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# Application Decision

by **Richard Holland**

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

Decision date: 13 June 2016

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**Application Ref: COM 777**  
**Galmpton Common, Torbay, Devon**

Register Unit No: CL141

Commons Registration Authority: Torbay Council

- The application, dated 2 February 2016, 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 Torbay Council.
  - The works applied for are:
    - (i) a line of low level (0.7m high) wooden post and rail 'birds mouth' fencing along a 75m section of Slade Lane with gaps for pedestrian access; and
    - (ii) the moving of a gate across Slade Lane from the entrance to the common to the north eastern end of the fencing.
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## Decision

1. Consent is granted for the works in accordance with the application dated 2 February 2016 and the plan submitted with it subject to the condition that the works shall be carried out no later than 3 years from the date of this decision.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. The application was made on the basis that some works are temporary and some permanent, although it was not specified which was which. However, the applicant, Torbay Council (the "Council"), has since confirmed that all the works applied for are permanent and that the reference to temporary works was made in error. I am satisfied that no party has been unduly prejudiced by this error and that the validity of the application is unaffected.
4. I have had regard to Defra's Common Land consents policy<sup>1</sup> 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representation made by the Open Spaces Society (OSS).
7. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

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<sup>1</sup> Common Land Consents policy (Defra November 2015)

- 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;<sup>2</sup> and
- d. any other matter considered to be relevant.

## **Reasons**

### ***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 land is owned by the Council. Messrs Ralph Bowden Hall (Senior and Junior) have registered rights of estovers and to graze sheep and cattle over the whole of the register unit. They apparently do not exercise the rights and they did not respond when consulted about the proposals. The Council advises that a local farmer cuts the grass for hay for his cattle at least once a year. It has not been established whether the farmer is exercising a formal right to do so but the Council confirms that he will be provided with a key to the repositioned gate if that is necessary to allow him to continue to cut for hay.
9. The proposed works cover a small area in the south west corner of the common where the tarmac highway, Slade Lane, enters the common and continues as a gravelled vehicular access way serving residential properties bordering the common to the south. A gate currently crosses Slade Lane at the entrance point where there is a small gravelled car park. The properties have vehicular access rights along this part of Slade Lane, which forms part of the registered common. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. At present, the gravelled area is used as a car park for those wishing to access the common on foot. In order for this to continue, as the Council desires, the gate, in its current position, needs to be kept unlocked. A line of large rocks and an embankment prevent vehicular access to the body of the common but only up to the point where the line of rocks ends – beyond this point access is unrestricted. Leaving the gate unlocked has allowed unauthorised vehicles to enter the body of the common and cause damage (presumably by, for example, wheel ruts to the surface of the common although the applicant has not given any details). Illegal encampment on the common has also taken place. The application is designed to prevent this by extending the barrier, by means of the fencing, so that it links up with the repositioned gate. The repositioned gate will be kept locked and keys will be given only to occupants of the residential properties and other legitimate vehicle users. This will allow continued use of the car park but prevent unauthorised vehicular access to the rest of the common.
10. Section 193 of the Law of Property Act 1925 gives a public right of access for air and exercise over the land. The proposed fencing and repositioned gate will restrict access to the common to some extent although, at 70cm high, the fencing will be low enough to be stepped over and gaps will also allow pedestrian access. Furthermore, the existing line of rocks just inside the area of the Slade Lane entrance to the common which prevent vehicular access will remain unfenced.
11. Section 193 access rights apply generally to access on horseback as well as on foot and OSS sought assurances that the fencing will not restrict access for horse riders. The Council has confirmed that the gaps will be sufficiently wide to allow such access.
12. I am satisfied that the interests of persons occupying or having rights over the land will not be harmed, nor will public rights of access be unacceptably harmed. The Council has advised that the local community requested the proposed works and I agree that the works are in the interests of the neighbourhood as they will help prevent damage to the common by unauthorised vehicular access while allowing local people to continue to enjoy it.

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<sup>2</sup>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.

### ***Nature conservation***

13. There is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests. Indeed, I consider that the prevention of unauthorised vehicular access across the common land can only serve to protect any nature conservation interests there may be.

### ***Conservation of the landscape***

14. The works will impact only on a small area in the south western corner of the common where vehicular use is permitted and therefore where there is already an urbanising influence. The fencing will be of a low level, wooden, naturally finished post and rail design with no line of solid panels or contrasting colours to draw the eye. The Council sees the works as important to the ongoing conservation of the common and claims the support of Friends of Galampton Common although it has made no representations about the application. I consider that the works will have only a negligible detrimental impact on the conservation of the landscape. This harm will in any case be outweighed by the visual improvements arising from the prevention of unauthorised vehicles damaging the common.

### ***Archaeological remains and features of historic interest***

15. There is no evidence before me of any archaeological features within the application site or nearby. I am content, therefore, that the works are unlikely to harm any such remains or features.

### ***Other matters***

16. The application is for permanent fencing. I have given consideration to whether any consent granted should be time limited so that the fencing cannot stay lawfully in place in perpetuity if there should come a time when it no longer serves the purpose for which consent is sought. I consider that given the layout of the common land at the south west corner it is likely that there will always be a need for a physical barrier to prevent unauthorised vehicular access. It is therefore appropriate for consent to be for permanent fencing.

### **Conclusion**

17. I conclude that the proposed works will not unacceptably harm any of the interests set out in paragraph 7 above. Indeed, by strengthening measures to prevent unauthorised vehicular access the works will serve the interests of the neighbourhood and the conservation of the common. Consent is therefore granted for the works.

**Richard Holland**

**KEY**

- 1.  Temporary Gate At End of Slade Lane To Be Relocated.
- 2.  New Position of Gate With Free Access Either Side For "Legal" Access - Pedestrians, Horses Etc.
- 3.  Low Level Vehicle Deterrent to be "Birds Mouth" Wooden Post And Rail Fence:  
 - Rail 100mm x 100mm. Height to the top of the rail to be 700mm above ground level.  
 - Post 150mm x 150mm at 1000mm centres.

REVISIONS				
no.	date	By	Checked	details

NOTES	
no.	details
1	Proposed

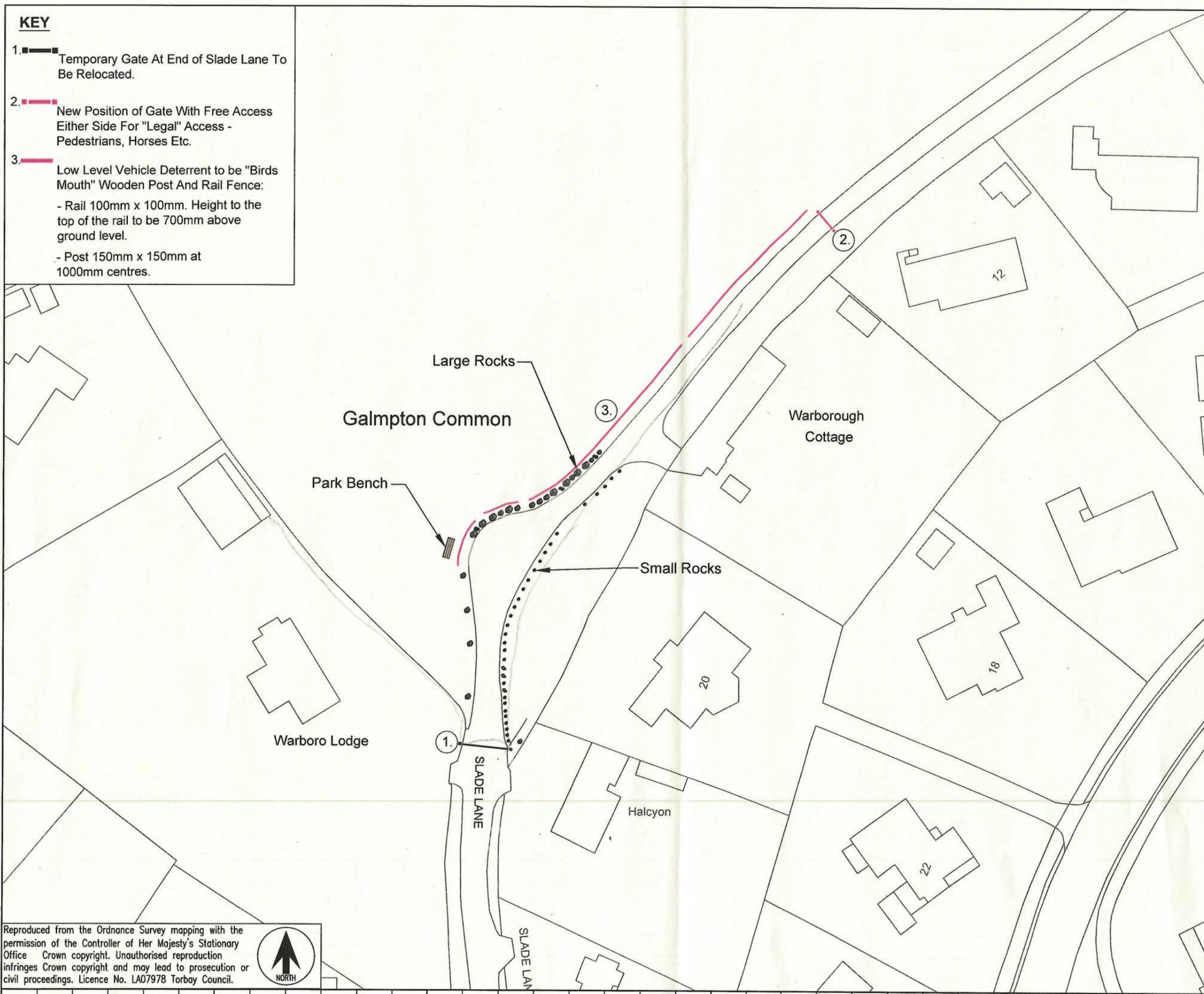
drawn LS	scale(s) 1:500
checked IJ	date FEBRUARY 2015



SCHEME TITLE  
**GALMPTON COMMON**

DRAWING TITLE  
**ANTI INCURSION MEASURES**

drawing number **\*/\*\* \*\***



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