
Application Decision

by Harry Wood

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

Decision date: 4 March 2025

Application Ref: COM 3347265

Cleeve Common, Cheltenham, GL53 3PW

Register Unit Number: CL20

Commons Registration Authority: Gloucestershire County Council

- The application, dated 27 July 2024, 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 the National Grid.
 - The works comprise:
 - i) The excavation of 4 trenches measuring approximately 30m each for the laying of underground electric cable to replace existing overhead cables on the common;
 - ii) Construction of approximately 193m of temporary stock proof fencing to create two working areas with the fencing being approximately 1.5m high. One area will measure approximately 1802m² for the removal of overhead cables on the Common. The second will measure approximately 6272m² for the excavation of the trenches and laying of the cables.
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Decision

1. Consent is granted for the works in accordance with the application dated 27 July 2024 and the plans submitted with it subject to the following conditions:
 - i) the works shall begin no later than three years from the date of this decision;

REASON: To provide certainty to users of Cleeve Common.

- ii) the land shall be fully reinstated within one month from the completion of the works (note that this does not apply to any physical changes or permanent features introduced as part of the works for which consent is granted);

REASON: To retain access for commoners, public and livestock across Cleeve Common.

- iii) Any temporary fencing shall be removed within one month of completion of the works.

REASON: To retain access for commoners, public and livestock over Cleeve Common.

- 2. For the purposes of identification only, the location of the works is shown on the attached plans.

Preliminary Matters

- 3. I have had regard to Defra's Common Land Consents Policy Guidance (November 2015) 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. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE), Historic England (HE) and Cotswolds National Landscape (CNL).
- 5. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:
 - i. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - ii. the interests of the neighbourhood;
 - iii. the public interest; Section 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;
 - iv. any other matter considered to be relevant.

Reasons

- 6. The applicant explains that the works are connected to the Cotswolds VIP project which aims to enable works to be carried out that help reduce the landscape and visual impact of the existing power lines.

The interests of those occupying or having rights over the land

- 7. Cleeve Common Trust are the trustees and owners of the land. The common land register records multiple rights to graze for livestock including, cattle, sheep, horses, donkeys and goats over the whole of the common land at Cleeve Common.
- 8. The applicant has highlighted, with confirmation from CNL, that the area of land where the works are taking place is not used for grazing. I am satisfied that the

applicant has carried out the required consultation and that no further comments were received. I am also satisfied that the planned works would not interfere with the interest of those occupying or having rights over the land.

The interests of the neighbourhood and public access

9. The interests of the neighbourhood relate 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.
10. Cleeve Common is a large area of mainly natural open green space and contains the Cleeve Common SSSI. The works themselves cross a small stretch of land along the southern border of the Common. I believe the Common is an active space for open air recreational activities, including walking, and is well-used by the public.
11. The applicant explains that excavation of the trenches will be completed with a “cut and fill methodology”. This will require the clearance of any walls, fences trees or shrubs along the route of the trenches. Once the cables are installed the trenches will be refilled with the material excavated at the site.
12. During the time the works are being carried out the excavation of these trenches would introduce impediments to access onto the Common, as the area of excavated land would not be available to the public. However, these impediments will be temporary in nature, with the excavations happening in sections and being refilled on the completion of the works.
13. The applicant has also outlined that access will be facilitated across the working area, with covers over the trenches outside of working hours to mitigate the impact to access.
14. Overall, I do not believe that the excavation of the trenches will cause an unacceptable impediment to the public’s access of the Common.
15. The temporary fencing would impact access to the Common by blocking access to the areas of the Common where the works are taking place. However, the impact will be minimal when considering the overall size of the Common, which will also remain accessible via other routes. The applicant has also outlined how a number of gates will be included in the fenced areas to allow for access.
16. I am satisfied that such fencing is appropriate on health and safety grounds and that it will be removed on completion of the works, which can be secured by attaching a suitable condition to the consent.
17. NE have been consulted on the application and stated that while “There will be a number of temporary negative impacts [...] [these will] be confined to a relatively small area of the common and we believe they will be outweighed by the significant improvements to the visual amenity of the common.”

18. OSS asked several questions concerning access outside of working hours. In response the applicant has outlined that “If there is an open trench with cables being laid throughout the day and the public wishes to cross the open trench, the project pulls across a road plate, that allows the public to cross over the trench. Outside of construction working hours, the road plate is left across the trench to allow access out-of-hours”
19. Overall, I do not believe the works as planned would create any unacceptable impediment to people’s access to and across the Common or affect the recreational value of the Common.

The public interest

20. As well as having regard to the public interest in the protection of public rights of access, I must also have regard to the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

National Landscapes

21. NE highlight that the site falls wholly within the Cotswolds National Landscape, and additionally explain that the application is part of a broader project “to carry out work to help reduce the visual impact of existing power lines in National Landscapes and National Parks”.
22. NE explain that Cleeve Common is “subject to the Commons Regulation Provisional Order Confirmation Act 1890” which “provides the inhabitants of Bishop's Cleeve, and the neighbourhood, a right of free access to the common and the privilege of playing games and enjoying reasonable recreation.”
23. They continue “with regards the works on the common itself that the applicant has referred to regular consultations with the Cleeve Common Trust who are responsible for managing and conserving the Common. From the information provided by the applicant we understand that this is likely to result in measures to offset any negative impacts on the current use of the Common by common rights holders and will ensure important features associated with the landscape, such as dry stone walls, are fully restored once the works have been completed.”

Nature conservation and conservation of the landscape

24. NE have stated that while “The majority of Cleeve Common is designated as a site of Special Scientific Interest (SSSI)”, the works “are proposed on a part of the Common that is not within the SSSI boundary”. They add that they “do not anticipate that they will have any significant impact on the protected site or its designated features.”
25. The proposed works within this application are all temporary in nature and their impact on the Common will be minor. Additionally, the applicant has outlined that

the land will be restored once the works are complete which can be ensured by attaching the appropriate condition for the restoration of the Common.

26. CLN outlined numerous conditions they would like to see applied to the decision, including several related to nature and landscape conservation:
- following best-practice protocols for the removal, storage and reinstatement of soils;
 - storing soils in ways that avoid / minimise visual impacts for users of public rights of way and access land;
 - reinstating / restoring any dry stone walls or hedgerows that would be affected by the proposed works – ideally, as part of fulfilling the ‘seek to further’ duty, this reinstatement / restoration should apply to the entire length of the northern and southern boundaries of the strip of common land between the main body of Cleeve Common and West Down / Wardens’ Wood;
 - taking all other reasonably practicable steps to further the conservation and enhancement of the natural beauty of the CNL in this locality.
27. Within their application the applicant has outlined their plans to reinstate any features of the land that are affected by the work and reinstate the land once the works are complete. There is also a condition attached to this decision for the reinstatement of the land on the completion of the works
28. Although the works are not taking place within the SSSI section of the Common, the applicant has undertaken assessment to outline whether dust build up from the works could affect the SSSI and has outlined that this is of low risk to the site.
29. The applicant has also stated “The primary purpose of the project is to ensure the CNL is enhanced. Therefore, the project is fundamentally committed to further the conservation and enhancement of the natural beauty of the CNL”.
30. It is noted that once the works are complete and the land is restored there will be a net positive to the landscape through the removal of existing overhead power lines which will happen alongside these works.
31. Overall, I am of the view that the works will not negatively impact on nature conservation interests of the Common or impact the landscape interests of the Common once the land has been reinstated.

Protection of archaeological remains and features of historic interest.

32. HE has been consulted on the application and outlined that the proposals will not impact on any designated Heritage Assets. They further clarify that any non-designated archaeology will be addressed by the related planning application.
33. There is no evidence before me to suggest that these interests will be harmed by the proposed works. The applicant has also made clear that they intend to conduct their own investigation of the planned trench routes before beginning any works.

Other matters

34. In coming to a decision, I have noted that the applicant has included in their application reference to removing “a section of 400kV overhead line which oversails the Common”. While I note that these features may fall within the temporary works area and fenced area outlined within this decision, consent under Section 38 is not required for the removal, specifically, of these features.

Conclusion

35. In this case I conclude that the works will not introduce an unacceptable barrier to public access to the Common or negatively affect its recreational value. In addition, the works will not seriously harm the other interests set out in paragraph 5 above. Consent for the works is therefore granted subject to the conditions set out at paragraph 1 above.

Harry Wood

Site Plan:

Interest: N/A

Location: Briarwood House, Winchcombe, Cheltenham, Gloucestershire, GL54 5AN

Coords: 400697, 226056

Scheme Name: Cotswolds VIP

Drawing Name: Information Plan

Drawing No: 21006866_PLN_INFO_16.1

Rev	Date	Description
1	04.10.2023	First Issue

Drawn: AM

Approved: DR

Sheet No: 1 of 2

Sheet Size: A3

Key:

- Indicative Alternative Route
- Indicative Favoured Route
- Cotswold Ecological Corridor (2023/0404)
- Scheduled ancient monuments
- Cleeve Common
- SSSI
- Ancient woodland
- Preferred sealing end compound location
- Pylon to be removed
- Pylon to be retained

Notes:

Plan produced on behalf of Network Rail Electricity Distribution

BASED UPON THE OS/EDNEDS GARDEN MAP WITH THE SANCTION OF THE CONTROLLER OF HER MAJESTY'S OFFICE

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Coordinate System: British National Grid
Projection: Transverse Mercator
Datum: OSGB 1936

DM DALCOUR MACLAREN

nationalgrid

Scale: 1:15000

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