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# Application Decision

Site visit made on 8 November 2017

**By Barney Grimshaw BA DPA MRTPI (Rtd)**

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

**Decision date: 4 December 2017**

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**Application Ref: COM/3176298**  
**Hindhead Common, Haslemere, Surrey**

Register Units: CL241, CL255 and CL257

Registration Authority: Surrey County Council

- The application, dated 4 May 2017 is made under Section 23 of the National Trust Act 1971 for consent to carry out restricted works on common land.
- The application is made on behalf of the National Trust.
- The works comprise the erection of a total of 3144.3 metres of new permanent fencing which will include 5 cattle grids with bypass gates and 11 pedestrian/equestrian gates and also the retention of 7682.2 metres of existing fencing including 10 existing and 1 proposed new field gates, 3 cattle grids and the replacement of existing pedestrian and bridle gates with 21 pedestrian/equestrian gates plus 1 new pedestrian/equestrian gate.

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## Decision

1. Consent is granted for the proposed works in accordance with the application and subject to the following conditions:
  - i. the fencing and associated structures shall be removed no later than 25 years from the date of this decision;
  - ii. the common shall be re-instated no later than one month following removal of the fencing.

## Preliminary Matters

2. I made a visit to the land referred to on Tuesday 8 November 2017 accompanied by Matthew Cusack and Paul Redsell, National Trust (NT), Hugh Craddock, Open Spaces Society (OSS), objector and Andrew Storey, objector.
3. For purposes of identification only, the locations of the works are shown marked in red on the attached plan.

## The Application

4. The application is made by NT, the owner of the land. It proposes the retention of fencing erected in the 1990s to divide the land owned by NT into 4 grazing units, one of which is not on common land and not part of the current application.
5. It also proposes further works to move parts of the fence line closer to the boundary of the common and to bring into a grazing unit land formerly

occupied by the A3 road which has become redundant since 2011 when the road was re-routed by way of the Hindhead Tunnel.

6. In total, the application proposes the retention of 7682.2m of fencing including 10 existing and 1 proposed new field gates, 3 existing cattle grids with bypass gates and the replacement of existing pedestrian and bridle gates with 21 combined pedestrian/equestrian gates and 1 new pedestrian/equestrian gate. In addition, 3144.3m of new fencing is proposed including 5 cattle grids with bypass gates and 11 pedestrian/equestrian gates.
7. These works will enable the removal of 3498.4m of existing fencing and 2 cattle grids for which no consent is required.
8. The fencing is said to be required in order to continue and extend an established traditional practice of conservation by pony and cattle grazing which maintains the heathland vegetation from being colonised by woodland. The full extent of the grazing area needs to be enclosed in order to prevent animals escaping on to nearby properties and roads and causing damage and danger. Fencing within the grazing area is proposed to create separate units within which grazing animals can be contained or excluded to facilitate stock management.

### **Main Issues**

9. In accordance with regulations<sup>1</sup> applications made under Section 23 of the National Trust Act 1971 are to be dealt with as though they were made under Section 38 of the Commons Act 2006 (the 2006 Act).
10. This being the case, 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>
  - (d) any other matter considered to be relevant.
11. I will also have regard to the Department for Environment, Food and Rural Affairs (Defra) Common Land Consents Policy Guidance<sup>3</sup>, which has been published for the guidance of both the Planning Inspectorate and applicants.

### ***Interests of those occupying or having rights over the land***

12. No rights of common are registered over the land.
13. Three leaseholders of properties outside the common have rights of access over the common to their properties. These rights are not affected by the works proposed.

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<sup>1</sup> The Works on Common Land, etc. (Procedure) (England) Regulations 2007

<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.

<sup>3</sup> Defra, Common Land Consents Policy Guidance November 2015

14. The public have a right of access to the common for air and exercise, I deal with possible issues in connection with this below under the heading 'Public Access'.
15. All of the land affected by the proposed works is owned and occupied by the applicant, NT, which considers that the effect of the works will be beneficial.
16. Overall, it is my view that the proposed works will not have an adverse effect on those occupying or having rights over the land.

### ***Interests of the Neighbourhood***

17. A visitor survey in 2010 found that 50% of visitors to the common came from within 5km of the site. NT expects that the re-routing of the A3 may well have reduced the likelihood of 'drop-in visitors' and that a higher proportion of visitors now come from the local area. Visitors are typically walkers, dog walkers and horse riders who value open areas and distant views which the grazing regime enabled by the proposed fencing will help to maintain. It is also felt that many visitors like to see grazing animals on the common.
18. Issues in connection with the possible interference with the public right of access caused by the proposed fencing are dealt with below under the heading 'Public Access'. Otherwise there is no evidence that the proposed works will have any significant adverse effect on the interest of the neighbourhood.

### ***Public Interest***

#### *Nature Conservation*

19. Much of the land to be enclosed by the fencing proposed to be retained or erected lies within a designated Site of Special Scientific Interest (SSSI) and a Special Protection Area (SPA). Natural England (NE) as the relevant competent authority has commented that the existing grazing regime has resulted in the status of the SSSI changing from unfavourable to favourable condition. In addition, NE's assessment of SSSI condition has not revealed any damaging effects on features of nature conservation interest arising from the use of grazing. NE has therefore expressed the opinion that the extension of the grazed area resulting from the proposed works will in all likelihood be beneficial for the heathland flora and its associated species.
20. In addition to NE's comments it appears to be common ground amongst all parties that the grazing of animals on the common is beneficial in terms of maintaining and enhancing the conservation value of the heathland. Issues raised by objectors are concerned primarily with the location and type of fencing proposed.

#### *Landscape*

21. The land affected by the proposed works lies within the Surrey Hills Area of Outstanding Natural Beauty (AONB) and it is therefore important that any adverse effect on the landscape is avoided.
22. NT states that without grazing the area would return to woodland and the character of the landscape would be changed and open views across the heath no longer available. The proposed fencing is of traditional design and constructed with timber posts and galvanized wire. It is generally located below ridge lines and is not visually intrusive. On my visit I noted that existing fencing was typically overgrown with vegetation and was not at all prominent.

23. NT has investigated the possibility of using different types of fencing which would potentially be even less visually obtrusive. Electric fencing, although less substantial, would need to be kept clear of vegetation and might therefore be more visible. It would also require checking on a daily basis and pose health and safety problems for people and animals. The use of 'Fenceless' or 'Virtual Fencing' is considered below under 'Public Access' but also considered to be impractical.
24. NE has commented that the application will result in an improvement to the landscape.
25. Overall, it is my view that the fencing proposed will not have a significant adverse effect on the landscape and the grazing that it will enable will be beneficial for the maintenance of landscape value.

#### *Public Access*

26. The public have a right of access to the common for air and exercise in accordance with Section 193 of the Law of Property Act 1925 and it is accepted that this right can be exercised both on foot and on horseback.
27. The proposals include a substantial number of gates for pedestrians and horse riders and have been put in place after extensive consultation with users of the common on foot and horseback.
28. One objector, whilst agreeing with the general principle of fencing to allow grazing of the land, questioned the need for internal fencing to create separate grazing units. He claimed that the removal of internal fences had been agreed during consideration of the re-routing of the A3 but this was disputed on behalf of NT. NT argue that internal divisions are necessary to ensure that grazing takes place in the areas where it is most needed as animals would otherwise graze in areas where it is easiest for them but not necessarily as beneficial for conservation purposes. If the land were to be managed as a single grazing unit, many more animals would be required to ensure that all areas were grazed adequately whereas the current management system allows fewer animals to be concentrated in areas where grazing is most beneficial and has proved effective. It also allows large areas to be free of grazing animals at any time meaning that some gates can be left open to facilitate public access.
29. It was suggested that, where fencing is required to contain grazing animals this could be achieved in a way that would be less restrictive for public access. In particular 'Fenceless' or 'Virtual Fencing' was referred to. This system would rely on underground cables activating a transponder on a collar around the neck of each animal which would emit a warning sound and deliver an electric shock to animals approaching a boundary. However, this system has been tried by NT in other areas and found to be unreliable. Some animals have not responded as hoped and have crossed boundaries despite receiving shocks and, as the cable can only be buried at a shallow depth to be effective, it is easily damaged and, if the circuit is broken at any point the whole boundary is de-activated. NT has also investigated the possibility of containing animals by shepherding or tethering but concluded that such methods would not be practical.
30. It has also been pointed out that it is proposed that some areas of the common will not be fenced, particularly in the eastern part of CL241. However, this area is generally steeply sloping and wooded and the benefits of allowing animals to

graze there would be limited and would be outweighed by the cost of fencing the long boundary.

31. More specific concern was expressed on behalf of OSS regarding other areas where the proposed fencing follows the boundary of the common closely, such as the western edge of CL255. In these areas there is often a fence around gardens of properties adjoining the common then a gap of between 1 and 10m and then the fence erected by NT. The land between the fences is typically occupied by a ditch and bank and is not accessible and effectively 'no-man's land'. OSS argue that this land is part of the common and should be made accessible to the public by the erection of a single line of fencing on the boundary of adjoining private property, especially since adjoining property owners would traditionally be expected to fence against the common. On behalf of NT it is stated that wherever possible fences have been erected on the actual boundary of the common. It is acknowledged that landowners in the past would have been required to fence against the common but that where this was done by constructing a ditch and bank this would have been done on the landowners' own land not the common and accordingly the 'no-man's land' referred to is in fact part of adjoining properties and not common land. I have not seen any map of a sufficiently large scale to confirm the precise line of the boundary of the common but agree that works by adjoining landowners to create a ditch and bank ought to have taken place on land outside the common.
32. Other concerns were expressed regarding the design of gates in the fencing and the possible difficulty for equestrians and others in negotiating them. I understand that discussions have been held and that these concerns have largely been satisfied. In any event, all gates and cattle grids will comply with the relevant British Standards and, in the case of the pedestrian/equestrian gates, will comply with the recommendations of recent trials carried out by NE in partnership with the British Horse Society.
33. In general, fencing on common land other than along the boundary of the common is considered undesirable. However, in this case satisfactory provision appears to have been made to allow continued public access on foot and horseback and the grazing of the land enabled by the erection of fencing will bring significant benefits. Accordingly, it is my view that any restriction of public access resulting from the fencing works will be more than offset by the benefits from the land being grazed.

#### *Archaeological remains and Features of Historic Interest*

34. There is no evidence to suggest that the proposed fencing would have an adverse effect on any archaeological remains or features of historic interest. English Heritage has made no comment on the proposals. In general terms, the grazing regime which the fencing works will allow is compatible with the preservation of any archaeological remains that might be present in as much as it will help prevent colonisation by trees and consequent disturbance of the ground by their roots.

#### **Other relevant matters**

35. The application is for permanent fencing as it currently seems likely that there will be a continuing need for the land to be grazed to maintain the open heath. Nevertheless, it would in my view be prudent to make provision for the need for fencing to be reviewed at some stage in the future. I therefore propose that

the works should be approved for a period of 25 years, this being the expected life of the fencing proposed, if it is properly maintained.

**Conclusions**

36. Having regard to these and all other matters raised in written representations I conclude that all the criteria for the approval of the proposed works have been satisfied and the application should therefore be approved, subject to the conditions at paragraph 1.

*Barney Grimshaw*  
INSPECTOR

Map 1: Application summary map

