



# Application Decision

**by Richard Holland**

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

Decision date: 4 November 2020

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**Application Ref: COM/3258441**  
**Churchend Green Common, Hertfordshire**

Register Unit No: CL 13

Commons Registration Authority: Hertfordshire Council

- The application, dated 13 August 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 Settle Group.
  - The works comprise two accesses of 5 m in width. The total area of hard surfacing is approximately 20 m<sup>2</sup>.
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## Decision

1. Consent is granted for the works in accordance with the application dated 13 August 2020 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.
2. For the purposes of identification only the location of the works is shown hatched within the green common land boundary 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 the Open Spaces Society (OSS).
6. 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);
  - 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***

- 7. The owner of the common has been consulted about the application and has no objection. The applicant confirms that the registered right of common is not exercised. I am satisfied that the works will not impact the interests of those occupying or having rights over the land.

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

- 8. 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 applicant explains that the common is a neglected area of verge and ditch in front of a mature hedge bordering an area of private garden. The works are needed to facilitate vehicular access to two new dwellings granted planning permission (20/00227/FP) and include pedestrian access, visibility splays, culvert and service ducts. This area of common will be maintained by the occupants of the new dwellings.
- 9. There is no indication that the narrow roadside area of verge is well used for recreation or access and the works will have little or no impact on how the common is used since people will continue to be able to access the site. I am satisfied that the works will not impact the interests of the neighbourhood or public rights of access.

### ***Nature conservation***

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

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

- 11. The applicant has advised that the extent of hardstanding has been kept to a minimum and is likely to consist of tarmac hard surface between the road and the residential plots. Two lengths of hedgerow will need to be removed to form the accesses but the remainder will be protected from construction work.
- 12. The common has no special landscape designation. The tarmac surface will, by its nature, have an urbanising impact on the landscape. However, I consider that as the works involve very narrow strips of roadside verge any impact is likely to be limited. I conclude that the works will not seriously harm the landscape.

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

- 13. I am satisfied that there is no evidence before me to indicate that the works will harm any archaeological remains and features of historic interest.

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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.

## Conclusion

14. 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'. However, by its very nature, paving will have an impact on the enjoyment of the common, by reducing the area available for recreation and grazing, by causing harm to habitat, perhaps by affecting drainage, and by introducing an urbanising feature into what will normally be an essentially open and natural setting. 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'*.
15. I conclude that the works will not unacceptably harm the interests set out in paragraph 6 above and are consistent with Defra's policy guidance. Consent is granted for the works.

*Richard Holland*

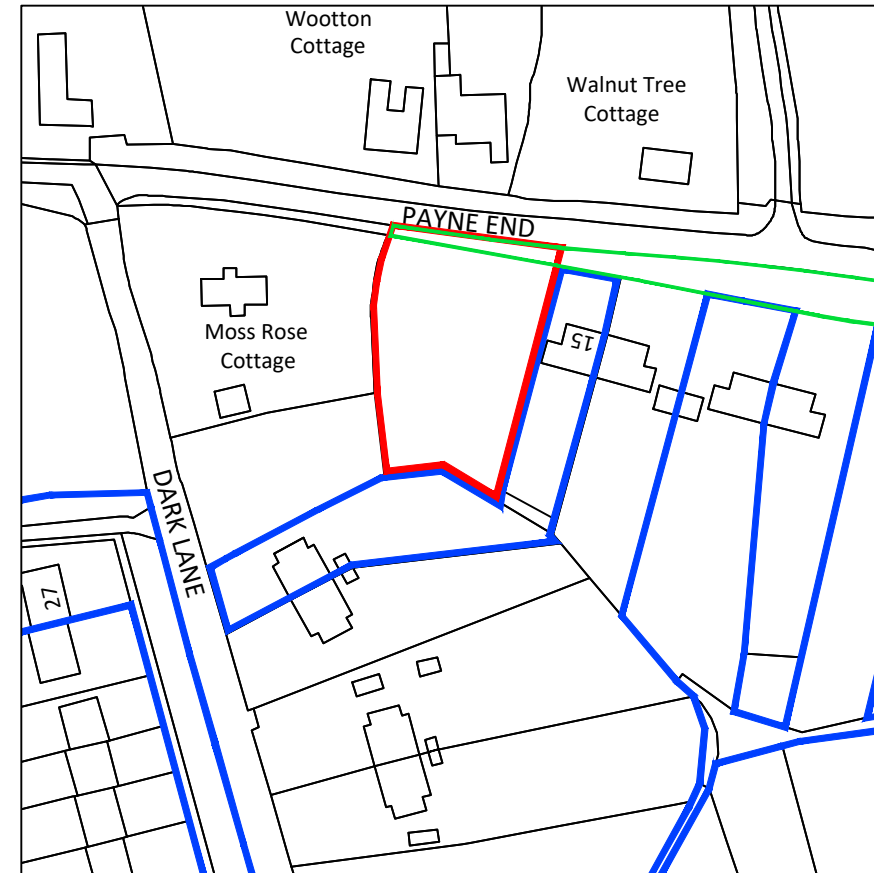
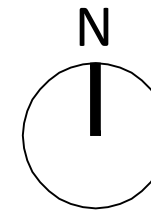
GENERAL NOTES

This scheme is subject to Town Planning and all other necessary consents. Dimensions, areas and levels where given are only approximate and subject to site survey. All dimensions are to be checked on site. All feasibility studies are subject to full site survey.  
 This drawing is to be read in conjunction with all relevant consultants and/or specialists drawings/documents and any discrepancies or variations are to be notified to the architects in writing before the affected work commences. All queries relating to design of structural elements are to be referred to the structural engineering consultant for resolution.  
 The workmanship and materials of all trades and building operations shall comply with the recommendations of British Standard (BS)8000 parts 1-16 inclusive and with Approved Document to support Regulation 7 1999 edition (incorporating 2000 amendments) of the Building Regulations 2010.  
 All design and construction is to be in accordance with the Construction (Design and Management) Regulations 2007.

Rev	Date	Description	By
A	16.09.2020	Common Land boundary indicated and key added	LN

KEY

- Site boundary
- Land under same ownership
- Common Land boundary



Scale @ 1:1250

60m 50m 40m 30m 20m 10m 0m

Location Plan

GENERAL NOTES

- Area of Common Land relevant to the development
- Development area

**Access Point A** Single vehicular driveway and pedestrian access to be constructed to approved Civil Engineer design including culvert, service ducts, etc to facilitate residential development all in accordance with relevant and current Planning and Building Regulation approvals and subject to Section 278 Agreement with Herts County Council.

**Access Point B** Single vehicular and pedestrian driveway access all as per details for Access Point A (above).

Vehicular and pedestrian accesses are subject to a signed Legal Agreement with the Common Land landowner for all construction works over the Common Land from the public highway to the development area.

Vehicle to vehicle visibility splays of 2.4 metres (at centreline of access from back edge of carriageway) by 31.0 metres in both directions shall be provided and permanently maintained, within which there shall be no obstruction to visibility between 0.6m and 2.0 metres above the carriageway level.

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COMMON LAND

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Project  
**Land Adjacent 15 Payne End**  
 Sandon

Drawing Title  
**Site & Location Plans**  
 Section 38 Agreement

Drawn	Date	Checked	Scale @ A3
LN	June 2020	/	1:200 / 1:1250
Job No	Drawing No	Revision	Note
2019-10	PL.003	A	



Scale @ 1:500

25m 20m 15m 10m 5m 0m

Site Plan