



# Application Decision

by **Richard Holland**

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

Decision date: 4 December 2015

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## Application Ref: **COM 723**

### **Woodham Fenn, Woodham Ferrers, Essex**

Register Unit No: CL14

Commons Registration Authority: Essex County Council

- The application, dated 5 August 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 Essex Wildlife Trust, Abbots Hall Farm, Maldon Road, Great Wigborough, Colchester, Essex CO5 7RZ .
- The works comprise:
  - i) installation of 632m of 1.2m high wooden post stock netting fencing, topped with two strands of barbed wire and enclosing 1.6ha of land;
  - ii) three access gates in the western fence line (two kissing gates for public access and one 3.65m field gate for livestock access);
  - ii) installation of one cattle trough within the enclosure and approximately 25m of underground water pipe to connect to the water mains; and
  - iii) installation of a 12m x 6m x 1.52m high wooden post and fence-board livestock corral in the north west corner of the enclosure.

## Decision

1. Consent is granted for the works in accordance with the application dated 5 August 2015 and the plans submitted with it subject to the following conditions:-
  - i. the fencing shall be removed no later than 10 years from the date it is erected;
  - ii. the works shall begin no later than three years from the date of this decision;
  - iii. the land shall be fully reinstated within one month of the completion of the water pipe works.
2. For the purposes of identification only the location of the works is shown in red on the attached plans.

## Preliminary Matters

3. Although the application form says that permanent consent is sought, the applicants have since said that they are content to amend the application to time limited fencing for a period of 10 years.
4. The published notice of the application indicates that Essex Wildlife Trust (EWT) and South Woodham Ferrers Town Council (SWFTC) are joint applicants. However, the application is in the name of Essex Wildlife Trust (EWT) only. However, this has not

affected the validity of the application.

5. 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.
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by Historic England (HE), the Open Spaces Society, Essex Bridleway Association (EBA), Natural England (NE) and Mr Brian Smith.
8. 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.
9. The site lies within the Woodham Fen Nature Reserve, which is managed by EWT with the support of SWFTC. It also lies within the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Ramsar site. The SSSI is classed as "Unfavourable recovering". In the case of SSSIs I have a duty when deciding the application to take reasonable steps to further the conservation and enhancement of the flora, fauna, geological or physiographical features by reason of which the site has been designated.

## **Reasons**

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

9. Whilst the application is made in EWT's name only, the land is managed by EWT in conjunction with SWFTC, which owns the land and is the sole holder of rights of common over it. SWFTC has confirmed that it fully supports the application. I therefore conclude that the proposed fencing will not harm the interests of those occupying or having rights over the land.

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

10. The interests of the neighbourhood test relates primarily to whether the works will impact on the way the common land is used by local people. The application plan indicates that the proposed fencing will not abut the common land boundary at any

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

<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.

point so free access around the full perimeter of the common will be maintained. EWT has advised that whilst parts of the common land unit are served with a good network of footpaths for visitors use, the application land is difficult under foot and heavily vegetated such that there is little or no public use of it. There are no paths across the application land and the proposed fencing will not infringe any footpaths and tracks.

11. The common is subject to s193 of the Law of Property Act 1925, which gives a right of public access for air and exercise on foot and on horseback. EWT has said it understands the need to allow public access to the application site, hence the proposed provision of two kissing gates in the fence line, but maintains that it is unsuited for this purpose and therefore little used. OSS and EBA object to the proposals because they make no provision for access by horse riders. However, EWT is concerned that unrestricted access by horses could harm the SSSI although it has given no details. It says that there has never been any access to Woodham Fenn for horse riders and it has never received any complaints or enquiries about this from the British Horse Society or EBA; neither OSS nor EBA contests this. Owners of land on which an SSSI is situated have a duty under the Wildlife and Countryside Act 1981 to ensure that the SSSI is not damaged without consent. I accept that unrestricted access to the site on horseback could damage the SSSI. Bearing in mind that there seems to be little or no demand from horse riders to access the site, I consider that, in order to protect the SSSI, the curbing of access rights under s193 is justified; horse riders should therefore be excluded from the site. The proposed fencing will not unacceptably restrict public access on foot and I am satisfied that the interests of the neighbourhood will not be harmed unduly.

#### *Nature conservation*

12. The purpose of the enclosure is to enable the area to be grazed for habitat enhancement to benefit species that are becoming increasingly threatened by the effects of rising sea levels. NE has confirmed that it actively supports the proposed works to facilitate grazing, which should benefit avian, invertebrate and botanical interest features of the designated site, and plans to part-fund the works under a Higher Level Stewardship agreement with EWT if the application is granted consent. I consider that the proposed works are therefore likely to benefit nature conservation interests.

#### *Conservation of the landscape*

13. EWT has advised that the underground water pipe to supply the trough will be laid at a depth of 400-600mm, that the trench will be dug by hand to minimise impact and that all topsoil will be replaced once the trench is backfilled. I consider that the trough and excavation works will therefore have a negligible impact on the landscape.
14. EWT suggests that at a height of 1.2m the proposed fence will be low enough to allow visitors to look over it to view the landscape and the wooden materials used for the fence posts and corral panels will blend into the landscape over time. I accept that this may soften the visual impact to a degree. Standing at approximately 1.5m, the corral will be some 0.3m higher than the proposed fencing. Although positioning it in a corner of the enclosure will reduce its visual impact to some extent, this will be offset by its slightly raised profile above the fence line.

15. I consider that the proposed fencing will interrupt the open nature of the common land and will be detrimental to the conservation of the landscape to a degree. However, I accept that in order to take forward the grazing regime the grazing stock needs to be contained within a fenced and corralled area. This being the case, I consider that the negative impact the proposed fencing and corral will have on the landscape is outweighed by the likely long term benefits to habitat conservation through a controlled grazing regime.

*Archaeological remains and features of historic interest*

16. HE is content that the proposed works will not have a direct effect on any designated historic assets. I note that the County Council Historic Environment Team were consulted and raised no concerns. I am satisfied that the proposed works are unlikely to harm any archaeological remains or features of historic interest.

**Conclusion**

17. Having regard to the interests set out in paragraph 8 above, I conclude that the works are likely to benefit conservation interests 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**