¹ 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.
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.
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 Guidance (Defra July 2009)

- 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. I note that the landowner (Lord Roborough of Maristow Estate) consents to the application. The applicant confirms that grazing rights are exercised over the common and so the temporary fencing is being erected for 12 months at the commoners request to protect livestock and allow the ground to recover naturally.
8. I note that the majority of works are either temporary and at the request of the commoners or underground. The only permanent works above ground is a 40 cm x 13 metre high pole and stay. I do not consider therefore that the proposed works will interfere with the rights of those occupying or having rights in relation to the land or the ability of commoners or other rights holders to exercise their rights.

The interests of the neighbourhood

9. The proposed works are part of an agreement with the industry regulator (ofgem) to invest in high quality undergrounding and removal of overhead cabling from Areas of Outstanding Natural Beauty (AONBs) and National Parks. The proposed works involve the replacement of overhead cables with underground cabling (the majority of which will not be on common land) in the Dartmoor National Park. The proposed works are supported by local organisations as they consider that they will significantly improve the visual appearance of the area.
10. I consider that the proposed fencing will restrict local people's use and enjoyment of the common but only slightly as it is limited to a small part of the common and will be in place for no more than 12 months. I note that the fencing is necessary to allow the full reinstatement of the ground upon completion of the proposed work. I consider that the improvement to the appearance of the National Park by the removal of the overhead cable will benefit the interests of the neighbourhood and that this easily outweighs the very limited impact of the permanent works (pole and underground cabling) and the short term impact of the temporary fencing.

The public interest

The protection of public rights of access

11. The public will be unable to access an area of common for 12 months while temporary fencing is in place. However, the area to be affected is relatively small (0.24 hectares of a 2521.30 hectare common) and the fencing will run parallel to an existing wall at the edge of the common. The applicant has confirmed that no public rights of way will be affected. I consider that the impact on access will be negligible and is outweighed by the visual enhancement of the common that the removal of the overhead cable will bring about.

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.

Nature Conservation

12. The proposed works are supported by the Dartmoor National Park Authority (DNPA). The route of the proposed works has been approved by Natural England (NE) but it would like the land to be re-instated with the original vegetation. The applicant has confirmed that the ground will be allowed to recover naturally. I am satisfied that the proposed works will not harm nature conservation interests.

Conservation of the landscape

13. The applicant has advised that, at the request of the DNPA, the fence posts will not be driven into the ground. While the erection of the pole and stay and the temporary fencing will have some visual impact I consider that this will be outweighed by the removal of the overhead cable and its replacement with underground cable as this will enhance the landscape and natural beauty of the National Park.

Archaeological remains and features of historic interest

14. I note that the applicant has instructed ADAS to carry out an archaeological survey of the area. ADAS has consulted English Heritage (EH) and confirmed that EH's consent is not required as the proposed works will not directly affect any Scheduled Monuments. The applicant has agreed that the DNPA's archaeological team may carry out archaeological works in advance of the scheme on those areas of the route that affect significant unscheduled archaeological remains, with additional archaeological monitoring during construction of the portions of the scheme which cross those areas of moorland identified by ADAS as having archaeological potential. In view of these measures and the fact that no Scheduled Monuments will be directly affected I am satisfied that the proposed works will not harm any archaeological remains and features of historic interest.

Other relevant matters

15. I have considered the provisions of the Dartmoor Commons Act 1985. I do not consider that consent for the proposed works would contravene the Act.

Conclusion

16. I conclude that the proposed works will not harm the interests set out in paragraph 6 above and will in the long term benefit the common by enhancing the appearance of the area. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland