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# Application Decision

by **Richard Holland**

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

Decision date: **8 January 2018**

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**Application Ref: COM/3176676**  
**Brill Common, Buckinghamshire**

Register Unit No: C109

Commons Registration Authority: Buckinghamshire County Council

- The application, dated 22 May 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 Brill Parish Council.
  - The application is to permanently retain existing previously consented works; the works being a bus shelter, 3 metres by 3 metres, with oak corner posts on stone bases, a pitched clay tiled roof, vandal-proof glazing on three sides and with brick paving to the ground.
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## Decision

1. Consent is granted for the works in accordance with the application dated 22 May 2017 and the plan submitted with it.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. Consent previously granted to install the bus shelter and retain it for a period of six years has now expired (Application Decision COM161 of 21 February 2011).
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 by the Open Spaces Society (OSS), which does not object to the application, Mrs Shirley Ansell (supporter) and Mr Graham Cook (objector).
7. I am required by section 39 of the 2006 Act 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);
  - b. the interests of the neighbourhood;

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

- 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 common land is owned by the applicant, Brill Parish Council (the Council). The Council has advised that grazing rights recorded in the common land register are exercised by one rights holder, who grazes 6 to 8 animals behind electric fencing. Whilst the right is not attached to any land and grazing of the animals is not confined to one place, I consider it unlikely that any animals are grazed at the bus shelter site and no one has suggested that they are. I am satisfied that the works do not harm 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 and public access test relates to whether the works affect the way the common land is used by local people. The bus shelter is located on a piece of land surrounded by the public highway in an area known as The Square in the centre of Brill village. This small part of the common has been used as a bus shelter since its construction following the granting of time limited section 38 consent in 2011. The footprint of the bus shelter takes up only a very small area of the common, the rest of which appears to have little recreational value other than for general access. The shelter does not materially interfere with public rights of access to, or over, the common nor does it materially interfere with the way the common is used and enjoyed by local people.

### ***Nature conservation***

10. There is no evidence before me that leads me to think the shelter has harmed, or will harm, any statutorily protected sites or other nature conservation interests.

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

11. The bus shelter is now an established feature of the village landscape and I do not consider such a feature to be out of place in the centre of a village where public highways converge, as is the case here. The Council considers the design to fit with the surroundings and OSS has described it as being of pleasant design. I accept that Mr Cook finds the shelter to be an eyesore. This is, of course, a subjective matter. However, I find that the sensitive design of the shelter, with its oak corner posts on stone bases, pitched clay tiled roof and brick paving give it a pleasing rustic appearance in keeping with the common. It is an attractive building and is not an intrusive feature on the common.

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

12. 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 have harmed, or will harm, any such remains or features.

### ***Other matters***

13. The 2011 consent was time limited to ensure that its need could be reviewed in the event of reduced or discontinued bus services to the village. The 2011 consent has expired and this application to permanently retain the shelter provides the opportunity for such a review. Mr Cook says that scheduled bus services have reduced considerably since 2011 and that such services may ultimately be withdrawn completely. He also says that the shelter is largely unused by children catching school busses from The Square. On this basis, he objects to the permanent retention of

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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.

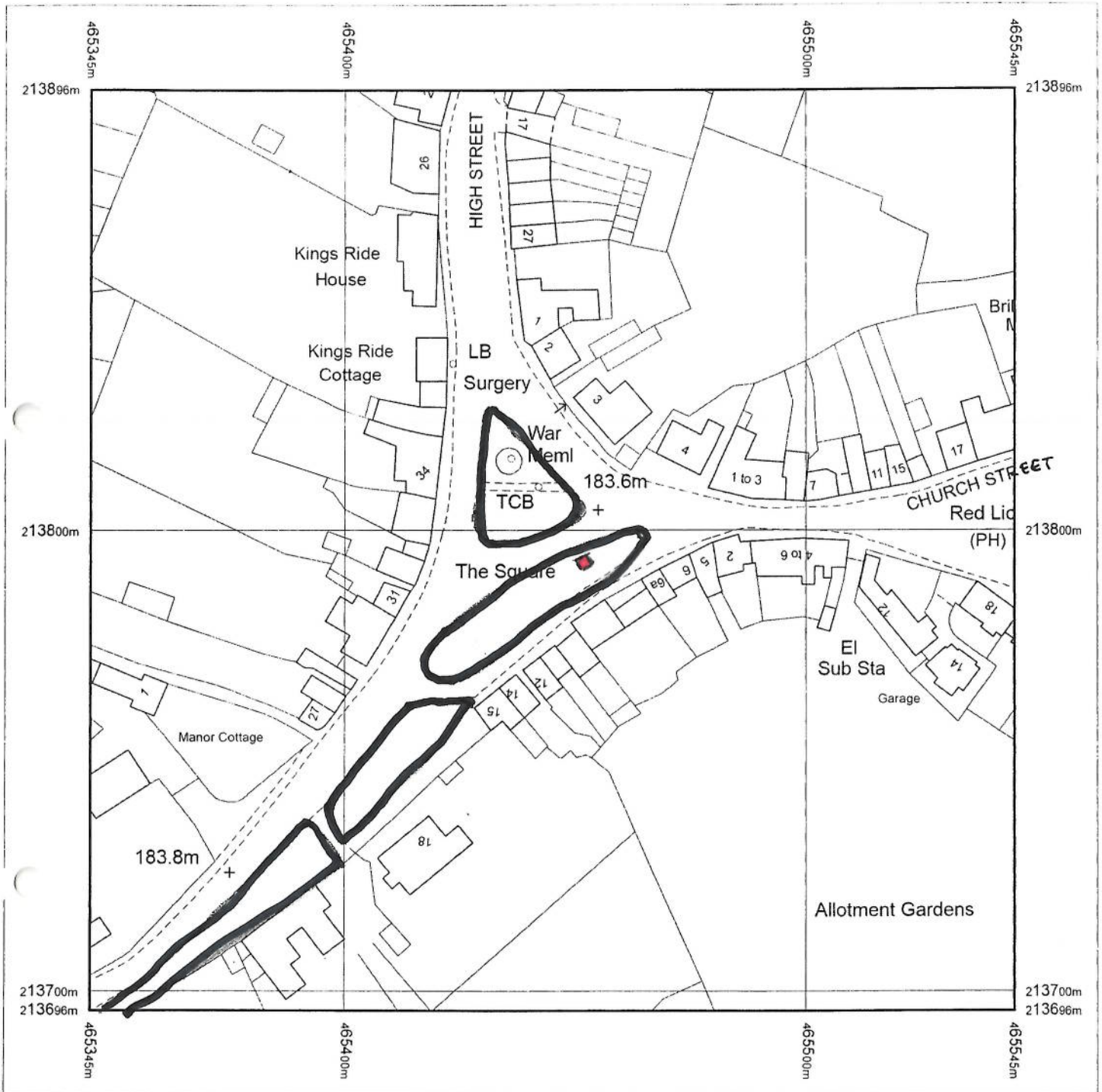
the shelter. The Council argues that whilst some scheduled services have been discontinued there remains a well-used scheduled service to Thame and a supermarket service, albeit one that is up for review. The Council also argues that around 50 children a day during term time catch school buses from The Square, many of whom use the bus shelter in poor weather. No doubt other residents who travel by bus also rely on the shelter to shield them from the elements. I give weight to the Council's point that Brill is an exposed hilltop village often buffeted by cold wind and rain and it is for this reason that the shelter was erected. No clear evidence has been presented which leads me to think that bus services to and from Brill will be significantly reduced or withdrawn altogether in the near future; the need to provide protection from poor weather for those using the bus service in the village therefore remains.

14. The number of buses currently serving Brill may, or may not, be reduced at some point in the future; on the information before me it is not possible to assess accurately what the number of buses serving Brill might be in the years to come. However, I have decided the application based on the current situation and I am satisfied that the continued provision of a shelter, while not necessarily encouraging more people to use public transport, is a valuable community facility. The shelter does not harm those having rights over the common or rights of access, nor does it harm nature, neighbourhood, landscape or archaeological interests. Furthermore, there is no reason to think that the shelter will not continue to provide a beneficial community facility for the foreseeable future; its retention is therefore in the public interest. I am satisfied that granting permanent consent is consistent with Defra's policy which recognises that some works on common land may be acceptable because, while they may not benefit the common, they confer a wider benefit on the local community.

## **Conclusion**

15. I conclude that as the bus shelter does not materially harm any of the interests outlined in paragraph 7 above and is an important community facility, permanent consent should be granted.

**Richard Holland**



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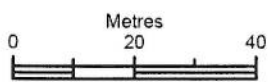
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