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# Application Decision

by **Richard Holland**

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

Decision date: 9 June 2020

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**Application Ref: COM/3247012**  
**Braintree Green, Essex**

Register Unit No: CL31

Commons Registration Authority: Essex County Council

- The application, dated 6 February 2020, 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 Shire Hall Homes.
  - The works to an existing 12m long track serving Builders Yard from Queenborough Lane comprise: i) resurfacing the first 6m (27.3m<sup>2</sup>) from Queenborough Lane with bedded gravel (bound surface) and the remainder with free draining gravel; and ii) installation of 10cm wide granite set edging.
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## Decision

1. Consent is granted for the works in accordance with the application dated 6 February 2020 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. the land shall be fully reinstated within one month of 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. Planning permission for erection of a four-bedroom dwelling with garage at Builders Yard was granted on 25 May 2018 by Braintree District Council (Application 18/00180/FUL).
5. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Historic England (HE), the Open Spaces Society (OSS) and Rayne Parish Council, none of which raised objections to the proposed works.

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

6. 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;
  - 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 land is owned by the applicant, Shire Hall Homes. The common land register records rights in favour of Pear Tree Cottage to cut and take tree loppings, peat or turf and to graze one horse or pony, three goats and 20 head of poultry over the whole of the register unit. The applicant advises that the rights are not exercised and that the residents of Pear Tree Cottage were consulted verbally about the application. The residents have not commented on the application.
8. I am satisfied that the works are unlikely to harm the interests of those having rights in relation to, or occupying, the land.

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

9. The existing track will serve as a driveway for the new dwelling at Builders Yard. The applicant advises that the track has been poorly maintained but already has a dropped kerb to the highway and may previously have had a bound surface. The works are proposed in accordance with Condition 8 of the planning permission (landscaping) relating to the laying of hard surfaces. The purpose of the condition is, amongst other things, to prevent any unbound materials escaping onto the highway, which could cause an accident.
10. 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 public rights of access. The applicant advises that the common land is subject to rights of access on foot and on horseback under section 193 of the Law of Property Act 1925.
11. The works are proposed along an existing track and will be flush with the surrounding land. The works will be completed in a matter of days without use of any temporary fencing and, once laid, the bound surface will be immediately accessible as there is no curing time. I am satisfied that the works will have a negligible impact on the interests of the neighbourhood and public rights of access as local people and the wider public will continue to be able to walk or ride over the track as before.

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

12. Natural England was consulted about the proposals but did not comment. HE advised that it had no objections to them. There is no evidence before me to suggest that the proposals will harm the above interests.

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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.

### **Conservation of the landscape**

13. The applicant advises that a bound gravel surface was chosen for the Queenborough Lane end of the track to blend in with the proposed free-draining natural shingle surface at the other end. I agree that together they will create a more natural looking finish than block paving or tarmac. The applicant confirms that any earth or grass either side of the track that is disturbed by the works will be replaced and topped with grass seed or turfed as necessary, which can be secured by attaching a suitable condition to the consent. Growth will be monitored so the grass fully recovers and the granite sets will prevent the track from eroding and spreading sideways. I am satisfied that the works will improve the appearance of the existing poorly maintained and unsightly track.

### **Other matters**

14. Defra's policy 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... The Secretary of State takes the view that, in some circumstances, a paved vehicular way may be the only practical means of achieving access to land adjacent to the common. Where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable.*' I am satisfied that the proposed works to improve an existing track are consistent with Defra's policy objectives.

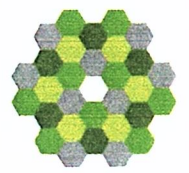
### **Conclusion**

15. I conclude that the works will not harm the interests set out in paragraph 6 above and will improve the appearance of the existing track. Consent for the works should therefore be granted.

*Richard Holland*

HM Land Registry  
Official copy of  
title plan

Title number **EX832145**  
Ordnance Survey map reference **TL7322SW**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **Essex : Braintree**



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