



## Application Decision

Site visit made on 14 November 2017

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 15/01/2018**

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**Application Ref: COM/3176568**

**Coldhams Common, Cambridge**

Register Unit: CL 61

Registration Authority: Cambridgeshire County Council

- The application, dated 18 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 Mr Joyce for Cambridgeshire County Council ("the Council").
  - The application is for works to be carried on the common which are linked to the provision of a cross-city walking and cycling route. The proposed temporary and permanent works are outlined in paragraphs 8-10 below.
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### Decision

1. Consent is granted for the proposed works in accordance with the application and subject to the following conditions:
  - The works shall commence not later than 3 years from the date of this decision.
  - All pedestrian gates to be provided shall be compliant with BS 5709.
  - The land enclosed by the temporary fencing shall not exceed 10 metres in width and this fencing shall only remain in place for the duration of each phrase of the approved works on the common.
  - All of the temporary fencing shall be removed from the common within 20 weeks of the commencement of the approved works.

### Preliminary Matters

2. For the purpose of identification only the locations of the works are generally shown on the attached plan.
  3. Around 140 representations were submitted in response to the advertisement of the application. These on the whole support the proposed scheme. In contrast, an objection was submitted by Mr Smith of the Friends of Coldhams Common.
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4. I note that Mr Smith requested that a public inquiry be held. However, I am satisfied that I can reach my decision in light of the written submissions of the parties and my observations of the site. I did nonetheless request additional information from the Council on particular issues and Mr Smith has commented further on the details provided. Although he questions the nature of the consultations undertaken by the Council, the details provided outline that the specific advertisement requirements in relation to this application were properly undertaken.
5. It is not my role to address the temporary closure or permanent alteration to the existing public rights of way network. Any dedication of additional public rights of way would be a matter for the landowner. Whilst both consent for works to be undertaken on the common and the grant of planning permission are required to enable the proposed works to take place, these are separate processes. I see no reason for my decision to be deferred until documents discharging conditions have been submitted and accepted by the planning authority.
6. My decision only relates to the issue of whether certain works should be permitted to take place on the common. Any additional works, for which consent is required, will lie outside of the scope of this application. I note that reference is made in the representations to the provision of a temporary footbridge. However, it may be the case that the provision of a temporary structure to facilitate public access would not constitute restricted works for which consent is required under Section 38 of the 2006 Act.

### **Main Issues**

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;
  - (c) the public interest<sup>1</sup>;
  - (d) any other matter considered to be relevant.

### **Reasons**

#### ***The application***

8. This application relates to the carrying out of works on the common to:
  - realign and reduce the width of some of the existing path between Coldhams Lane and the subway<sup>2</sup> underneath the railway line;
  - replace existing cattle grids and gates;
  - widen and realign the existing path between the railway line and an existing culvert;

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<sup>1</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.

<sup>2</sup> The underpass itself lies outside of the registered common

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- realign an existing section of path from Pool Way near the railway underpass;
  - replace the existing culvert with a bridge which will have a span of 10 metres and width of 4.5 metres and realign the path in this locality;
  - widen the existing path from the replacement bridge to Newmarket Road;
  - construct a new path from the above path to the bridge described below;
  - construct a bridge over the Coldhams Brook with a span 16 metres and width of 4.5 metres with associated cattle grid and gate; and
  - erect temporary fencing for the duration of the works and permanent fencing at the side of the bridges and cattle grids.
9. The paths will be mainly 3.5 metres wide with timber edging and an asphalt finish. However, there will be variations at specified locations. Where the width of an existing path is to be increased it will be widened with a subbase of around 150 millimetres deep next to the existing path with a new surface for the whole path. The redundant sections of path will be removed and returned to grassland.
10. Where cattle grids and bridges are to be installed the works will involve significant local digs to form the bridge abutments or to position the cattle grids.

***The interests of those occupying or having rights over the land***

11. The common is owned by the Mayor Alderman and citizens of Cambridge. It is apparent that matters in respect of the common are administered by Cambridge City Council ("the City Council"). The City Council supports the proposals contained in the application.
12. No information has been provided to indicate the relevance of the alleged charitable status of the land. The issue to be determined is the impact of the proposed works on any occupier of the land or anyone enjoying rights over the common. There is a registered right to graze geldings, mares and cows (124 in total) between 1 April and 30 November each year. These rights are regulated by the City Council. Whilst Mr Smith raises concerns about how the grazing rights have been offered, this is not a matter for me to comment on.
13. The area of grazing land available will not be significantly diminished by virtue of the proposed permanent works. Some land will also be returned to grassland. Although Mr Smith refers to stock and machinery being placed on the wide surfaced area towards Coldhams Lane, a reduction in its width would generally be beneficial to the appearance of the common. The temporary works would be limited in terms of their duration for each location.
14. The purpose of the cattle grids is to prevent stock from leaving the grazed areas. In this respect, these works would facilitate people who obtain the right to graze animals on the common. The new cattle grids on either side of the underpass would generally serve as replacements for the present cattle grids in these locations. There is no indication that the existing arrangements for the movement of stock to different parts of the common will cease to be applicable. I address the cattle grids for the purpose of stock control further in paragraph 25 below.

15. No evidence has been provided to support Mr Smith's assertion that the removal of the culvert will have an adverse effect on access for the landowner and commoners. The Council says there are no vehicular rights over the common. However, the Council outlines that the replacement bridge will take the weight of a light vehicle if necessary. There is nothing to suggest that the works proposed would have an adverse effect on any other rights over the common.

***The interests of the neighbourhood***

16. No particular issues are raised specifically in relation to the interests of the neighbourhood. Nonetheless, some of the points addressed below regarding the public interest are also likely to impact upon local people.

***The public interest***

17. Paragraph 3.2 of the Common Land consents policy issued by the Department for Environment, Food and Rural Affairs outlines one of the outcomes sought is that *"works take place on common land only where they maintain or improve the condition of the common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact"*.
18. The proposed works aim to facilitate access for pedestrians and cyclists. I acknowledge the point made by Mr Smith regarding there being no right to cycle on a footpath. However, as outlined below, the existing route through the common is used by cyclists and there is nothing to suggest that this permissive use will cease. I agree with some of the supporters that the widening of the existing path across Coldhams Common could potentially assist in maintaining the condition of the common by reducing the need for people to deviate from the surfaced path. Nonetheless, I consider that the application needs to be determined predominantly in light of the alleged wider public benefit.
19. There is an existing tarmac path between Coldhams Lane and Newmarket Road which corresponds in part to public rights of way. Whilst this is not a retrospective application, it is apparent that the tarmac path largely follows the proposed alignment of the route the Council wishes to provide between Coldhams Lane and Newmarket Road. No information has been provided in terms of when this surface was put down but the Council says it was carried out prior to 1989. There is nothing to prevent a wider width from being provided for the public to use in relation to an existing public right of way.
20. The Council refers to the heavy use of the existing path. My visit took place early in the afternoon outside of peak hours and I observed a fair amount of use by pedestrians and cyclists. I also noted that there are entrances to the Abbey Football Stadium which are accessed via the existing path. Whilst the cyclists I encountered were not travelling particularly fast, it was clear to me that there was only just enough room for the different types of users to pass each other. Further, it was not always apparent that a cyclist was approaching from behind. It is evident from the representations of the supporters and my observations of the site that the proposal to provide a surfaced path of around 3.5 metres would assist both cyclists and pedestrians in terms of safety and convenience of access for users of this route. I am not convinced that a suggested narrower path with passing places at intervals would be suitable for a busy dual use route.

21. Overall, in light of the present circumstances, I consider that the provision of a surfaced path with a suitable width between Coldhams Lane and Newmarket Road would be of widespread benefit for local residents and the public generally. Any drainage measures in relation to the path would be a matter for the Council to determine. There is nothing to suggest that there are any drainage problems in respect of the existing path. The replacement bridge would also serve to maintain access for the public and I accept that the parapets for both bridges are required for safety reasons.
22. An additional spur would connect the above path with the proposed new bridge. This proposal is linked with the continuation of the route beyond the common to a proposed underpass under Newmarket Road. The proposed route is clearly linked to the provision of a safe alternative route for cyclists and pedestrians. Reference has been made to the high rates of cycling use in Cambridge and this was evident from my observations of this locality. I therefore conclude that the additional spur will be of significant benefit to the public. The controlled crossing at Newmarket Road for people using the existing route will nonetheless remain available for the public to use. In terms of the potential benefits for private parties mentioned by Mr Smith on land away from the common, I do not give any weight to these issues.
23. The works to widen and realign the existing path, including the replacement bridge, will have a slightly greater visual impact on the common. There will be more of an impact in terms of the spur path and new bridge. However, these issues need to be weighed against the public benefits arising out of the upgrading and creation of routes for cyclists and pedestrians in this area.
24. It is proposed to construct a short section of path to the Pool Way, which is located to the north of the underpass. This section generally corresponds to a worn path visible in the grass and I observed use of this route by a couple of cyclists during my visit. The Council says the new section of path is designed to provide better visibility in relation to the underpass and the existing section of tarmac path will be returned to grass. I accept from the details provided that there will be no increased visual impact on the common and there is a potential benefit for the public in the realignment of this path.
25. There are a number of structures presently in place on the common which include fencing, cattle grids, gates and squeeze stiles. The replacement of the cattle grids on either side of the railway albeit on a slightly different alignment is reasonable to prevent stock congregating in the confined underpass. An additional cattle grid in relation to the intended entry point on the western boundary of the common would prevent stock from straying from the common.
26. I noted from my visit that cyclists passed over the grids unhindered. Clearly cattle grids are not easily traversed by pedestrians. In this respect, the draft design of the cattle grids makes provision for a 1.2 metre wide self-closing gate at the side of each grid to facilitate pedestrian access. If properly designed this arrangement should facilitate access for people with limited mobility, including wheelchair users. In terms of the references to the potential use of squeeze stiles, these are a more restrictive option. Therefore, I do not consider that public access will be restricted if an accessible gate is provided adjacent to each of the new cattle grids. For the avoidance of doubt, any consent should be conditional on such a provision.
27. The temporary fencing is intended to keep people and animals away from the working area and to provide a safe site for construction workers. It may also

- be necessary for the storage of equipment. The undertaking of the works outside of the grazing period will not prevent the need for the safety fencing. It is nonetheless apparent that only a limited part of the common would be unavailable at any one time. The Council estimates that the fencing would encompass a strip of land around 9.5 metres wide.
28. I am not satisfied that the temporary fencing would have a significant impact on the public's use of the common. Further, the Council stresses that public access will remain albeit subject to diversions at times. I note that during the period the temporary fencing would be in place matting is to be provided to assist with ease of access. In particular circumstances people can be escorted through the site. However, I share the concerns of Mr Smith regarding the potential lack of control over the temporary fencing. Therefore, if consent is granted, conditions should be imposed in terms of the overall period allowed for the fencing, the width of the area to be fenced and for the fencing to be erected in conjunction with the phased works.
29. Mr Smith refers to the presence of four listed buildings, which I take to correspond to those in the locality of Newmarket Road. He also makes some general points in relation to ecology. In response, the Council says all matters relating to ecology and heritage were addressed in full in relation to the planning application.
30. I noted during my visit that the common is well screened from Newmarket Road by vegetation. Nothing has been provided, or was apparent from my observations, to suggest that the proposed works on the common would have a permanent impact on the heritage setting of these buildings. In this respect, I note that no adverse comments were received from Historic England or the local authority's archaeological service. There is also a condition in the planning permission in respect of a programme of archaeological works.
31. Coldhams Common is stated to be a local nature reserve and county wildlife site. The Council says that the other sites mentioned are located to the west or east of the common, including in the locality of the proposed bridge. However, Mr Smith believes that the common also comes partly within the Coldhams Brook City Wildlife Site. On this issue, the commons registration plan is unclear. No comments have been received from Natural England or the local wildlife trust to indicate that the proposed works on the common would have a significant detrimental impact on the ecology in this area.
32. Clearly there will be works undertaken in relation to the replacement bridge and the new bridge that are likely to have some impact on the sections of watercourse they would cross. In terms of the proposal to replace an existing culvert with a bridge, the Council outlines that bridges are more sympathetic to the movement of aquatic mammals. The Council also outlines that the tree works would be kept to an absolute minimum and carried out under the supervision of the City Council's ecologist. In respect of the protected species mentioned by Mr Smith, no information has been provided to indicate that they are at risk from the proposed works on the common.
33. From the information supplied, I do not consider that it has been shown that there will be any significant adverse effect on the ecology of the area arising out of the proposed works on the common. Further, the works cannot proceed in accordance with the planning permission until particular conditions have been satisfied. Of particular note are the conditions for tree protection, a Construction Environmental Management Plan, Ecological Design Strategy and

Landscape Ecological Management Plan. I have given careful consideration to whether any consent for works on the common should be conditional on the discharge of particular conditions in the planning permission. However, I am not satisfied that it is necessary to do so.

### **Conclusions**

34. There is nothing to show that any party occupying or having rights over the common would be adversely affected by the proposed works. These works would not have a permanent adverse impact on the public rights of access. I consider that the proposed scheme would provide significant benefits for local residents and members of the public generally and this is supported to a large extent by the representations in support. It will lead to improved public access over the common.
35. In my view, the benefits of the scheme for the public outweigh the visual impact of the works. It has not been shown that the proposed works would have an adverse impact on any archaeological remains or features of historical interest. Further, it cannot be determined that the scheme will have a significant effect on the ecology of the area. There are also conditions in the planning permission which seek to ensure that measures are put in place to address any ecological issues.
36. Having regard to these and all matters raised in the written representations I conclude on balance that consent should be granted subject to conditions being imposed in relation to the works to be undertaken.

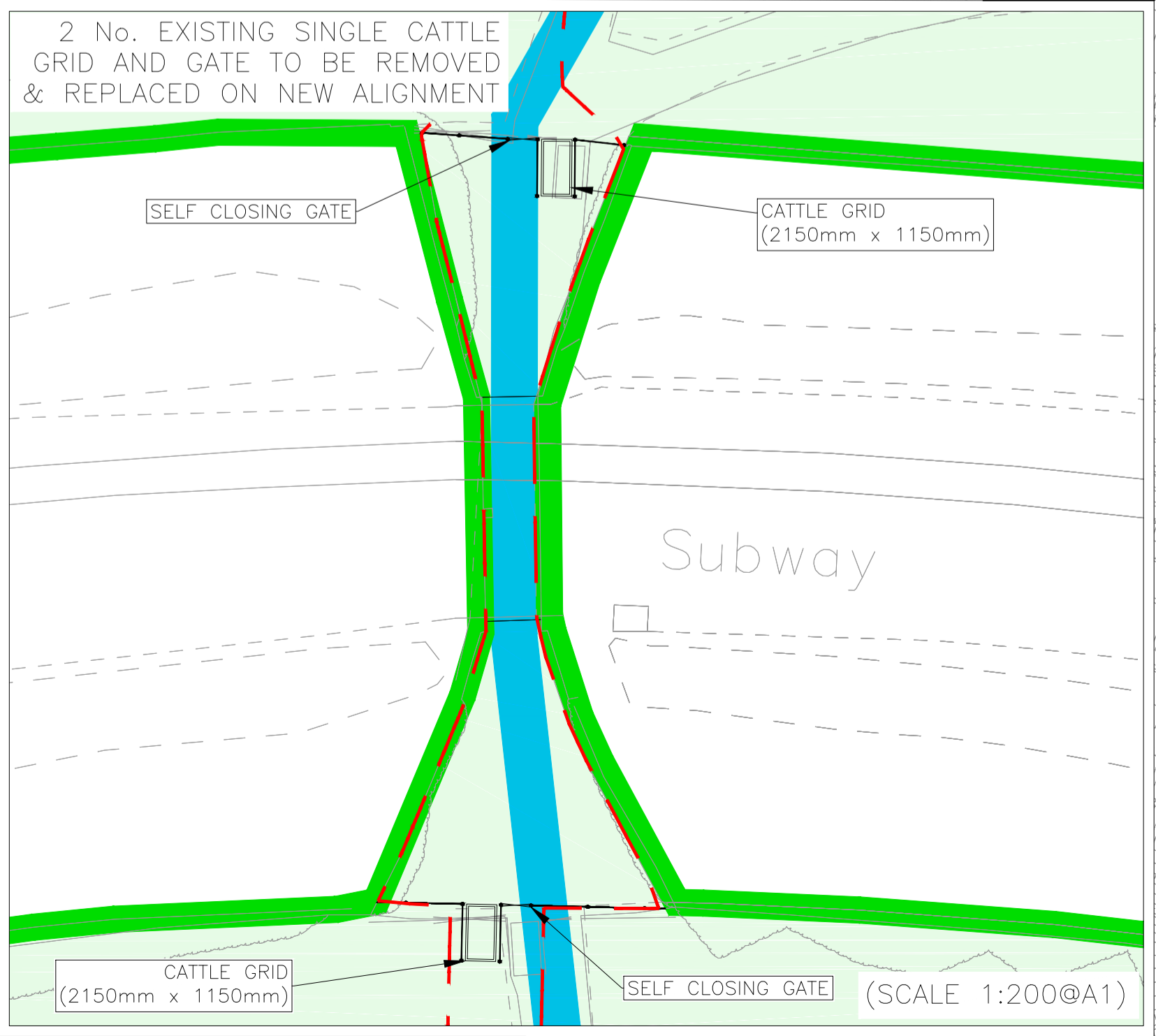
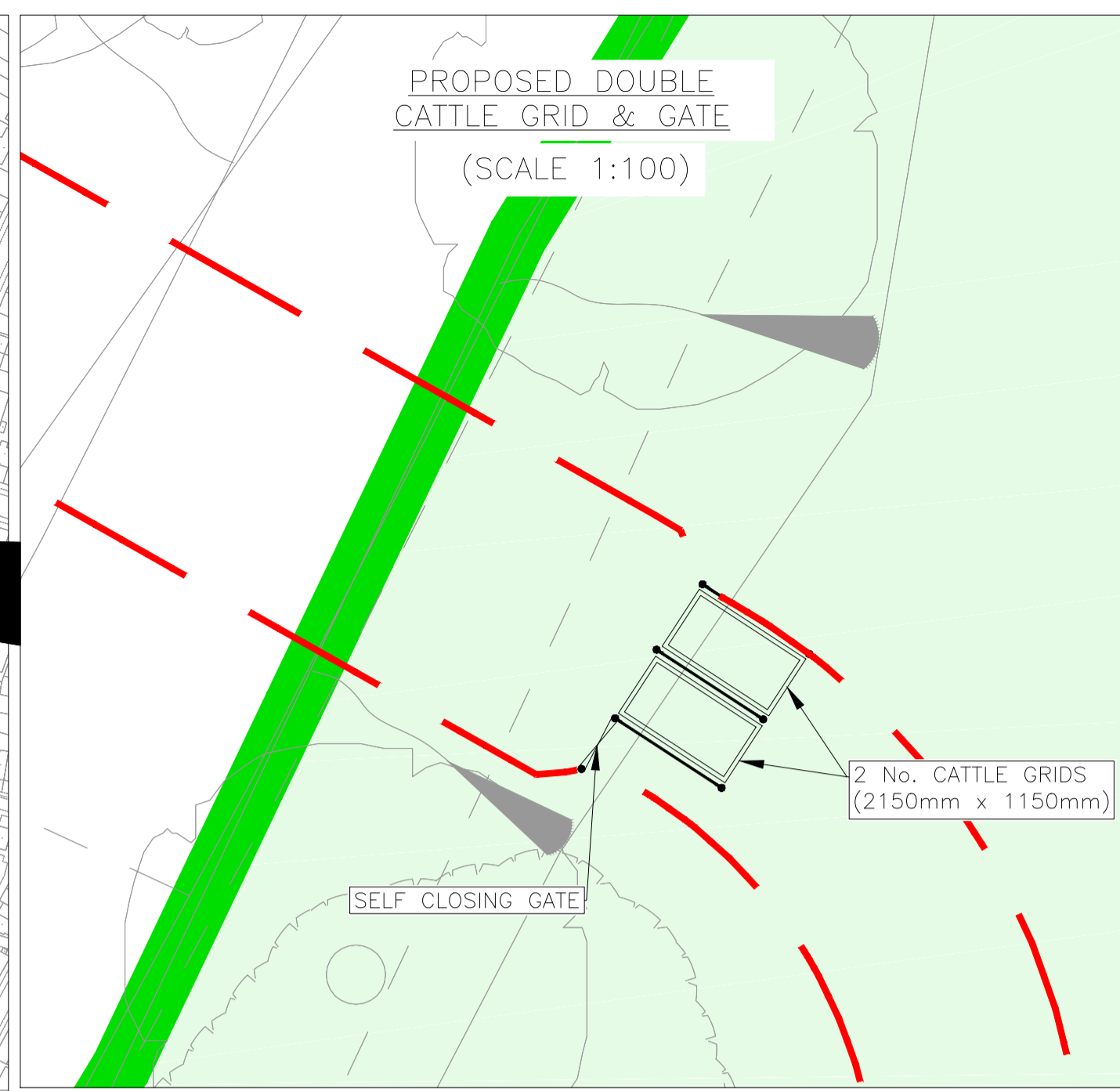
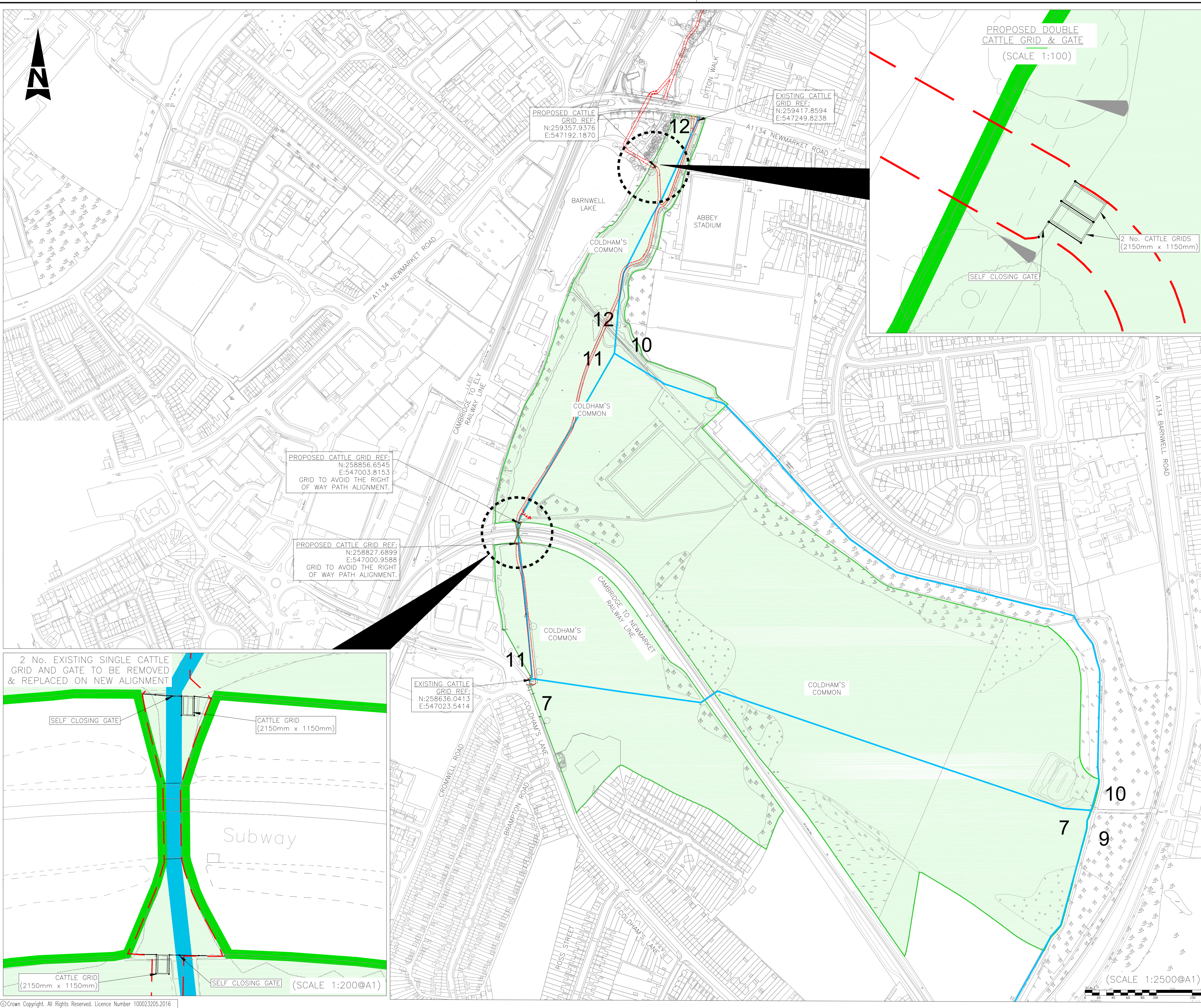
### **Other Matters**

37. Some additional matters have been raised that are not relevant to my decision, such as other works that have occurred elsewhere on the common. Further there is nothing to demonstrate that access to the common for the emergency services will be hindered to any greater extent by the proposed works.

*Mark Yates*

**Inspector**





**KEY**

- DEFINITIVE RIGHT OF WAY PATH ALIGNMENT WITH ROUTE NUMBER.
- REGISTERED COMMON LAND
- PROPOSED FUTURE ROUTE

**NOTE**

PROPOSED CATTLE GRIDS ARE TO BE POSITIONED OFF THE DEFINITIVE RIGHT OF WAY PATH ALIGNMENT.

**SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION**

IN ADDITION TO THE HAZARDS/RISKS NORMALLY ASSOCIATED WITH THE TYPES OF WORK DETAILED ON THIS DRAWING, NOTE THE FOLLOWING SIGNIFICANT RESIDUAL RISKS.

CONSTRUCTION	NONE
MAINTENANCE/CLEANING	NONE
USE	NONE
DECOMMISSIONING/DEMOLITION	NONE

B ALIGNMENT OF CATTLE GRIDS	CM	04/17	RLB	TL	
Rev	Description	By	Date	Chk'd	Auth
B	FOR COMMENT		04/17		TL
A	FOR COMMENT		01/17		TL
Rev	Purpose of Issue	Date	Auth		

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Client

Project **CHISHOLM TRAIL**

Title **COLDHAM'S COMMON WORKS CONSENT DEFINITIVE PATHS ALIGNMENT**

Original Scale	Designed/Drawn	Checked	Authorised
As Shown	NT	RLB	TL
Status	Drawing Number	Date	Date
I	5040130/HW/CCWC/101	01/12/16	18/01/17
Rev			