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# Application Decision

by **Richard Holland**

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

Decision date: 1 July 2015

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**Application Ref: COM 682**  
**Therfield Heath, Hertfordshire**

Register Unit No: CL092

Commons Registration Authority: Hertfordshire County Council

- The application, dated 3 February 2015, 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 David Smith for The Therfield Regulation, 6 Willow Close, Reed, Royston SG8 8BA.
- The works comprise: 488m of sheep fencing with gates.

## Decision

1. Consent is granted for the works in accordance with the application dated 3 February 2015 (as corrected) and the plans submitted with it subject to the following conditions:-
  - i. the fencing shall be removed no later than 15 years from the date it is erected;
  - ii. 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 in red on the attached plan.

## Preliminary Matters

3. Although the application form says that consent is sought for 1360m of fencing the application notice refers to 488m of fencing. The applicant has since confirmed that consent is sought for 488m and I am satisfied that no interested party has been prejudiced as a result of the incorrect figure in the application form.
4. I have had regard to Defra's Common Land Consents Policy Guidance<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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

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<sup>1</sup> Common Land Consents Policy Guidance (Defra July 2009)

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Hertfordshire Rights of Way Service and Natural England.
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>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

8. The Therfield Regulation, the applicant, is also the owner of the land. There are registered common rights for the grazing of sheep but they are not exercised. Several local sports clubs hold leases over the land. The rights holders and lease holders were consulted about the application and did not make any comments. I conclude that the proposed fencing will not harm the interests of those with rights over the land.

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

9. The common is used for sports and recreation. The public have a right of access on foot and horseback under section 193 of the Law of Property Act 1925. The fencing will restrict access to the common from New Road to some degree. In response to the representation from Hertfordshire Rights of Way Service the applicant has agreed to the inclusion of kissing gates at the existing access points 1, 4, 5 and 6 and a large mobility kissing gate at point 3 as shown on the map entitled "*Therfield Heath. S 38 Commons Act App. Access points onto the Heath*" dated 12/2/15 provided by Hertfordshire Rights of Way Service. With a total of five access points along a 488m stretch of fencing I consider that the proposed fence will not unacceptably restrict public rights of access or harm the interests of people from the neighbourhood wishing to use the common.

### *Nature conservation*

10. Therfield Heath is designated as an SSSI for its chalk grassland habitat, currently in "unfavourable, recovering" condition. Natural England comments that the site supports important flower and butterfly populations and that sheep grazing, the traditional management for the site, will probably help the site to achieve favourable condition. The fencing is also needed to stop sheep straying onto New Road and causing accidents although this seems to be secondary to its main purpose of helping to improve the SSSI. I conclude that the fence, by restricting sheep to the common, will facilitate grazing and thus benefit nature

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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 interests. I note that temporary fencing has been used in the past but because of vandalism it has been ineffective in containing the sheep.

*Conservation of the landscape*

11. The site is not designated as having particular landscape value. The applicant has confirmed that the fencing will be located 2m from the edge of New Road along the bottom of an existing bank to limit its visual impact. Although the fencing will detract somewhat from its surrounding I am satisfied that it will not have an unacceptably adverse impact on the landscape.

*Archaeological remains and features of historic interest*

12. There is no evidence before me of archaeological features within the application site or nearby and I am satisfied that the proposed works will not harm any archaeological remains or features of historic interest.

**Conclusion**

13. Having regard to the interests set out in paragraph 7 above, I conclude that the works will benefit the SSSI without seriously harming the other interests in the common and that therefore consent should be granted subject to the conditions in paragraph 1 above.

**Richard Holland**