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## **Penderfyniad ar yr Cais**

Ymweliad â safle a wnaed ar 14/09/2021

**gan Joanne Burston BSc MA MRTPI**  
**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 24.09.2021**

## **Application Decision**

Site visit made on 14/09/21

**by Joanne Burston BSc MA MRTPI**  
**an Inspector appointed by the Welsh Ministers**  
**Date: 24.09.2021**

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### **Application Ref: COM 3274463**

#### **Land in the Community of Rhosesmor, Mold**

Register Unit: CL 11 (Halkyn Common and Holywell Grasslands) comprising an area of approximately 1875.977 acres.

Commons Registration Authority: Flintshire County Council

- The application, dated 04 May 2021, 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 Sharon Freeman.
  - The works are to replace a length of freshwater pipe of approximately 135 metres.
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### **Decision**

1. Consent is granted for the works in accordance with the application dated 04 May 2021, subject to the following conditions:

1) The works shall begin no later than five years from the date of this decision.

REASON: To provide assurance for common land users.

2) All temporary fencing shall be removed within one month of the completion of the works.

REASON: To ensure that the common land remains accessible for common land users.

3) The proposed works shall be undertaken in accordance with the Method Statement and Avoidance Measures statement that accompanied the 'Application for Consent to Construct Works on Common Land', dated 4 May 2021.

REASON: In the interests of biodiversity and to ensure the favourable conservation status of the SAC.

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## **Procedural Matters**

2. I carried out an accompanied site inspection on 14 September 2021. My decision has been made on the basis of my observations on this visit, taking account of the application and representations received in response to the advertisement of the application.
3. I have had regard to the Welsh Government Common Land Consents Guidance, published in August 2014, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
4. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of making our cities, towns and villages even better places in which to live and work.

## **Main Issue**

5. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land.
6. In considering such an application I am required by section 39 of the 2006 Act to have regard to the following:
  - 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 which includes the interest in nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest; and
  - d) any other matters considered to be relevant.

## **Reasons**

### *Preliminary matters*

7. The Common comprises an irregular shaped parcel of land of approximately 1875.977 acres. The majority of the Common is set to grass, with small fields enclosed by mature hedges and tree thickets. The Common, in the vicinity of this application site is designated as a Special Area of Conservation (SAC) and a Site of Special Scientific Interest (SSSI).
8. The application area contains gorse and scrub and is contiguous with a hedge line to the south and an access track to the north. From the evidence before me there are no registered rights holders for the application area, which is owned by Flintshire County Council.

9. The works to the Common are necessary to replace a freshwater pipe that serves a property known as 'The Paddocks'. The length of underground pipeline to be replaced is approximately 135 metres. During the construction operations an area of the Common 300mm x 135 metres would be enclosed by temporary fencing.

***The interests of those occupying or having rights over the land,***

10. The landowner has no objection to the proposed works, subject to reinstatement of the land. There are registered rights to graze sheep, goats and heifers on the Common.
11. Given the location, scale and temporary nature of the works involved, I am satisfied that the proposal 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***

12. 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. Access to the working area will be restricted for a limited time while underground works are being undertaken.
13. I accept that temporary barriers are required for health, safety, and biodiversity purposes. I consider that, as the proposed works will only impede access for a short duration and the ground will be reinstated, the interests of the neighbourhood will not be harmed and public rights of access will not be interfered with in the long term.

***Nature conservation, archaeological remains and features of historic interest and conservation of the landscape***

14. The application area is part of a wider designated SAC and SSSI. These designations relate to the amphibian assemblage and the habitats and flora that support them. The applicant has consulted Natural Resources Wales (NRW) who have advised that if the 'Method Statement and Avoidance Measures'<sup>1</sup> are followed then the likelihood of damage or disturbance to amphibian species is unlikely to occur. In particular, NRW state:
- Cutting the vegetation a day or so in advance, along the route of the proposed trench, no lower than 5-10cms height.
  - Pre-survey hand search of ground by the warden on Halkyn.
  - Dig the trench to lay the pipe and backfill.
  - Ensure that machinery and boots / trousers are pre-treated with a solution of Virkon, to act as a disinfectant in order to minimise the risk of bringing Chytrid to the site.
15. The use of the Method Statement will ensure that any harm to nature conservation as a result of the proposed works is limited.
16. There is no evidence before me to indicate that the proposed works will harm archaeological interests. Furthermore, Cadw have confirmed that there are no designated historic assets within 500 metres of the proposed works.

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<sup>1</sup> Submitted by the applicant

17. Given the small scale and localised impact of the proposed development within the wider landscape, I am satisfied that any impact on the landscape will be short term and following restoration the proposed works will conserve the landscape in the long term. Accordingly there will be no long term visual intrusion or encroachment in to the landscape.

**Conclusions**

18. I consider that on balance the proposed works will not harm any of the interests set out in paragraph 6 above. The works would be in conformity with the Welsh Government's policy objectives and Guidance in relation to works on common land and consent is therefore granted for the works subject to the conditions set out in paragraph 1.

*J Burston*

INSPECTOR