



## Application Decision

Inquiry opened on 26 April 2016

By **Peter Millman BA**

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

**Decision date: 29 June 2016**

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### Application Ref: COM749

#### Land at Iping and Trotton Commons

Register Units: CL100 (Iping) and CL101 (Trotton)

Registration Authority: West Sussex County Council

The application, dated 22 October 2015, is made under section 38 of the Commons Act 2006 ("the 2006 Act") for consent to construct works on common land.

The application is made by Sussex Wildlife Trust ("SWT"), Woods Mill, Henfield, West Sussex BN5 9SD.

The works comprise:

- The permanent erection of 4285 metres of fencing around an area of about 782 000 m<sup>2</sup> of common land, together with:
- Thirty-seven gates in the line of the fencing, and a safety corral.

#### Decision

Consent is granted for the works in accordance with the application and the plans appended to this decision subject to the conditions set out immediately below and the correction and modifications described in paragraphs 90 to 92 below.<sup>1</sup>

- i) The works shall begin no later than three years from the date of this decision.
  - ii) If, following a period of 20 years from the date of the granting of the consent, SWT or its successor as landowner ceases to graze animals on Iping and Trotton Commons for a continuous period in excess of 3 years for reasons within its control, permission to fence will lapse and the landowner will remove the fencing within two months from the date on which permission lapses.
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<sup>1</sup> Section 39(3) of the 2006 Act provides that consent may be given – (a) in relation to all or part of the proposed works; (b) subject to modifications and conditions relating to the proposed works as the national authority sees fit.

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## **Preliminary Matters**

1. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land under the Commons Registration Act 1965. Restricted works include fencing.
2. The application is made by Ms Jane Willmott on behalf of SWT which owns almost all the land concerned and manages the remainder. The application was for permanent fencing around most of Iping and Trotton Commons, apart from an area owned by the Leconfield Estate, although a modification is now proposed by SWT to fence that area as well (see below at paragraph 9).
3. Almost all the application land falls within the Iping Common Site of Special Scientific Interest ("the SSSI"), which includes both Iping and Trotton Commons, as well as the adjacent Stedham Common.
4. The occupier of a property known as 'Steps' has a right to access it across Trotton Common, and a right to cut and take tree loppings, gorse, furze, bushes or underwood.
5. There are 11 Scheduled Ancient Monuments on Iping and Trotton Commons. A Roman road runs through Iping Common. Historic England informed SWT that the proposed works would not impact on any known archaeology.
6. The Commons are within the South Downs National Park. The public has the right to access them on foot under the Countryside and Rights of Way Act 2000.
7. Permission has been given by the local highway authority (West Sussex County Council) for the erection of gates where the proposed fence line crosses public rights of way. SWT intends to erect, in addition, gates where all identified informal paths (i.e. paths not recorded by the County Council as public rights of way) cross the fence line.
8. This application has been determined following a public inquiry. I visited the Commons on my own before and after the inquiry.
9. After the application was made, SWT discovered that the boundary between its land and the small part of Iping Common owned by the Leconfield Estate, but let to and managed by SWT, had been wrongly measured, and it asks that its application be granted subject to a correction to take this into account.
10. The application as made does not include the land owned by the Leconfield Estate in the north-east corner of Iping Common within the area proposed to be fenced. This land, to the north and south of the car park on Elsted Road, is shown on the first map appended at the end of this decision. This map is labelled 'SWT DOC NO. 2' and the Leconfield Estate land lies within A-B-F-G. The Leconfield Estate does not now oppose the application being extended to include the fencing of this land, and SWT asks that the application is granted with a modification to include it. However, the Leconfield Estate has not yet given its permission for fencing if SWT's application, as proposed to be modified, is granted. SWT therefore asks that the modification be worded in such a way that if, in the event, the Leconfield Estate decides not to give its

permission for fencing on its land, the application as originally made, with the correction mentioned in the previous paragraph, is granted.

11. The correction and the proposed modification are not, in themselves, controversial, and if I decide the application should be granted I shall do so subject to them. The line of the proposed fencing and the position of the proposed gates are shown on the second map at the end of this decision. This map is labelled 'SWT DOC NO. 1' and has had to be spread over 2 pages.
12. Most of the objectors appeared at the inquiry as individuals, but there was an informal grouping of objectors, represented by Mrs L Petrie, which provided a statement of case and made closing submissions.

### **The Application**

13. SWT's case is, in brief, as follows:

14. The application land is lowland heath, which has a very strong nature conservation interest, as well as being open to public access. It has been designated since 1954, apart from Bridgelands Plantation, but including Stedham Common, as a SSSI, because, according to the citation, *It is one of the richest examples of heathland remaining in West Sussex and is of particular interest for its invertebrate fauna which includes several rare spiders. The site is of county importance as a breeding site for heathland birds, and is the only site in Sussex for an uncommon species of grass.* The factors which created the nature conservation interest, i.e. exploitation by humans over centuries, which included grazing by cattle as well as removing materials such as turf and furze for fuel, no longer operate. If the heathland were not managed at all, it would gradually, over many years, revert to scrub and then woodland.
15. Some of these factors can be re-created by human intervention, for example the removal of turf by mechanical means, and cutting down emerging birch scrub, but the effects of grazing cannot be replicated by other means. At present the Iping and Trotton Common parts of the SSSI are categorised by Natural England as in 'unfavourable (recovering)' condition (see below at paragraph 48 for the meaning of this phrase).
16. SWT has owned or leased the application land since 2005 and has been managing it with the intention that all of the SSSI should eventually be categorised as in 'favourable' condition.
17. A significant amount of research has been carried out which demonstrates that extensive low-level grazing on heathland such as Iping and Trotton Commons, can assist in creating botanical and structural diversity and enhance species diversity. A small-scale trial of grazing took place in 2012 and 2013 on the Commons, the results of which were positive. Natural England, in its 2013 assessment of the SSSI, stated: *The main issues of concern within units 2 and 3 [i.e. Trotton and Iping Commons; Stedham Common is unit 1] are birch regeneration, in the south west of unit 2 and into unit 3, the low levels of pioneer heather (common across the SSSI as a whole) and the closed Molinia dominated sward and lack of disturbance within the wetter areas. All of which can be remedied by some disturbance and grazing ideally by cattle.*

18. It is proposed that grazing be used at Iping and Trotton Commons alongside other continuing management techniques such as tree and scrub clearance and turf stripping. SWT has extensive experience in managing its nature reserves by grazing, and has the on-going resources to manage such a scheme. The application land would sustain somewhere between 15 and 30 cattle, grazing for part of each year, the period of time depending on various factors.
19. Livestock fencing is required to keep grazing cattle from the roads and nearby plantations and farmland. Although other types of fencing or control have been considered, for example electric fencing and 'invisible' fencing, these have been rejected, and it is proposed to use 1.2 metre high wire fencing with softwood or sweet chestnut posts.
20. Public access would be maintained. Gates would be to the appropriate British Standard, and the advice of the British Horse Society with regard to bridle gates has been considered.

### **Main issues**

21. 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.
22. There is additional legislation and guidance to which I must have regard, some because of the designation of the Commons as a SSSI.
23. Section 28G of the *Wildlife and Countryside Act 1981* applies to SSSIs. It imposes a duty: *to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.*
24. Article 4 of the new *Wild Birds Directive* of 2009 provides that bird species listed in Annex 1 of the Directive shall be the subject of special conservation measures concerning their habitat. Three species that are listed in the Annex breed or have recently bred on the application land; they are the Woodlark, the Nightjar and the Dartford Warbler.
25. The *European Habitats Directive* defines Northern Atlantic wet heaths with *Erica tetralix* (cross-leaved heath) and European dry heaths as being of particular importance and interest. The Commons contain these habitats and the *Directive* requires their protection.

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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.

26. The *Conservation of Habitats and Species Regulations 2010* (as amended) requires me to exercise my functions which are relevant to nature conservation so as to secure compliance with the Habitats Directive and the new Wild Birds Directive.
27. Section 40 of the *Natural Environment and Rural Communities Act 2006* states that *every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*. This is a reference to the *United Nations Environmental Programme Convention on Biological Diversity*, to which the United Kingdom Government is a signatory.
28. Section 11 of the *Countryside Act 1968* states: *In the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside*.
29. In addition to this legislation, I am guided by the Government's *Common Land consents policy* of November 2015, and by the Public Sector Equality Duty.

### **Written representations made on publication of the application**

30. When details of the application were published, representations were received from a large number of organizations and individuals. In some cases these were supplemented by further representations made in advance of the inquiry. Some supported the application, some opposed it. Some objections were principally concerned with the direct effects of fencing, for example on the ability of people to access the Commons for recreation, while others were principally concerned with the consequences of the grazing which the fencing would facilitate.
31. I summarise first the reasons given by those opposed to the application, sixteen individuals and the parish councils of Stedham with Iping and Trotton with Chithurst.
32. People were concerned that to fence the common land would lead to a loss of the sense of openness. Many more were concerned that the proposed bridle gates would be difficult for riders, particularly children on leading reins, and that pedestrian gates would mean the commons would be inaccessible to those on mobility scooters or with wheelchairs. Experience of the neighbouring fenced Stedham Common was cited.
33. Many people were concerned about the cattle that would be introduced to the land if consent for fencing was granted. A few noted that cattle might scare people, the majority, again citing what had occurred at Stedham, were worried that cattle would introduce bovine tuberculosis. Others argued that there was no scientific basis for the view that grazing cattle would lead to a decrease in scrub or would assist in maintaining and enhancing biodiversity. One objector was worried that cattle would trample on ground nesting birds.
34. One objector was concerned that the visibility of the fence meant that it should not be allowed in a national park, and one considered that the local community could look after the commons, with no need for institutional management.

35. Finally, there seemed also to be a not infrequent feeling that SWT was not a fit body to manage the commons; it was accused of 'mismanagement and ill-thought-out policies'. Examples of this were said to be the ruining of previously pleasant paths by the use of heavy machinery, the cutting down of oak trees, seen as an exemplar of biodiversity, and the 'ravaging' of Stedham Common.
36. There were letters of support or conditional support from the following organizations: Natural England, the South Downs National Park Authority, the RSPB, the Open Spaces Society, Sussex Ornithological Society, the South Downs Local Access Forum, Butterfly Conservation and the British Horse Society (conditional). Historic England did not oppose the application. In addition, six individuals indicated their support.
37. I shall not summarise the contents of these letters, since they broadly agreed wholly or in part with the case put forward by SWT.
38. I have taken into account all these representations, together with additional representations and evidence presented to the inquiry, in coming to my decision.

### **Assessment**

39. Although I have assessed the arguments under the separate headings given in the legislation, in practice there is some overlap, for example the ability to access the common land if it were fenced would apply not just to the neighbourhood, but to the wider public. Any effect on the landscape would also concern the wider public and not just the neighbourhood. I have taken account of these overlaps in balancing the weight to be given to the interests.

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

40. The land is occupied by SWT, which clearly sees fencing it as in its interests, serving the Objects of the Trust as set out in its Articles of Association.
41. There is one right of common which is exercised (see paragraph 4 above). The fencing proposals incorporate a field gate intended to facilitate the exercise of that right. The occupier of 'Steps' has not objected to the application.
42. I conclude that if the application is granted, there would be a very clear benefit to the SWT as occupier of the land, and no negative impact on the rights holder.

### ***The public interest***

#### ***Nature Conservation***

43. It is not disputed that until around the middle of the 20<sup>th</sup> century, Iping and Trotton Commons were grazed by cattle and other livestock. For many hundreds of years before that the Commons were exploited by humans by, for example, cutting turf and gathering gorse, tree loppings and underwood for fuel. Neither is it disputed that one of the results of this exploitation was a diverse, species-rich habitat. Much of this lowland heathland habitat in southern England (and elsewhere) has been irretrievably lost, for example to development.

44. The remaining examples of lowland heathland, if they are left to themselves, will, there is no doubt, change gradually, over a period of years, to scrub and then woodland, and their biological diversity will decline.
45. It is the intention of SWT, with the aim of continuing to reverse the decline, to reintroduce grazing to Iping and Trotton Commons, so that, combined with the existing management techniques of scrub clearance, mowing, scraping and burning, this reversal continues and the SSSI can be recorded as being in favourable condition. The concept, put rather simplistically perhaps, is that if the way the Commons were utilised and exploited before the mid-20<sup>th</sup> century is replicated as far as possible, their biological diversity should gradually be recovered and retained.
46. There have been a number of studies of the management of lowland heathland, including some concerned with its grazing. However, it is clearly the case, as acknowledged at the inquiry by Natural England's National Heathland Specialist, that no two examples of heathland contain exactly the same range of habitats and exactly the same range of plant and animal species. It is not possible, therefore, to take any particular study, apply its conclusions to a piece of heathland (such as Iping and Trotton Commons) and, with certainty, to be able to predict the outcome of a particular management regime. Heathland managers do, naturally, take account of academic studies, but also rely on their own practical experience, and that of others, in deciding how to manage, for nature conservation interests, the land for which they are responsible.
47. One or two objectors argued that the Commons should be left to their own devices, and that occasional fires, such as the one that occurred in 1976, might prevent the land reverting permanently to wood. I do not accept that argument; once broad-leaved woodland in this country is well-established it is unlikely to succumb to fire.
48. Other objectors argued that the SSSI could be brought into favourable condition by continuing with the current management practices without the need for grazing. As I have already noted (paragraph 15 above), it is currently recorded as being in 'unfavourable (recovering)' condition. That phrase is mentioned in Government advice published on the GOV.UK website, which explains its meaning as 'if current management measures are sustained the site will recover over time', and it is this explanation that objectors have used to support their argument. It is, however, very clear from the correspondence accompanying the most recent assessment of the SSSI's condition (see paragraph 17 above) that the management practices envisaged by Natural England for Iping and Trotton Commons include grazing.
49. Objectors also argued that the scientific research cited by SWT in support of its argument for introducing grazing was flawed. I accept that it has limitations, some of which I mentioned briefly at paragraph 46 above, but I do not consider that these limitations mean that none of it can be considered relevant to Iping and Trotton Commons. In any event, the informal group of objectors, in their closing submissions, accepted that 'the results shown in robust scientific literature... show that although grazing may have beneficial effects and often does in many situations, there can be negative impacts on some species in some situations'. I think it is unlikely that SWT could disagree with that

assessment, and that is why the knowledge and practical experience of its staff and advisers should become of importance in the day-to-day management of their land.

50. Seven witnesses gave evidence for SWT. All had academic qualifications (albeit the ecologist's formal qualification was in astrophysics) as well as a wealth of practical experience. They included Natural England's National Heathland specialist, the RSPB's heathland adviser, a Fellow of the Royal Entomological Society and SWT's senior ecologist. In addition, SWT's case was supported by a number of national organizations concerned with nature conservation (noted above at paragraph 36).
51. I do not need to assess in detail the quality of each of the numerous pieces of research referred to by witnesses (although I have looked at all of them), nor is it necessary for me to form detailed judgements about the capabilities, both practical and academic, of those who work for or advise SWT, except where it is necessary to judge their apparent honesty, consistency and integrity as it appeared when giving evidence. SWT's evidence, taken at face value, strongly supports a conclusion that the introduction of extensive grazing by a small number of cattle on the Commons is more likely than not to be beneficial to the conservation and enhancement of their biodiversity. It is possible, however, even if unlikely, that it may not, which is why I would be reluctant, if granting permission, to grant it in perpetuity without conditions (see paragraph 93 below).
52. The objectors produced no witnesses with directly relevant academic or practical qualifications in nature conservation. They seemed to me to be more concerned to denigrate SWT and its witnesses than to demonstrate that its evidence was flawed and that it did not demonstrate that grazing was an appropriate part of managing the two commons. For example, witnesses were accused of improperly citing evidence more than 10 years old, which was said to be 'unacceptable in English universities', of failing to make cost-benefit analyses of grazing schemes and thus potentially misusing public funds, of carrying out surveys without help from independent survey specialists, of giving incorrect summaries of the findings of academic papers cited by objectors, of providing opinions which, because not published, were not facts, of ignoring some of the results of 'robust scientific literature' which did not support their case and of starting their own research with preconceived notions of the result. These were all, in my view, generalised attacks which provided little or no assistance in coming to a decision on the application.
53. The passion and conviction with which objectors put forward their views cannot be doubted, but their personal criticisms and their pointing out of the limitations of research in this area did nothing of significance to counter the very widely held view of experts and practitioners that low level grazing has been shown to be, in combination with other practices, an appropriate management for lowland heathland to deliver conservation objectives, provided the management is carried out by experts who are able to take into account the particular features of the site in question.
54. On a particular point, objectors stated in their closing submissions that 'the small amount of research on lowland heath grazing schemes has shown that there is damage to the habitat of the Dartford warbler from cattle trampling

through gorse'. What is actually stated in *English Nature Research Report 422*, which seems likely to be the source of this allegation, is, at 8.4.1 'However, the reduction in dwarf shrub cover and structural diversity characteristic of very high grazing pressure may adversely affect species such as Dartford Warbler *Sylvia undata* which require dwarf shrubs for foraging, shelter from predators and nest sites'. There would be no question of 'very high grazing pressure' or even just 'high grazing pressure' occurring on Iping and Trotton Commons if the grazing densities were as intended by SWT.

55. I conclude that the weight I should give to the importance of maintaining and enhancing biodiversity and protecting threatened but important habitats on Iping and Trotton Commons, emphasised as it is not only by the 2006 Act, but also in the other legislation noted in paragraphs 23 to 28 above, is very considerable. The evidence presented supports, on the whole, the view that grazing, of the sort envisaged by SWT, would probably be a useful tool in helping to bring the SSSI into favourable condition. This cannot happen, or even be attempted, unless permission is granted for fencing.

#### *The landscape*

56. One objector, who did not appear at the inquiry, felt that the proposed fence would be 'too visible', and should not be allowed in a national park.
57. I have walked within the Commons, as well as looked towards them from the surrounding roads. From within, the fence will generally not be visible. It is almost a mile from the east to the west side of the common, and I doubt that the fence would be visible from more than the first and last fifty yards of that distance. From without, the intention to set the fence back from the edge by up to 10 metres, in fairly dense existing vegetation, should ensure that it is well hidden.
58. It is intended that the fencing would be similar to that which encloses Stedham Common. That fencing, although visible from the Elsted Road, is hardly noticeable, particularly since the posts are now well weathered.
59. Although the edges of the Commons are generally fairly overgrown, for example with dense rhododendron thickets, once the central area is reached there is still a considerable sense of openness and spaciousness. If the Commons are not managed in the way intended by SWT, then the openness and spaciousness will eventually disappear. If the Commons are not fenced, grazing cannot take place. I conclude that the likelihood that grazing cattle will help to maintain and enhance an open landscape should be given some weight.

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

##### *Ability to access the land*

60. Although the objectors were against fencing altogether, it did not seem to me that the number of access points was a significant issue to them. Their principal concerns were access for horse riders and for disabled people through the proposed gates. One local person (not at the inquiry) who was said by objectors to use a Trampler off-road all-terrain mobility scooter was of particular concern.

### *Bridle Gates*

61. It is intended by SWT that bridle gates should be to the appropriate British Standard – BS5709 – slightly wider than the minimum, at 1.6 metres rather than 1.5, and with ‘trombone’ handles, i.e. handles which bend back on themselves in the manner of the slide on a trombone, rather than a single vertical handle. They would be self-closing so that they could not inadvertently be left open, and would open inwards, towards the common.
62. Objectors who were riders did not like self-closing gates because of the possibility of the gate closing too fast and injuring the horse, and because it was impossible to traverse such a gate with a child (on a horse) on a leading rein.
63. In advance of the inquiry, written advice had been given by the British Horse Society (“BHS”) County Access and Bridleways Officer, who had noted that *Gates should comply, as a minimum, with British Standard 5709*, and that the *proposed wooden Henley design one-way opening self-closing type with trombone handle is acceptable, dependent on the result of the recent trial*. This was a reference to a trial of bridle gates carried out in September 2015, the results of which are expected to be published soon. At the inquiry, Mr R Milton, stating himself to be representing the BHS, read out a letter from the BHS’s Director of Access, who is based in Warwickshire. This letter stated that its contents were ‘further’ to the letter from the County Officer, but in fact contradicted it in some respects. The letter queried the need for fencing, and raised questions about a number of other issues, in particular whether grazing was an appropriate management method for the Commons. I have seen no evidence that Mr Weston visited the Commons or is in any way qualified to pronounce on nature conservation matters.
64. I was not impressed with the totality of the BHS representations. It is not clear to me whether I should prefer the view of its local representative, who is obviously in touch with local riders, or Mr Milton, or its distant Director of Access, as to what its position is. Mr Milton stated that the local representative’s views were ‘wrong’, but he did not make it clear what status he had to make such a remark. On the whole I can give this evidence little weight. I do, however, record that I would expect SWT to take note of and consider the results of the 2015 trial of gates, should gates not have been installed by the time of their publication, and comply with any resulting recommendations that are endorsed by Natural England or Defra. This, SWT agreed at the inquiry, would be done.
65. A local horse rider, the proprietor of a Trail Riding Centre and one-time bridleways officer for the BHS, gave evidence to the inquiry. She was happy with what SWT had intended to provide, as long as it took note of any recommendations which came from the recent trial (noted above) and added that she would dismount when approaching a gate if leading a child.
66. The chairman of the Local Access Forum, a statutory body representing, among others, walkers, cyclists and equestrians, including those with disabilities who use mobility vehicles, gave evidence to the inquiry. The Forum had discussed SWT’s application on two occasions and, given the need for fencing, was supportive of it.

67. If I grant the application, there will be some disbenefit to horse riders – any gate is a more restrictive option than no gate at all. I do not accept, however, that such gates would permanently prevent use of the application land by equestrians. Most riders would be resourceful and adaptable enough to learn to traverse gates properly installed to the British Standard, either in the saddle or after dismounting, if they could not do so already.

*Access for people with mobility problems*

68. The application proposes that there should be, in the line of the fence, 8 kissing gates, a pedestrian gate and 14 bridle gates, and that they will all be compliant with BS 5709. If they are, then they should be negotiable by people with pushchairs, wheelchairs and medium motorised wheelchairs.

69. I accept that there may be at least one local person (see paragraph 60 above) who might nevertheless find kissing gates and possibly even bridle gates difficult or impossible to get through, although the chairman of the Local Access Forum (paragraph 66 above) noted in cross-examination that a member of the Forum who used a Trampler mobility vehicle (paragraph 60 above) was able to negotiate gates such as those proposed in the application. The application plan (appended to the end of this decision) shows that there would be bridle gates near all kissing gates.

70. In these circumstances, if I grant the application, I would expect SWT, if notified of the situation, to make reasonable efforts to accommodate the person who could not use the proposed gates. At the inquiry Ms Willmott, for SWT, stated that she would be happy to meet this person. But in any event, neither the Equality Act 2010, nor Government Guidance, would oblige me to refuse to grant permission to fence if I concluded that the benefits of fencing outweighed the disadvantage to that person and there was no reasonable alternative. I should, however, include a condition that fencing and gates are to be removed if they no longer fulfil the purpose for which they were installed (paragraph 93 below).

71. Objectors were concerned that since SWT took over management of the Commons in around 2007, paths, which they said had at one time made pleasant walks, had been badly rutted by machinery brought in to carry out operations such as scrub clearance and tree-felling.

72. I noted on my site visits some of the damage that had been caused to surfaces by such machinery. It seems to me that where damaged paths follow existing public rights of way, remedies are available under the Highways Act 1980, but I accept that damage to other paths may continue from time to time. I note, however, that if permission for fencing is refused, and no cattle graze the common, the need for heavy machinery to access the land in order to assist in its management might possibly be greater than if it is granted.

*Effects of grazing – bovine tuberculosis*

73. A few years ago, SWT brought in cattle from East Sussex, a high risk bovine tuberculosis (btb) area, to graze the neighbouring Stedham Common, which, with Iping and Trotton Commons, are in the btb low risk area of West Sussex. The animals were tested seven times before and after their movement, with negative results on each occasion. In 2015 one tested positive for btb, and

after it and the rest of the herd were slaughtered, and post-mortem examination had been carried out, it was found to have been infected by an East Sussex strain of btb. The seven previous tests had failed to pick up this infection. Because of the positive test, nearby cattle were tested, and animals from one farm gave a positive reaction and were slaughtered. When tested post-mortem, none was found to have been infected with btb. It is well known that the test for btb results in frequent false positive, as well as false negative results, although I accept one objector's comment that it does seem extremely surprising that 7 tests were wrong; if the test provides a false negative 20% of the time, that suggests that the chance of it being wrong on 7 successive tests on the same animal is  $(0.2)^7$ , or around one in a hundred thousand.

74. As a result of this confirmed case, the testing and movement regime in the neighbourhood was tightened. One tenant farmer who gave evidence to the inquiry was said to have been unable to move his cattle from February 2015 to April 2016 and to have lost £100,000 as a result.
75. Four farmers and the widow of a farmer gave oral evidence to the inquiry. Much anger was directed towards SWT, which was blamed for their financial losses. Concern was expressed that the cattle intended to be brought in to graze Iping and Trotton Commons might carry btb.
76. SWT's grazier, and the veterinary surgeon who attends to its cattle, gave evidence to the inquiry. What emerged from their unchallenged evidence was that there had been full compliance with the legally required testing regime for btb, and that precautions over and above what was legally necessary had been, and would be in the future, put into practice. SWT will no longer, for example, bring in cattle from high risk areas. It is also quite clear that SWT cattle did not, by nose to nose contact, infect any other cattle when they were at Stedham Common.
77. It is understandable, particularly at this time of very low milk prices, but not reasonable, for local farmers to have blamed SWT for problems caused by btb. However, it seems to me from the evidence given to the inquiry that it is no more likely that btb will be introduced to West Sussex in the future by SWT cattle than by any of the other thousands of cattle that come into West Sussex each year from high risk areas. It is not the fault of SWT that there is not a more accurate way of testing for btb.

#### *Other effects of grazing*

78. The cattle that grazed on Stedham Common until 2013 escaped on a couple of occasions, and caused inconvenience to local landowners. Objectors were concerned that because the grazier is based perhaps an hour's drive away, this could again become a problem. I accept that it could be, especially since it would not be possible to lock gates shut, as might be done on a farm, and gates have, in the past, been deliberately left open. Precautions to mitigate the effects of the problem are, however, in place. The cattle on each of SWT's grazing sites are checked daily by employees or voluntary 'lookers', and contact details for the grazier are displayed on each gate into enclosures where there are cattle.

79. Some people are scared of cattle, and do not like to walk where they roam freely. No doubt, if I grant permission for fencing and cattle are introduced to the Commons, a few people will choose no longer to visit them. I was given no evidence which would have supported any claim that cattle of the sort that SWT intends to graze have ever attacked people. SWT has given assurances that all would be heifers, and that none would be in calf. I am sure these fears are real, but they can be overcome if docile cattle are introduced.

*Conclusion on the interests of the neighbourhood*

80. If the Commons are fenced, there will be an adverse effect on the ability of people to access them; any gate, no matter how easy and trouble-free to open and get through, will be more restrictive than a gap. Some objectors suggested, in closing submissions, that a successful application might result in a situation where riders, no longer able to access the Commons, will be forced to ride on the roads, where accidents are far more likely, or where, if riders attempt to use the gates, horses would be injured because they would close too fast. In my view, however, taking account of the evidence given by other riders, these fears are unfounded, or exaggerated (see paragraph 67 above), and, although I should give them some weight, it should not be a great deal.

81. Although I heard no direct evidence from people with disabilities concerning their negotiation of gates, I accept they might cause problems for a few. However, given the support of the Local Access Forum for the application, and the assurance that gates will all be installed to the British Standard, I do not conclude that there would be a significant adverse effect.

82. If SWT does not bring cattle to graze on Iping and Trotton Commons, there will be no associated risk from bovine tuberculosis. However, given the precautions put in place and described by the veterinary surgeon, the risk of cattle in the neighbourhood becoming infected as a result should be very low. However, I do bear in mind that if infection did occur as a direct result of infection via SWT cattle the effect could be catastrophic for the affected herd and its owner. It is a similar story with escapes; if there were no cattle on the Commons there could be no escapes, but again the risk of escapes and their possible consequences is not great.

83. I conclude, therefore, that with regard to the factors discussed above, there would be, or would be the potential for, an adverse effect on the interests of the neighbourhood, which needs to be balanced with conclusions from the other interests which must be considered.

***Other matters***

84. Objectors made a number of general allegations about the conduct of SWT, accusing it or its employees of, for example, the reckless spending of public money, failure to comply with its charitable aims and going for 'big, headline projects' not followed up by annual maintenance (see paragraph 35 above). It is not for me to judge whether any of these allegations about the organization's ethos, made, it seems to me without significant credible supporting evidence, has any foundation, and I can see no reason to give any of them weight in deciding whether or not to grant the application.

85. I am satisfied that alternative means of fencing the Commons have been considered (paragraph 19 above). Evidence was given at the inquiry about 'invisible' fencing, and I am satisfied that it was sensible of SWT to reject it for the reasons given by Ms Willmott.

### ***Conclusions from the evidence***

86. It is very clearly in the interests of the occupier of Iping and Trotton Commons to grant the application (paragraph 42 above).

87. It is overwhelmingly in the public interest in nature conservation to grant the application, given the conclusion that extensive low-level grazing of the Commons is likely to aid their progress towards the SSSI being recorded and maintained in favourable condition (paragraph 55). There is unlikely to be any adverse effect on the openness of the landscape if the application is granted (paragraph 59).

88. If the application is granted, there are likely to be some adverse effects on the interests of the neighbourhood, but these will either be small, or if not small the likelihood of their occurrence will be very small (paragraphs 80 to 83).

89. On the whole the balance comes down firmly in favour of granting the application.

### ***Corrections, modifications and conditions***

#### *Correction*

90. The correct line of the proposed fencing north-east of Fitzhall Heath (see paragraph 9 above and the maps appended below) is B-C-F-E and not C-D-E, and the application is to be taken to apply to the corrected line.

#### *Modifications*

91. The application is to be considered as modified so that the line of the fence (see second map appended below, i.e. the two parts of SWT DOC NO. 1) runs between A-G-F-E rather than A-B-C-E (see paragraph 10 above), but in the event of the Leconfield Estate refusing to allow a fence to be erected on the line A-G-F, then the application will be taken as reverting to its original form but with the correction described in the previous paragraph.

92. SWT also asked that a gate, described as a kissing gate in the application, be replaced by a 2.5 metre wide field gate. This is shown on SWT DOC NO. 1 at the far west of Trotton Common, numbered 9 in green. This proposal attracted no comments and I accept it. The plan for the safety corral next to the A272 road, shown at the inquiry by SWT, differs in a very minor detail from the plan attached to the original application (a gap is proposed to be increased from 4 metres to 5 metres) and again attracted no comments and is acceptable.

#### *Conditions*

93. I have included the standard condition that works shall begin no later than three years from the date of this decision. SWT asked that consent should not be time limited. In my view it would be wrong to permit fencing for all time,

without some sort of condition to take account of the possibility that, at some time in the future, grazing is no longer an appropriate management method for enhancing or maintaining the biodiversity of the Commons. It will therefore be a condition of permitting fencing that if, following a period of 20 years from the date of the granting of the application, SWT ceases to graze animals on Iping and Trotton Commons for a continuous period in excess of 3 years for reasons within its control, i.e. not because, for example, it has been forced to suspend grazing because of events out of its control such as an outbreak of disease, permission to fence will lapse and the fencing will have to be removed.

### **Conclusion**

94. Having regard to the interests and matters set out in paragraphs 21 to 29 above, and having considered all the matters raised at the public inquiry and in written representations, I have reached the conclusion that it is expedient that consent should be given but that it should be subject to the correction, modifications and conditions described in paragraphs 90 to 93 above.

*Peter Millman*

**Inspector**

## APPEARANCES

### For the Applicant

Mr M Boyer, Solicitor who called:	Instructed by the Sussex Wildlife Trust
Dr I Alonso	National Heathland Specialist, Natural England
Mr G Baldock	Farmer and SWT grazier
Dr J Underhill-Day	RSPB's Heathland Casework Adviser. Ecological Consultant
Mr M Edwards	Entomologist and member of SWT's Conservation Committee
Mr G Lyons	Senior Ecologist, SWT
Mr B Pepper	Veterinary Surgeon
Ms J Willmott	Living Landscapes Officer, SWT

### Additional supporters

Mr B Middleton	South Downs National Park Authority
Mr R Mullenger	South Downs Local Access Forum
Mrs J Whatley	Horse rider
Mrs S Payne	Volunteer with SWT

### Objectors

Mrs L Petrie	Local resident
Mrs T Slowe	Local resident
Mr P Stent	Farmer
Mr R Milton	
Mrs A Church	Widow of a farmer
Mrs C Myres	Local resident and horse rider
Major J Herrtage	Local resident and naturalist
Mr D Terpstra	Farmer
Mr J Hancock	Farmer
Mrs P Robertson	Farmer
Mr J Field	Local resident
Mrs J Wilkinson	Local resident
Mrs P Blunt	Local resident

## **DOCUMENTS HANDED IN AT INQUIRY**

1. Mrs J Whatley's statement
2. Sussex Wildlife Trust Articles of Association
3. Sussex Wildlife Trust, Questionnaire and associated materials
4. Sussex Wildlife Trust Report and Annual Accounts 2013-14
5. Sussex Wildlife Trust Report and Annual Accounts 2014-15
6. Ashdown Forest Grazing Action Plan, summary
7. Letter from Trotton with Chithurst Parish Council, 12 November 2015
8. Email from Professor A Newton to Mrs Petrie, 18 April 2016
9. Letter of 20 April 2016 from Mr M Weston of the British Horse Society, and other material from Mr R Milton
10. English Nature Research Report 422 – Impact of Livestock Grazing on Lowland Heathland
11. Article from British Wildlife, February 2016
12. Mrs P Robertson's witness statement
13. Mr J Field's witness statement
14. Extract from Government guidance on managing sites of special scientific interest
15. Mrs Petrie's closing submissions
16. South Downs National Park Authority – statement of the Sandford Principle and its implications
17. SWT's closing submissions

**Iping & Trotton Commons Public Inquiry Map - Inset  
(with boundary in green and proposed fence in red)**

SWT DOC NO. 2

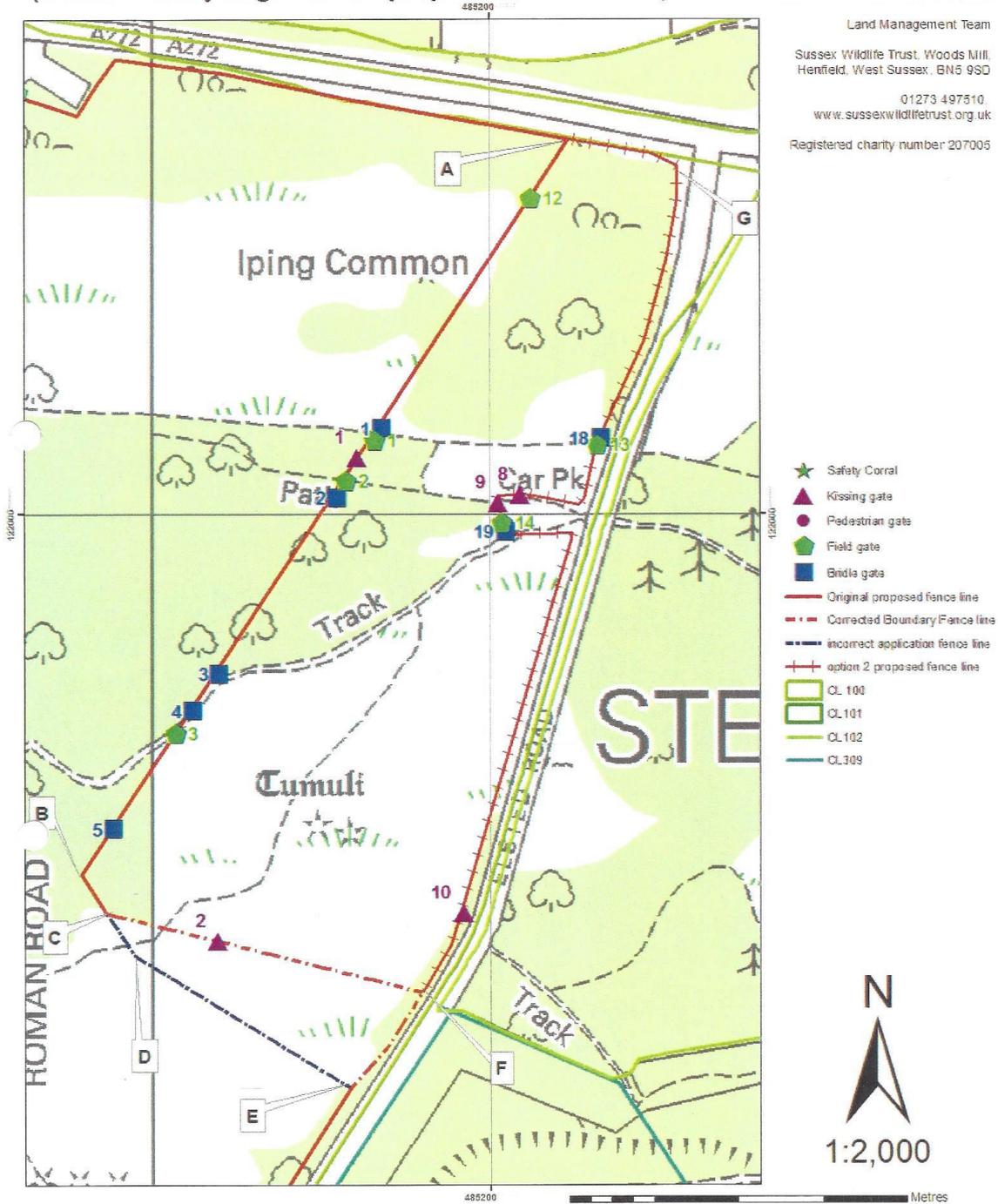


Land Management Team

Sussex Wildlife Trust, Woods Mill,  
Henfield, West Sussex, BN5 9SD

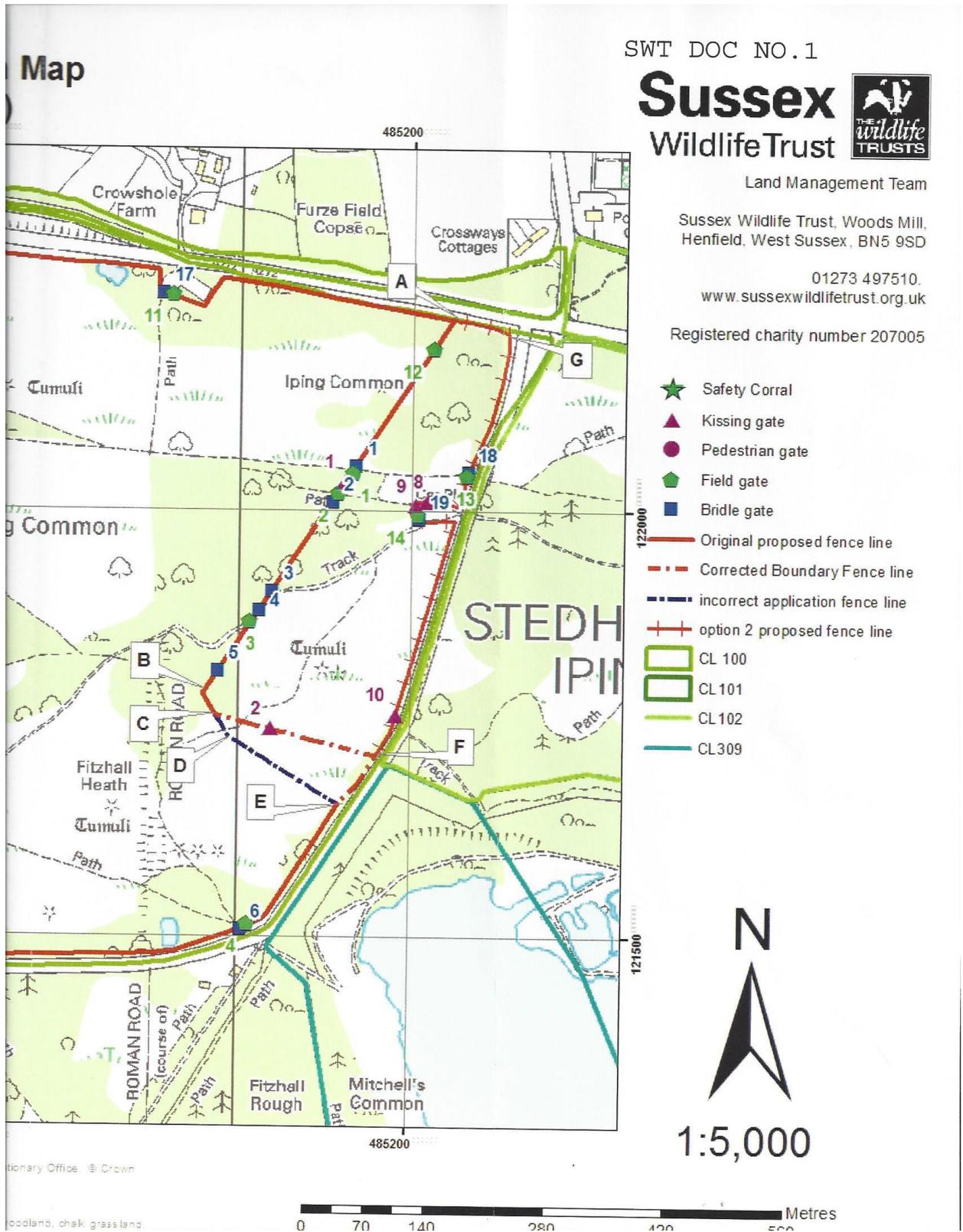
01273 497510  
www.sussexwildlifetrust.org.uk

Registered charity number 207005

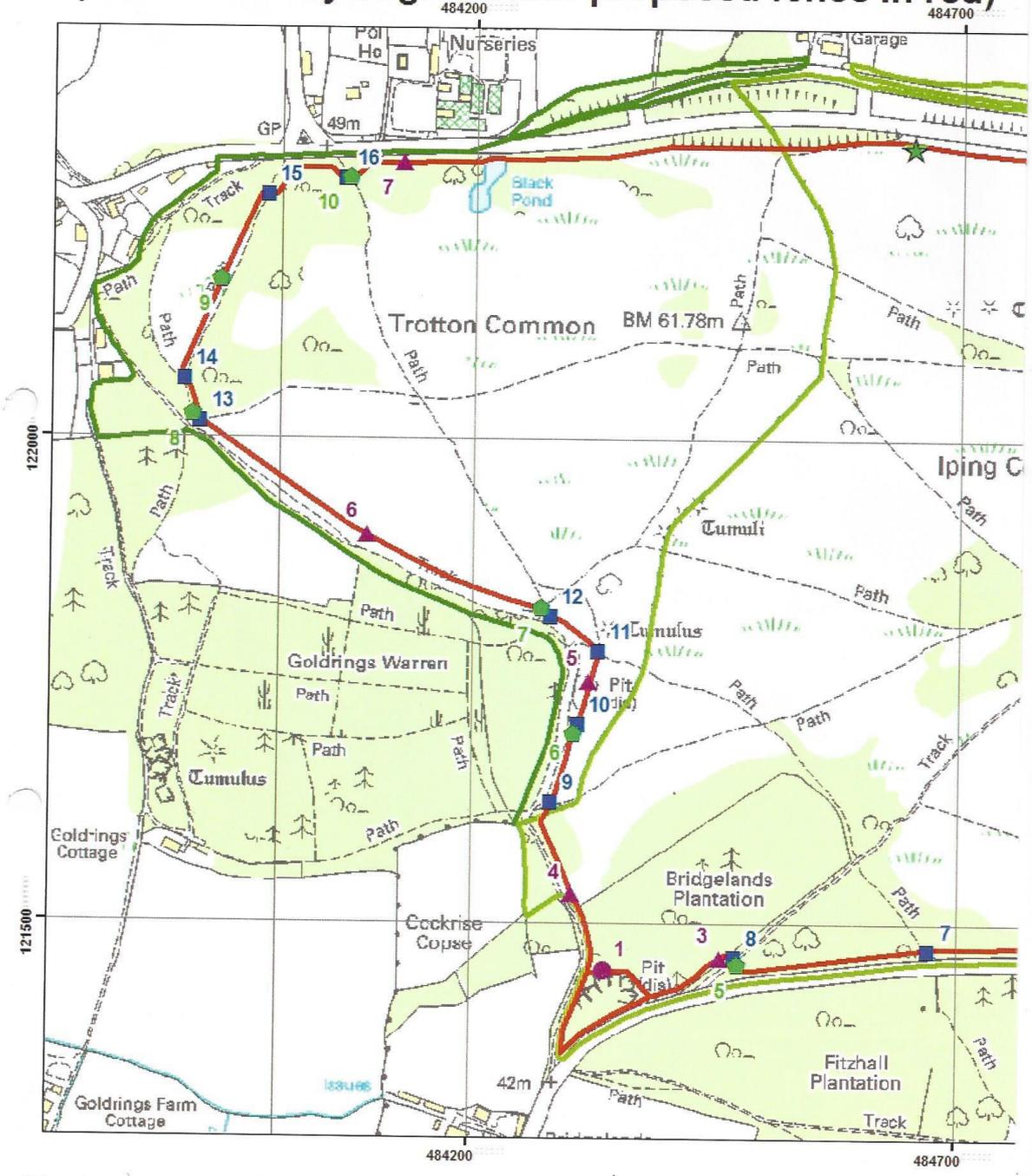


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Where appropriate, the Sussex Wildlife Trust would like to mark the following organisations: Natural England (RAN/SAR, SAC, SPA, NNR, SSSI) and the following: oak grassland register (simple and full data), East Sussex County Council (LVR, SINC), county park, notable verge and meadow data, Brighton & Hove City Council (SINC) & LVR data, The Sussex Wildlife Trust (SINC), county park, notable verge and meadow data, Brighton & Hove City Council (SINC) & LVR data, The Sussex Wildlife Trust (SINC), county park, notable verge and meadow data, Brighton & Hove City Council (SINC) & LVR data.



# Iping & Trotton Commons Public Inquiry Map - Main M (with boundary in green and proposed fence in red)



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Where appropriate, The Sussex Wildlife Trust would like to thank the following organisations for their assistance in the preparation of this map.