

SUPPORTING INFORMATION – SECTION 38 APPLICATION

Question 12

Explain why the proposed works are needed and how they fulfil the criteria set out in Section 39 of the Commons Act 2006. If the proposed works include fencing, please also complete section D2.

This Section 38 Application is linked to a corresponding Section 16 of the Common Act 2006 for the deregistration of an area of common land (“Release Land”) at Pelsall North Common (“the Common”) and offer of replacement land at High Bridges (“the Replacement Land”) in order to facilitate the construction of a new bridge (the “New Bridge”) alongside the existing York’s Bridge (the “Existing Bridge”). The York’s Bridge Replacement Scheme (“the Scheme”) comprises of highway works together with mitigation works to improvement and enhance the Common. The proposed works to the Common are needed in order to enhance an improve the Common at its points nearest to residential houses, to improve and encourage access to the Common, to safeguard and boast biodiversity and create attractive and useable common.

THE CRITERIA IN SECTION 39 OF THE COMMONS ACT 2006 ARE:

- 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 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.
- d) any other matter considered relevant. See Guidance Sheet 1a and Defra’s “Carrying out works.”

The Common is an area of approximately 63 hectares. It lies to the north of the conurbation of Pelsall, which is north-west of Walsall. The full extent of the Common is shown coloured green on Plan SECTION J-702/B (**Appendix 5**).

The Details of the Section 38 Works

The Section 38 works comprise partly of temporary and permanent works. The permanent works comprise of:

- a) Mitigation Pond

- b) Reed-beds
- c) Drainage headwalls and manholes
- d) Crib Walling
- e) The construction of a new access track to the canal towpath. This will connect the towpath to the Common.

The temporary Section 38 Works will comprise of high visibility heras fencing to protect members of the public from areas where works are being carried out.

Plan SECTION J-701/B (**Appendix 3**) shows the extent of the Section 38 works for which consent is being sought. The plan shows two areas of land. The larger area of land is located to the north of the Wyrley and Essington Canal. This area of land is currently of poor quality, with large parts being self-seeded scrubland covered with bushes and trees making the area largely inaccessible for use by members of the public accessing the Common. As part of the Scheme the proposal is that this area will then be improved and enhanced with a mitigation pond, reed beds and landscaped with a wildflower meadow.

The smaller area of land is located to the south of the Wyrley and Essington Canal, the land on the east side of Norton Road will benefit from improved access in the form of a widened bound gravel pathway linking the Common to the canal and adjacent crib wall which will be planted with appropriate flora.

These two areas are shown on included Plan MP/YB/S38/702_B and detailed on Plan MP/YB/S38/703 (**Appendix 1 and 2**)

Planning Permission in Connection with the Scheme and Section 38 Restricted Works

An application for planning permission (Planning Application Number 19/1042) was submitted in respect of the Scheme together with the works to enhance and improvement the Common which forms the basis of this Section 38 Application.

The proposal as set out in the planning application is for the construction of a new road bridge over the Wyrley and Essington Canal next to York's Bridge and realignment of Norton Road, plus new parking bays for Pelsall North Common (adjacent to Public Footpath ALD0.149). The application includes the provision of an area of Replacement Land to the east of the A4124 Lichfield Road, to be served by a new vehicle access and parking area.

The planning permission in connection with the Scheme was approved by the Council's Planning Committee and the decision notice was issued 15th December 2020 (**Appendix 14**).

Why are the Section 38 Works Necessary?

As part of the planning application process for the Scheme, an Environmental Impact Assessment was undertaken (**Appendix 18**). In November 2018, the Council engaged Atkins as consultants to undertake the ecological surveys. The scope of the ecological surveys included an extended Phase 1 habitat survey, otter and water vole surveys, great crested newt surveys and bat transect, emergence and static surveys. In addition, the ecological surveys gave full consideration to the impacts on European Protected Species

The ecological surveys identified a number of protected species. These are the common lizard and grass snake, great crested-newts, and breeding birds.

The ecological surveys undertaken on the Release Land also identified various flora and fauna some of which requires translocation or replacement.

There are therefore opportunities to maximise, incorporate and enhance biodiversity within the Common. The overall conclusion of the Environmental Impact Assessment was that the works required under the Scheme are not predicted to result in any significant negative residual effects on designated sites, undesignated habitats or protected and notable species.

Over the course of 2020 the importance of outdoor space, common land and connected waterways have been a major benefit in terms of mental health. The Council is acutely aware of the wellbeing benefits brought about by the enjoyment of recreational spaces and the ability to have access to the outdoors. The Common surrounding York's Bridge immediately abuts a large residential area and is important open space for residents of Walsall. The opportunity to improve and enhance the Common in this area and to entice more people to access the Common was determinative in the proposed works.

Why did the Council decide on the current proposals? What other options were considered?

The two areas of land subject to the Section 38 application are key gateways to the Common. Currently in accessible and overgrown, the opportunity arose to improve these areas alongside the adjacent bridge works. Both of these areas are close to residential housing and visible from the main B4154 Norton Road and the canal. Their current condition makes them unattractive and unusable for walking or roaming. Although there is a wealth of wildlife in the general area the improvement of these two parcels of land will enhance the Common whilst also encouraging more biodiversity across the Common, the canal, LNR (Local Nature Reserve), SSSI (Site of Special Scientific Interest) and SAC (Special Area of Conservation).

The parcels of land are on opposite sides of the Wyrley & Essington Canal, to the east of the existing B4154 Norton Road. As such it is the intention to remove the overgrowth and to utilise the land for construction purposes whilst works are being carried out to

the bridge and then, as part of the Scheme, to complete the improvement and enhancement works to the land which will provide improved accessibility to the Common and widen its appeal.

How will the works help to protect, maintain or improve the Common, having regard to all the interest in it.

The implementation of the various Section 38 works on the Common will secure the conservation of protected species but also improve and enhance the common land.

The creation of a reed-bed and mitigation pond

Several waterbodies within 250 m of the Scheme were found to support medium great crested newt populations. The extensive good quality habitats located to the west of the Scheme (heath and scrub) on the Common land and the fact that aquatic habitats will be created, is considered to have considerable ecological benefits. The creation of open water habitat in the form of the new reed-bed and mitigation pond will provide great crested newts with a long-term suitable aquatic habitat.

North of the Wyrley & Essington Canal, the land currently comprises of an area of self-seeded scattered trees, scattered scrub and marshy grassland habitat.

The provision of the reed-bed pond will improve the diversity and biodiversity of the habitat. It will have the added benefit of combating surface water runoff from the Norton Road.

A collector sewer is proposed to be constructed to drain into the reed-bed as a natural filter system for pollutants. This area of the Common is currently waterlogged and inaccessible for members of the public, the construction of the new reed-bed will alleviate these issues.

A. Creation of a new pathway to link the Common and canal.

The crib wall will be constructed to the south of the canal in place of an earthworks embankment. The wall will provide additional space to enable a canal access path linking Norton Road to the towpath to be introduced. The open areas within the crib wall will be planted with various flora and fauna to provide a pleasant aspect to the face of the wall and thereby enhancing the Common.

To the south of the canal the new crib-wall will allow space to enable an access path linking Norton Road to the Wyrley & Essington Canal towpath to be introduced. The path will be constructed of resin bound gravel and will provide a dedicated access route to replace the current route over grassland. The creation of the new pathway will allow this area of the Common to be more accessible for use by all sectors of the public including disabled.

Conclusion

The Section 38 works will improve accessibility, the works will improve wildlife, flora and fauna which will benefit users of the Common. The works will connect the Common with the canal and this will improve the visual amenity for users of both the canal and the Common

The measures to protect habitat for example the mitigation pond and reed bed will enhance and conserve the landscape.

The canal access and clearance of the site will improve overall accessibility to the Common by members of the public.