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# Application Decision

**by Richard Holland**

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

Decision date: 10 April 2019

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## Application Ref: COM/3218317

### Church Green, Old Buckenham, Norfolk

Register Unit Nos: CL63

Commons Registration Authority: Norfolk County Council

- The application, dated 4 December 2018, 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 Norfolk County Council (the Council).
  - The works of approximately 4 weeks duration comprise:
    - i. construction of a signalised pedestrian crossing over the B1077 road;
    - ii. extension of existing footways to the crossing on either side;
    - iii. two trapped gullies to intercept surface water at the crossing point; and
    - iv. a temporary works compound adjacent to the works area enclosing approximately 500m<sup>2</sup> with Heras style fencing for the duration of the works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 4 December 2018 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; and
  - (ii) all temporary fencing shall be removed, and the land shall be fully reinstated, within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. 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.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representation made by Natural England (NE), Historic England (HE), the Open Spaces Society (OSS) and Mr Derek Smalley, none of which object to the application.
6. 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***

7. The common land register records various grazing rights and rights of estovers over the land, which is owned by the Green Rights Proprietors. The Council separately consulted the Chair to the Green Rights Proprietors Trust (GRPT), in its capacity as the Commoners Association, and all the active rights holders about the application. GRPT did not comment. The only active commoner to comment was Mr Smalley, who supports the application. There is no evidence before me to suggest that the works will harm the interests of those occupying the land or having rights over the land.

### ***The interests of the neighbourhood, and the protection of public rights of access***

8. The commons register map is drawn such that the B1077 road forms part of the common land with extensive grassed areas on each side. The road at this point is both highway land and registered common land and all the proposed works therefore lie within the common land boundary. The works are to allow safe and controlled crossing for pedestrians at the proposed location approximately 45 metres south of the B1077/Abbey Road junction. The Council expects an increase in pedestrians wishing to cross the road following the construction of a new special educational needs school and seeks to encourage crossing at this single safe point.
9. The interests of the neighbourhood test relates to whether the works will affect the way the common land is used by local people and is closely linked with the interests of public rights of access. The combined permanent works at i, ii and iii above will take up 170m<sup>2</sup> of land, 130m<sup>2</sup> of which is within the road and is therefore unusable for recreational purposes. Most of the rest is to be taken up by extending an existing surfaced footway on the edge of the east side of the road and extending an existing unbound footpath set slightly back from the edge of the western side. As these areas of land are so close to the edge of the road, I consider it likely that they are already used as informal footways rather than for any recreational use. The remaining area is a strip linking the western footpath extension with the crossing point. Again, this area is so close to the road that I consider it unlikely to be much used for recreational purposes.
10. The temporary works compound will enclose a rectangular area of approximately 500m<sup>2</sup> with Heras style fencing for the duration of the works, which is expected to be around 4 weeks. It will be positioned on the eastern side of the road next to the crossing point. Whilst it will be an area that is closed off to public access, there is no evidence to suggest that it will interfere more widely with public access over the common, for example by crossing footpaths or desire lines or by blocking access to other areas of the common.
11. I am satisfied that public rights of access to the grassed areas on each side of the road will not be seriously harmed during the works period. I consider the permanent works to be in the interest of the neighbourhood and public access as they will provide a safe crossing point across the B1077 road from one recreational area of the common to another.

### ***Nature conservation***

12. The proposed works are not intended to directly benefit nature conservation interests. However, the Council agreed, in consultation with NE, that there was scope for the works to bring some benefits to the common's biodiversity. This will be delivered by retaining on the common wood cut

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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.

from trees during the necessary associated canopy raising work. The wood will be retained as biodiversity features to support and enhance the environment for wildlife. I consider that in this respect the works are likely to be of some benefit to nature conservation interests and there is no evidence before me that leads me to think the works will otherwise harm those interests

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

13. The common land has no special designated landscape value and includes a length of the B1077 road within its boundaries. It is nevertheless a mainly green space and the introduction of formal road crossing infrastructure will be somewhat visually intrusive. However, in the absence of a formal crossing point to serve an expected increase in pedestrians wishing to cross the road, it is likely that multiple informal crossing points will be used which will increase footfall over grassed areas of the common and cause unsightly wear and tear. I consider that, on balance, landscape interests are best served by creating a controlled crossing point and that the works are in the interests of the landscape in the long term.

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

14. HE has no objections to the application on heritage grounds as there are no Scheduled Ancient Monuments or listed buildings situated within the common or adjacent to it. HE notes that the site may have some archaeology sensitivity and copied its representation to the Council's Historic Environment Service, which did not subsequently comment on the application. There is no evidence before me to suggest that the works may harm any archaeological remains or features of historic interest.

### **Conclusion**

15. I conclude that the proposed works will confer a public and neighbourhood benefit by improving access from one area of the common to another across the B1077 road and will not harm the other interests set out in paragraph 6 above. The works may also bring some small benefits to nature conservation interests and protect the landscape from footfall wear and tear. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

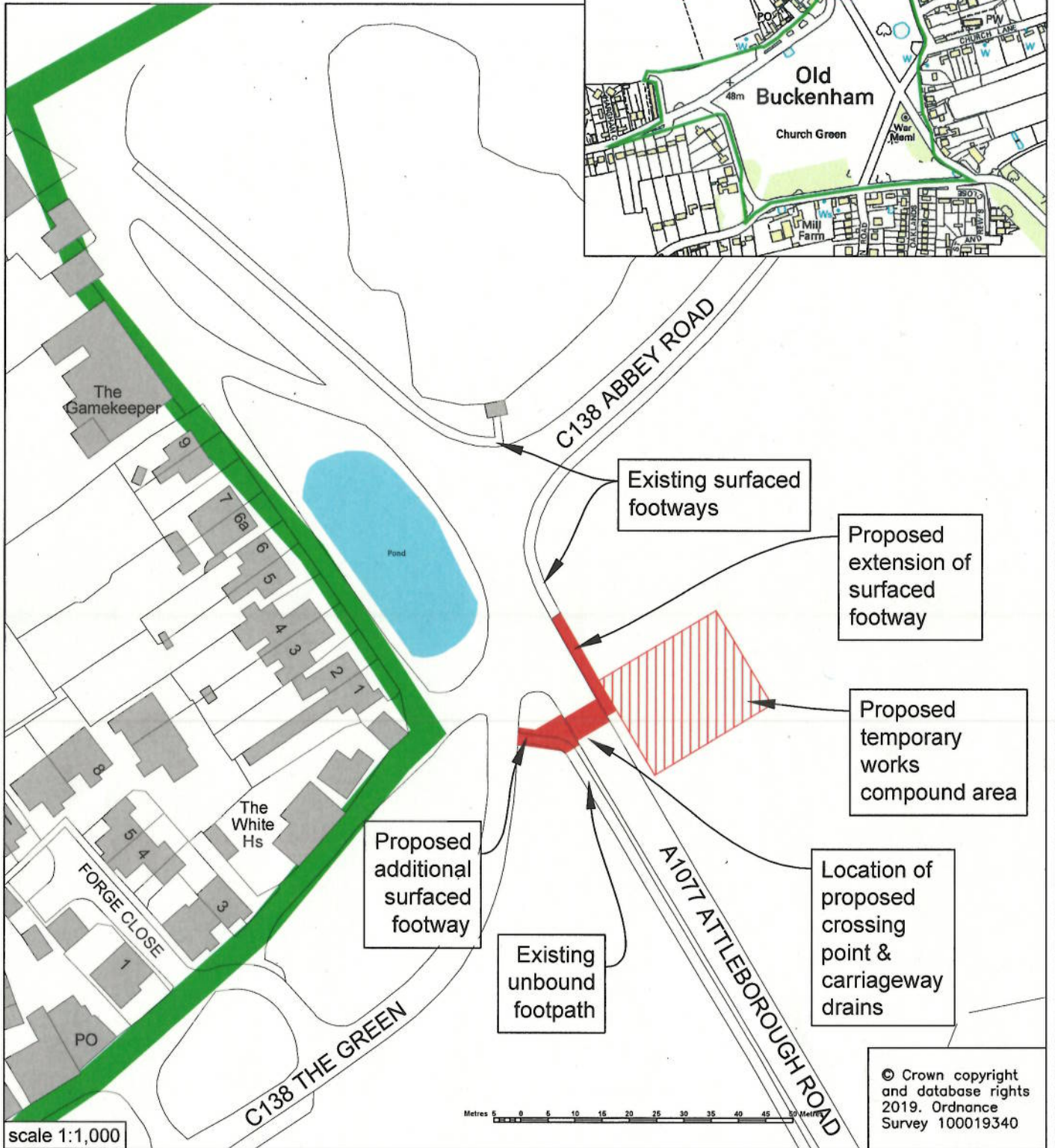
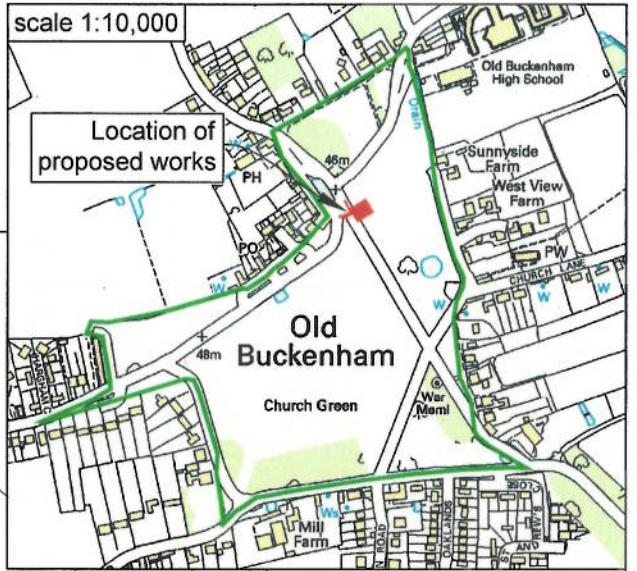
**Richard Holland**

Boundary of common land marked in green

Site of the proposed works shown in red

Solid red for permanent works, hatched area for temporarily fenced off compound / storage area

scale 1:10,000



scale 1:1,000

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 **Norfolk County Council**

DRAWING TITLE

Old Buckenham, The Green  
Pedestrian Crossing Construction  
Section 38 Application Plan

**Tom McCabe**  
Executive Director of  
Community and Environmental Services  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich NR1 2SG

REV.	DESCRIPTION	DRAWN	CHECKED	DATE

INIT.	DATE	DRAWING No.
SURVEYED BY OS	2018	PHA022-100-200
DESIGNED BY TS	11/18	PROJECT TITLE
DRAWN BY TS	11/18	Old Buckenham, The Green
CHECKED BY		Pedestrian Crossing Construction
		SCALE
		1:1k/10k @ A4
		FILE No.
		PHA022