



# Application Decision

**by Richard Holland**

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

Decision date: 11 October 2017

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## **Application Ref: COM/3178567**

### **Priory Common, Herefordshire**

Register Unit No: CL 79

Commons Registration Authority: Herefordshire Council

- The application, dated 19 June 2017, 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 Brian Griffiths.
  - The works comprise:
    - i) the upgrade of an existing entrance. The area of the entrance is 20 m<sup>2</sup>.
    - ii) the construction of a new entrance. The area of the new entrance is 38 m<sup>2</sup>.
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 19 June 2017 and accompanying plan.
2. For the purposes of identification only the location of the works are shown outlined in green on the attached plan.

## **Preliminary Matters**

3. The application is made retrospectively.
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 representations made by the Open Spaces Society (OSS) and Chris Swatland.
7. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining this application:-
  - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

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

- 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***

8. The applicant confirms that the common has no known owner and no rights are registered over the common. I am satisfied that the interests of those occupying or having rights over the land is not at issue.

### ***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 land is used by local people. The works will serve as crossings to 3 new dwellings granted planning permission (Application Number 163054). The construction of the new vehicular accessway is required by a condition of the planning permission and is required in the interests of highway safety.
10. The part of the common on which the works have taken place forms a roadside verge separated from the main part of the common to the north-west; it appears to have little recreational value. There is no indication that the works have impacted on the way the common is used by local people, and I do not consider that the infrequent use of the entrances by vehicles accessing the 3 dwellings has interfered with the way local people use the common or public rights of access. I conclude that the works have not harmed the interests of the neighbourhood or public rights of access.

### ***Nature conservation***

11. I am satisfied that there is no evidence before me to indicate that the works have harmed nature conservation interests.

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

12. The works have been carried out to conform to Herefordshire Council's highways specification for new developments. The grass edges have been restored and reseeded and a planting scheme has been agreed. The applicant explains that the works have avoided erosion and degradation to the verge; the alternative to the works would have involved the removal of a hedgerow.
13. The replacement of a grassed surface with tarmac has had a somewhat urbanising effect and some visual impact. However, given that the works only affect a small area of verge, I consider the impact on the landscape is limited and the proposed planting will help mitigate the impact. I conclude that the works will to some extent help conserve the landscape by preventing erosion of the grassed parts of the common.

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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.

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

14. I am satisfied that there is no evidence before me to indicate that the works have harmed any archaeological remains and features of historic interest.

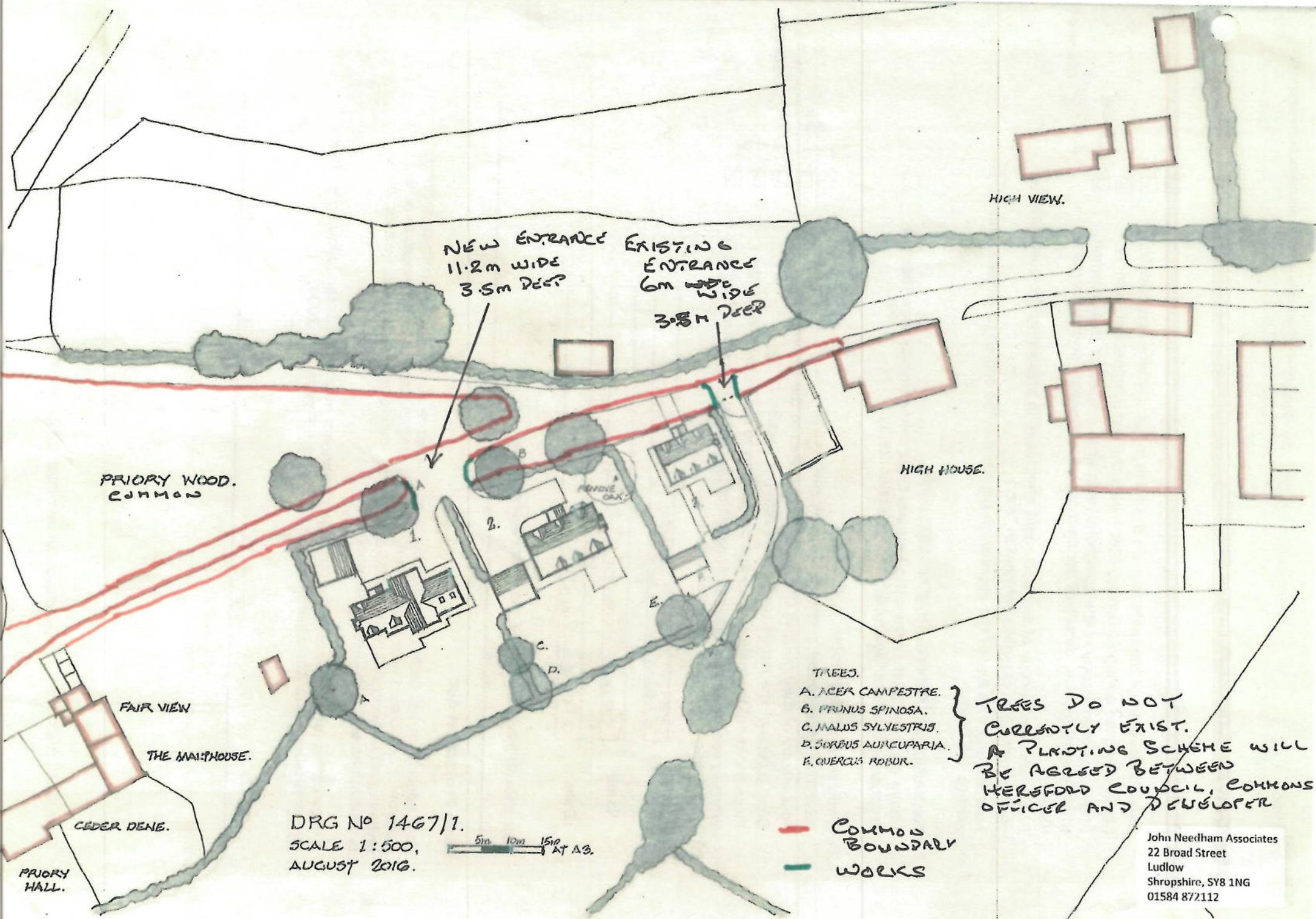
### **Other matters**

15. I note that there is some concern about the application having been made retrospectively. However, an application may be made where works have already begun or been completed.

### **Conclusion**

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'*.
17. I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above and are consistent with Defra's policy guidance. Consent is granted for the works.

**Richard Holland**



NEW ENTRANCE  
11.2m WIDE  
3.5m DEEP

EXISTING  
ENTRANCE  
6m WIDE  
3.5m DEEP

HIGH VIEW.

HIGH HOUSE.

PRIORY WOOD.  
COMMON

FAIR VIEW

THE MAIN HOUSE.

CEDER DENE.

PRIORY  
HALL.

- TREES.
- A. ACER CAMPESTRE.
  - B. PRUNUS SPINOSA.
  - C. MALUS SYLVESTRIS.
  - D. SORBUS AUCUPARIA.
  - E. QUERCUS ROBUR.

TREES DO NOT  
CURRENTLY EXIST.  
A PLANTING SCHEME WILL  
BE AGREED BETWEEN  
HEREFORD COUNCIL, COMMONS  
OFFICER AND DEVELOPER

DRG NO 1467/1.  
SCALE 1:500,  
AUGUST 2016.

5m 10m 15m  
At A3.

— COMMON  
BOUNDARY

— WORKS

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