

SUMMARY OF SUPPLEMENTARY GUIDANCE REGARDING COMMON LAND USE

For clarification, Brimpsfield Parish Council is not the LPA, (Local Planning Authority)

Introduction

Legal Notes relating to common land were published by Brimpsfield Parish Council in May 2025 summarising the general position for both areas of common land within the Parish. See this link [Legal Notes 2025](#)

Additional clarification with reference to driving and parking on the common land in Caudle Green has since been sought from Richard Tyson¹

The Open Spaces Society and GAPTC (now GALC) were also consulted on these issues.

Guidance from Richard Tyson confirmed by the Open Space Society:

Vehicles on common land in general

1. Driving

Section 193 of the Law of Property Act 1925 makes it a criminal offence for a person to drive "any carriage, cart, caravan, truck, or other vehicle" on common land without lawful authority. The landowner may grant the authority that is needed for such driving not to constitute an offence.

Section 34 of the Road Traffic Act 1988 makes it unlawful for a person to drive "a mechanically propelled vehicle" on any common land without lawful authority. Normally, it is for the landowner to grant permission, and he may wish to consider questions of amenity when deciding whether or not to grant the required authority (but he is not obliged to do so). Under the Act, it is not a criminal offence to:

- drive on common land in emergency situations, nor
- drive over common land within fifteen yards of the road to reach a parking place (on land adjacent to the common).

2. Parking

There are no legal rights for members of the public to park on a common.

The landowner can give permission to park on and/or drive across its land on a temporary or permanent basis should it wish to do so.

Parking is not permitted on a right of way even by the dominant owner (who benefits from the right of way), as the right of way is only "to pass and repass".

If permission to park in a specific area is given by the landowner on common land, then should it be used for more than 28 days in each 12-month period, it would become liable for a change of use and need planning permission for this.

¹ Richard Tyson has practical legal knowledge of the workings of common land. He is a barrister and retired Judge who owns common land and assists Cranham Parish Council on the management of Common land in that Parish.

Remedies available to the Council

- Sue for legal trespass - costs and impacts on Caudle Green residents would need to be considered.
- Create physical impediments to driving/parking – this would change of character of the common land and would impact on residents' use.

Repair/improvement of a prescriptive right of way:

In general, regarding prescriptive rights of way:

- the servient owner (who owns the land over which the way passes) is under no obligation to maintain or repair it. However, the servient owner can maintain and repair the way, if he chooses.
- the dominant owner (who benefits from the right of way) has no obligation to maintain or repair the way. However, they (in whose interest it is that the way be kept in good repair) are entitled to maintain and repair the way and, if they want the way to be kept in repair, must himself bear the cost.
- the dominant owner has a right to enter the servient owner's land for the purpose but only to do necessary work in a reasonable manner. The dominant owner has no legal right to improve the right of way, extend it or enlarge its use.
- So, if a dominant owner wants the way to be kept in repair, he must himself bear the cost and will have no right to a contribution from the servient owner in the absence of express agreement.

Additional restrictions relating to Common land

(taken from [gov.uk Common land guidance sheet 1a](#)):

- Under section 38 of the [Commons Act 2006](#) ("the 2006 Act"), consent is needed to carry out any restricted works on land registered as common land under the [Commons Registration Act 1965](#).
- Restricted works are any that prevent or impede access to or over the land, e.g. fencing, buildings, structures, ditches, trenches, embankments. They also include, in every case, new solid surfaces, such as for a new car park or access road.
- Works that do not need consent because they
(taken from [gov.uk Common land guidance sheet 1b](#)):

- (a) are so small or of such short duration that they do not impede access
- (b) do not constitute a new impediment to access
- (c) facilitate access
- (d) are processes (rather than works) that do not need consent because they do not impede access

Including:

New gates and stiles in existing boundaries
Resurfacing which consists only of the repair (with a similar surface) of existing lawfully constructed footpaths, roads and car parks
Creating or widening unsurfaced footpaths
Creating or widening loosely-surfaced footpaths (e.g. gravel, shingle or crushed stone), so long as it does not prevent or impede public access over the land (which

includes interfering with the exercising of rights of common, e.g. grazing).

Caudle Green: Stables Access Track

In view of these requirements with respect to the access track to the stables, no consent would be required from a planning perspective to repair the stone parts of the track itself along its gradient. However, any improvement made (i.e. changing the gradient or surface type or removing the grass middle strip) would need consent of both landowner and the other public bodies involved (planning and Defra etc). Furthermore, consent from both would be needed to improve the turning area “apron” in front of the stables to allow vehicular access to the two gates on its frontage without damage.

It was noted that there were two vehicular wooden gates at the frontage to the stables, space at the back of the stables and room to turn at the field end, along with the vehicular wooden gate into the field. It appeared to be a fact that there is vehicular access to that field via the stables which undermines the argument that a vehicular prescriptive right of way could not have arisen.

As landowner, the Council can agree or not to any improvements to the track and apron, on such conditions as it sees fit. However, the landowner does not have legal standing to frustrate repair to the track, should the dominant owner (the user of the right of way) wish to repair it.

The downside of a repair with crushed stone is that it will likely be worn away with use and weather run-off in a short space of time and return to the current situation, needing a fresh solution or at least more repairs. A further downside would be potential debris running onto the public highway.

The dominant owner is open to apply for planning permission and Defra et al consents, whether or not the Council has taken a view on any proposals. This will place the application in the public domain for residents to comment on to the Planning Inspectorate. NOTE that even if planning permission is granted, as landowner, the Council can refuse permission for improvements should it see fit.

If the prescriptive right of way were to be challenged, the Council notes that HM Land Registry would seek a negotiated solution (See HMLR Practice Guide 52, <https://www.gov.uk/government/publications/easements-claimed-by-prescription-pg52/practice-guide-52-easements-claimed-by-prescription>). The potential cost and timescale of any challenge also need to be taken into account.

Additional Comments from GAPTC (GALC)

1. Registered Right of Access and Statutory Declarations

When HM Land Registry (HMLR) registers a right of way based on a ‘Statutory Declaration or Statement of Truth’, it does so on the balance of probabilities. There is no formal testing of evidence unless the matter is disputed. This presumption can be challenged, but the burden of proof is on the challenger.

A third party (i.e., a resident or former resident) cannot challenge a prescriptive right of way. Only a person/organisation with a legal interest in the land, such as the landowner, can

formally challenge the registration of an easement (right of way) through an application to alter the register under Schedule 4 of the Land Registration Act 2002.

Note: A third party may submit evidence, but they would need to work through the landowner (i.e., the Parish Council).

2. Options for the Parish Council

Given that the Council owns the common land and was apparently not notified of the content of the application at the time, it may have legal standing to challenge the registration.

However, doing so would involve:

- Taking legal advice (potential cost)
- Submitting an application to HMLR to rectify the register under Schedule 4
- Providing sufficient evidence to prove that the right was improperly registered

If finances are an issue, the Council may choose not to challenge and instead clarify the situation pragmatically.

Acknowledging the current agricultural/equestrian access but having the user formally confirm and limit that use is a very reasonable and forward-thinking option. This would include:

- Requesting a written undertaking from the stable owner describing the extent and purpose of vehicular access
- Recording the Council's position in formal minutes and notify HMLR if a mutually agreed clarification is made

3. Potential Future Development of the Stables

While the Council cannot legally consider any potential development in its deliberations, should a future planning application arise regarding the agricultural building, the question of access will become critical. At that point, the LPA and potentially a planning inspector will scrutinise:

- The legal right of access
- The nature of historic use
- Any permissions or tolerances granted by the landowner (the Council)

July 2026