
Application Decision

by **Richard Holland**

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

Decision date: 7 February 2017

Application Ref: COM 3163240
GREAT COMMON, THUNDERSLEY

Register Unit No: CL 15

Commons Registration Authority: Essex County Council

- The application, dated 11 November 2016, is made under Section 38 of the Commons Act 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Mr and Mrs Allen.
 - The works comprise: the relocation of a crossover. The proposed crossover will cover an area of 38 m². The works are located at "White Gates", Goldfinch Lane, Thundersley, Benfleet.
-

Decision

1. Consent is granted for the works in accordance with the application dated 11 November 2016 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 existing crossover shall be removed and the land restored to grass no later than one month after the works have been completed.
2. For the purposes of identification only the location of the proposed access is shown outlined in red (hatched in black).

Preliminary Matters

3. A garden wall and gate, included in the application, do not form part of my considerations as they do not appear to be located on common land. The applicant's agent confirmed in correspondence that the garden wall and gate is on the applicant's land. The common is owned by Castle Point Borough Council.
4. 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.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by The Open Spaces Society (OSS), Historic England (HE), and Senior Historic Environment Consultant at Essex County Council.
7. 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 (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;² and
- d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. The landowner has been consulted about the application and has not objected. There is one right of grazing registered in respect of the common. The applicant confirms that they are not aware of any rights being exercised on the common. I am satisfied that the proposed works will not impact adversely on the interests of those occupying or having rights over the land.

The interests of the neighbourhood and the protection of public rights of access

9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common is used by local people. The applicant explains that the property known as 'White Gates' has been redeveloped into a chalet bungalow to suit the needs of the current occupier. As part of the redevelopment an existing crossover will be reinstated and a new crossover created. The relocation of the crossover is intended to allow ease of access to a new garage on the property.
10. The site appears to have little recreational value. I do not consider that the proposed works will prevent local people or the public from continuing to use the common in the way that they are used to. I conclude that the proposed works will not harm the interests of the neighbourhood or the protection of public rights of access.

Nature Conservation

11. I am satisfied that there is no evidence before me to indicate that the proposed works will harm nature conservation interests.

Conservation of the landscape

12. The new crossover replaces an existing access on an area of road side verge along a public highway. The existing crossover is 4.5 m wide and covers an area of some 19 m² which will be returned to grass. The new crossover is 4 m wide but at 38m² covers a greater surface area of the common.
13. I note that planning permission has been granted for the proposed access (Ref No. 16/00147/FUL) and is subject to a condition to construct the hard surface between the back edge of the footway and boundary of the property with either an asphalt finish or block paving. However, the plan submitted with the Section 38 application shows that the surface of the crossover will be of Bradstone Woburn rumbled block paving. The condition is in part imposed in the interests of the character and appearance of the surrounding area.
14. While the works may have a further urbanising effect on the area, this is to some extent mitigated by the returning to grass of the existing crossover (which can be secured through a condition attached to any consent) and the block paving surface finish. I consider that as the crossover is located on road side verge within a suburban setting it is not likely to impact unacceptably on the visual appearance of the common. I conclude that the proposed works will conserve the landscape.

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.

Archaeological remains and features of historic interests

15. HE does not object to the proposed works but says that Essex County Council should be consulted regarding the impact on undesignated archaeological remains and historic features, and to advise on an appropriate archaeological mitigation strategy. I note that Essex County Council has been consulted and confirmed that the works will have no significant archaeological implications. I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

Other relevant matters

16. Defra's policy guidance advises that *'where it is proposed to construct or improve a vehicular way across a common... such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access or access for commoners' animals'*. I am satisfied that the proposals are consistent with these policy objectives.

Conclusion

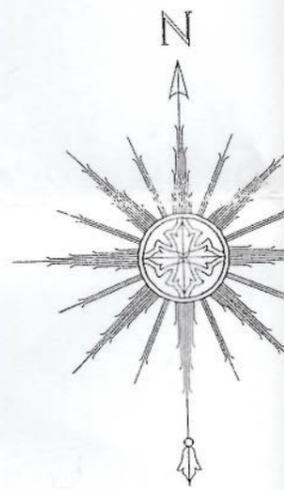
17. I conclude that the works will not harm the interests set out in paragraph 7 above and are consistent with Defra's policy guidance so long as the existing crossover is removed and the common restored. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland

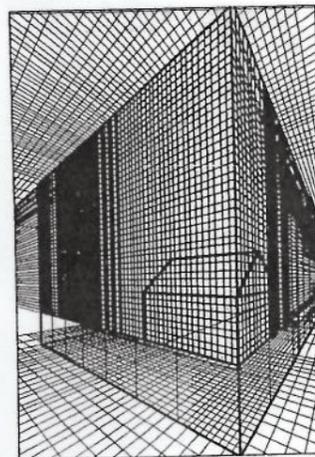
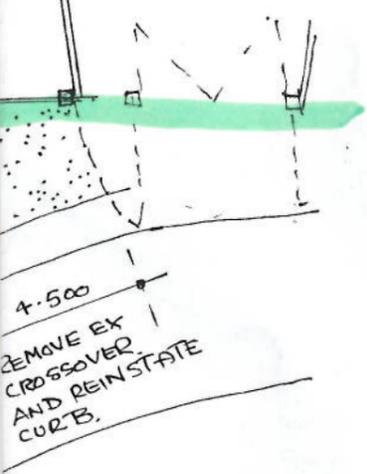


ORDNANCE SURVEY SHEET
 Scale 1 : 1250
 CASTLE POINT BOROUGH COUNCIL

Proposed Location Plan
 Scale 1:1250



TREE TOPS.



The Complete Related
 STRUCTURAL AND MECHANICAL ARCHITECTURAL DESIGN AND PARTY WALLS
Brian
Associates
 25 Galton Road
 Essex
 Tel : 01702 39444

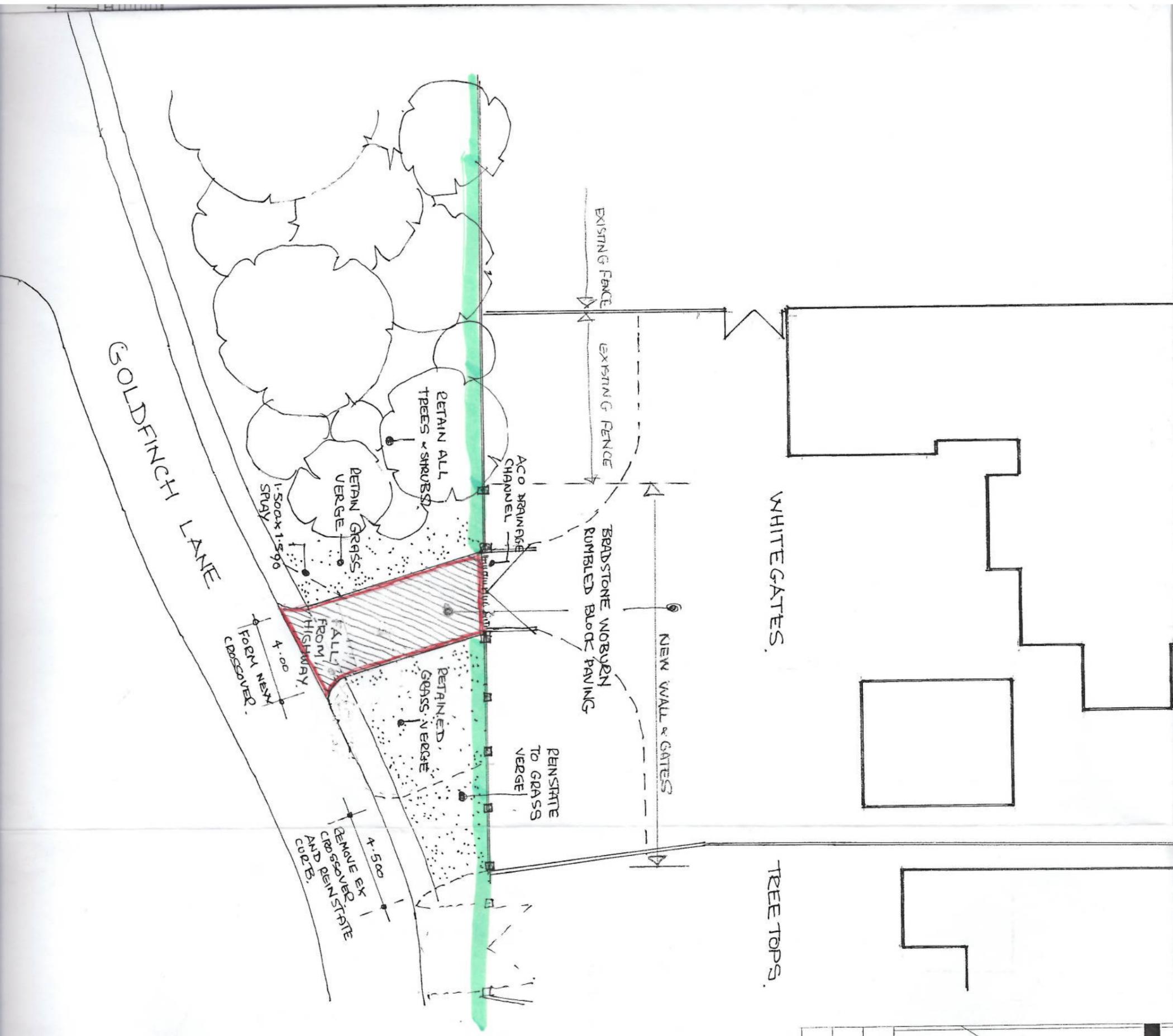
Project:
 Proposed Development of Site
 "Whitegates" Goldfinch Lane
 Benfleet,
 Essex

Client:
 .
 .

Drawing:
 Proposed Site

Scale: 1:200 Drawn by: B.D.

Drg no:
 1464/S3/ D



Proposed Location Plan
Scale 1:1250