



# Application Decision

by **Richard Holland**

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

Decision date: 24 August 2020

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## Application Ref: COM/3243541

### Ludshott Common, Hampshire

Register Unit No: CL101

Commons Registration Authority: Hampshire County Council

- The application, dated 16 December 2019, is made under Section 23 of the National Trust Act 1971 (the 1971 Act) for consent to carry out restricted works on common land.
  - The application is made by the National Trust.
  - The works to enclose 218.755 hectares of common land comprise:
    - i) 5570m of 1.05m high wooden post and wire stock fencing;
    - ii) 17 x bridle gates, 11 x field gates, 19 x self-closing pedestrian gates and 1 x stile;
    - iii) 4m of 1.8m high wooden post and rail fencing beside each of the bridle gates in place of post and wire fencing;
    - iv) 2 x 2m high wooden post and rail livestock handling pens (4m x 12m) enclosing a total of 96m<sup>2</sup>;
    - v) 2 x cattle grids; and
    - vi) 3 x water troughs with temporary trenches (approx. 1 month duration) for installation of approx. 390m of underground water pipes.
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## Decision

1. Consent is granted for the works in accordance with the application, as amended, dated 16 December 2019 and the plan submitted with it subject to the following conditions:
  - i. the works shall begin no later than 3 years from the date of this decision;
  - ii. all gates shall comply with British Standard BS5709; and
  - iii. all works shall be removed on or before 24 August 2040.
2. For the purposes of identification only the location of the proposed works is shown on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land consents policy<sup>1</sup> in determining this application under section 23, 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.

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<sup>1</sup> Common Land consents policy (Defra November 2015)

4. The application as originally made and advertised included 19 kissing gates for pedestrian access. The applicant subsequently amended the application by substituting 19 self-closing pedestrian gates for the 19 kissing gates. I am satisfied that the amendment has not prejudiced any party wishing to comment on the permanent works proposed.
5. This application has been determined solely on the basis of written evidence. I have taken account of the representations made by Natural England (NE), Open Spaces Society (OSS), Disabled Ramblers (DR), Hampshire Countryside Service (HCS), Margaret Benton and Neil and Nicola Milburn.
6. I am required by section 39 of the Commons Act 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***

7. The land is owned by the applicant, the National Trust (NT), which considers the works to be desirable for the purpose of improving opportunities for the enjoyment of the property by the public and that the works are in the interests of visitors to the common.
8. The common land register records rights of common attached to three dominant tenements; Selbourne Priory, Downlands and Passfield House Farm. All were consulted by NT about the application but none have commented. Rights attached to Selbourne Priory are to graze 200 sheep, 50 goats, 40 cattle and 40 pigs, along with rights of pannage. Rights attached to Downlands and Passfield House Farm are to graze 20 cattle and 3 cattle respectively, along with rights of estovers. NT advises that the tenements have been sub-divided into a number of ownerships, most owning very small areas of land. None of the rights are currently exercised but NT says one commoner has expressed an interest in grazing the common with native breed of cattle once the site has been made secure.
9. NT also advises that four properties have rights of vehicular access over the common. All were consulted by NT about the application; none have commented.
10. I am satisfied that the application is made in the interests of the landowner and there is no evidence before me to suggest that the works will harm the interests of those with rights of common and rights of vehicular access over the common.

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

11. The application works include 5570m of new fencing around the whole common land perimeter to contain grazing animals. It will almost entirely follow the common's boundary, with the exception of three car park locations and four minor deviations from the boundary where it is necessary to accommodate the safe and practical installation and use of bridle gates.

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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.

12. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. NT advises that the common is well-used by visitors, who make use of the many miles of paths. Visitors include dog walkers from nearby and neighbouring communities and those from further afield who arrive by car or walk from Headley Down and Grayshott to enjoy the open space of the extensive heathland and the wooded margins. Bird watchers, naturalists and groups from Grayshott Hall Spa make regular use of the common and horse riding and off-road cycling are also popular.
13. There is potential for such use to be impeded by the large amount of fencing proposed. Whilst no party to have made representations has objected to the works in principle, all but HE raised issues about accessibility, in particular the kissing gates' compliance with BS5709:2018 for Gaps, Gates and Stiles. In response to these concerns, particularly those of DR, NT agreed to install BS5709 compliant self-closing pedestrian gates instead of kissing gates to allow equality and access for all. I agree that to facilitate access all pedestrian and bridle gates should meet British Standards.
14. DR also raised concerns that the proposed stile on the eastern boundary of the common would be very restrictive to most users. NT advises that the single stile is proposed for a very remote part of the common to provide agreed access to specific persons, who have been consulted and are content. Whilst I consider a stile to be suitable only for those with good mobility, I accept that it may be appropriate in this instance. Furthermore, the application plan indicates that a pedestrian gate is to be situated approximately 70 metres to the north, so the stile will not be the only point of access onto the common along this stretch of fencing.
15. OSS raised concerns that the fencing will be away from the common land boundary in many places by a few metres, which will create useless sterile areas. NT says this will not be the case and reiterated the position set out in the application that the fence line will deviate from the common boundary at only four specific locations. At three of those locations the deviation is to allow safe use of gates where livestock may congregate. At the fourth location, at the northern most corner of the common, deviation is to allow horse riders to safely operate bridle gates at a safe distance from the adjacent highway. I am satisfied that these deviations are in the public interest and, notwithstanding the three car parks, that the fencing will not otherwise deviate from the common land boundary.
16. The two handling pens are required to unload livestock and to control their movement onto the common. The application form gives their combined area as 96m<sup>2</sup>, whereas the published notice indicates an area of 192m<sup>2</sup>. NT has since confirmed that the area will be 96m<sup>2</sup>. Whilst the area will no longer be accessible by the public, it amounts to less than 0.005% of the total area of the common. I am satisfied that the pens are necessary to manage livestock movement onto the common, that the area to be enclosed will have only a small impact on public rights of access and that no party has been prejudiced by the discrepancy in describing the size of the area, especially as the actual area is the smaller of the two measurements.
17. Mrs Benton raised concerns about the possible silting over of the cattle grids, which she says has happened to other cattle grids in the area; these became impossible to lift and clear out. I consider that such silting might have an effect on the safe pedestrian use of the proposed cattle grids as well as reducing their effectiveness to control livestock movement. NT concedes that cattle grids do fill up with material washed in over time and is proposing to install cattle grids where they can be lifted to allow the pits below to be cleaned. This would generally be done in the spring each year so as to prevent excessive build up but the grids would be checked on a regular basis. I am satisfied that measures will be in place to address Mrs Benton's concerns.
18. NT has confirmed that trenches for the underground water pipes will be dug and filled back in on the same day, making it unnecessary to erect any temporary safety/security fencing. I consider that this will ensure disruption to public access over the pipe routes will be kept to a minimum and I am satisfied that the pipe-laying works will not cause unacceptable harm to public access over the common.
19. It is clear that the opinions of parties with an interest in public access matters, including the British Horse Society, which has not commented on the application, were taken into consideration when the works plans were developed. I give significant weight to there being no objections in principle

to the proposals on public access grounds from the parties who commented. I am satisfied that NT has addressed the concerns raised about pedestrian access and that suitable and sufficient access points through the fencing will be provided. I conclude that the works will affect free movement over the common but that they will not unduly do so or cause serious harm to the interests of the neighbourhood and public rights of access.

## ***The public interest***

### *Nature conservation*

20. Ludshott Common lies within Unit 1 of the Bramshott and Ludshott Commons Site of Special Scientific Interest (SSSI), which is designated for the extensive tracts of dry lowland heath with an assemblage of birds associated with lowland heath. The SSSI has been assessed as being in 'Unfavourable - Recovering Condition', which has not improved since at least 1997 despite on-going manual, mechanical and chemical management. It also lies within Wealden Heaths Phase II Specially Protected Area (SPA), which is designated for the presence of Dartford Warbler, Nightjar and Woodlark.
21. In order to support NE's objective to achieve 'Favourable Condition' for the SSSI, NT proposes to re-introduce grazing animals onto the common. NE advises that grazing by cattle can be an effective mechanism for enhancing the structural diversity of lowland heath and that the site has recently entered a Countryside Stewardship Agreement, which permits NT to continue mechanical management and/or to introduce grazing. NE anticipates that such management would, over a number of years, move the SSSI into 'favourable condition'. NT advises that the proposed works are required to safely contain grazing animals and this is the purpose of the application.
22. I am satisfied that grazing by cattle will improve the condition of the SSSI and that the proposed works are needed to keep cattle on the common and to control their movements in line with the grazing regime. I conclude that the works are in the interests of nature conservation.

### *Conservation of the landscape*

23. NE advises that Ludshott Common lies within the Wealden Greensand National Character Area. It is also included in Hampshire County Council's Western Weald Forest and Farmland Heath Landscape Character Area and in East Hampshire District Council's Greensand Hills Landscape Character Assessment. NE further advises that the common is characterised as an area that is unenclosed but also as an area of heathland that should have an open character and wide vistas.
24. The works will have a detrimental visual impact to a certain extent as they will introduce new structures into the landscape. NT advises of a number of measures proposed to mitigate their impact. Fence posts will be of timber and, once weathered, will be less conspicuous. Natural materials will be used for gates, where possible. Vegetation will be allowed to grow around the new fence lines as it has around the fencing already in place. Restoration of hedging on the boundary banks will be encouraged. Fence lines will be against woodland, where possible, where it will be less visible. I consider that these measures will be of some assistance in reducing the visual impact of the works.
25. NE advises that heathland will inevitably be subject to succession and will eventually turn to scrub and to woodland if it is not managed. NT advises that there are some open views across the heath at Ludshott Common but more distant views are obscured by invasive pine woodland and that without management to control developing woodland these views will, over time, continue to be considerably restricted. Whilst it is not a primary aim of the application to protect the common's open landscape character, I consider that grazing of the land by cattle will nevertheless be of long-term benefit to the heathland landscape and that this outweighs any visual harm caused by the works during the period of consent.

### *Archaeological remains and features of historic interest*

26. HE indicated that it has no statutory interest in the application land and offered no comments about the proposals. There is no evidence before me to suggest that the works will harm any designated archaeological remains or features of historic interest.

## **Other relevant matters**

27. The application seeks consent for permanent works. Both NE and OSS have asked for any consent given to be time-limited to 20 years so that retention of the works beyond that, if NT considers it to be necessary, can be formally reviewed by way of a new consent application. In support of that view NE cites the natural life of the fence, likely improvements to virtual fencing technology over time and that the period of the proposed Countryside Stewardship Agreement will also be time-limited. OSS suggests that 20 years should be enough time for planned hedge planting on some parts of the common boundary to have established sufficiently to be stock proof without supporting fencing.
28. NT has confirmed that it does not wish to amend the application to time-limited works for a number of reasons. Firstly, it would be a limiting factor on capital investment and conservation work. Secondly, it cannot be assumed that a new Countryside Stewardship Agreement or other agri-environment scheme will be available in 20 years' time to tie in with a new consent period. Thirdly, if a suitable virtual fencing option is not available in 20 years' time, a major burden of time and expense will be required to repeat the application process. Notwithstanding the above, NT is willing to agree to a non-binding internal review, involving all statutory parties, in 20 years' time.
29. Defra's common land consents policy says, "*The Secretary of State will wish to know whether the objectives motivating an application can be achieved within a predictable time frame, or should be reviewed from time to time, and if so, whether any consent to works should be time limited*". Further to this, permanent consent allows works to remain in place for an unlimited period with no mechanism to require their removal once their purpose has been fulfilled. I therefore consider that time-limiting the consent to 20 years, which can be secured by attaching a suitable condition, is appropriate. I do not agree that making a new application 20 years after making the first is unduly onerous on an applicant.

## **Conclusion**

30. I conclude that the proposed works will not significantly harm the interests set out in paragraph 6 above; indeed, they will be in the long-term interests of nature conservation and the landscape. Time-limited consent is therefore granted for the works subject to the conditions set out in paragraph 1.

*Richard Holland*



# Application for Works on Common Land

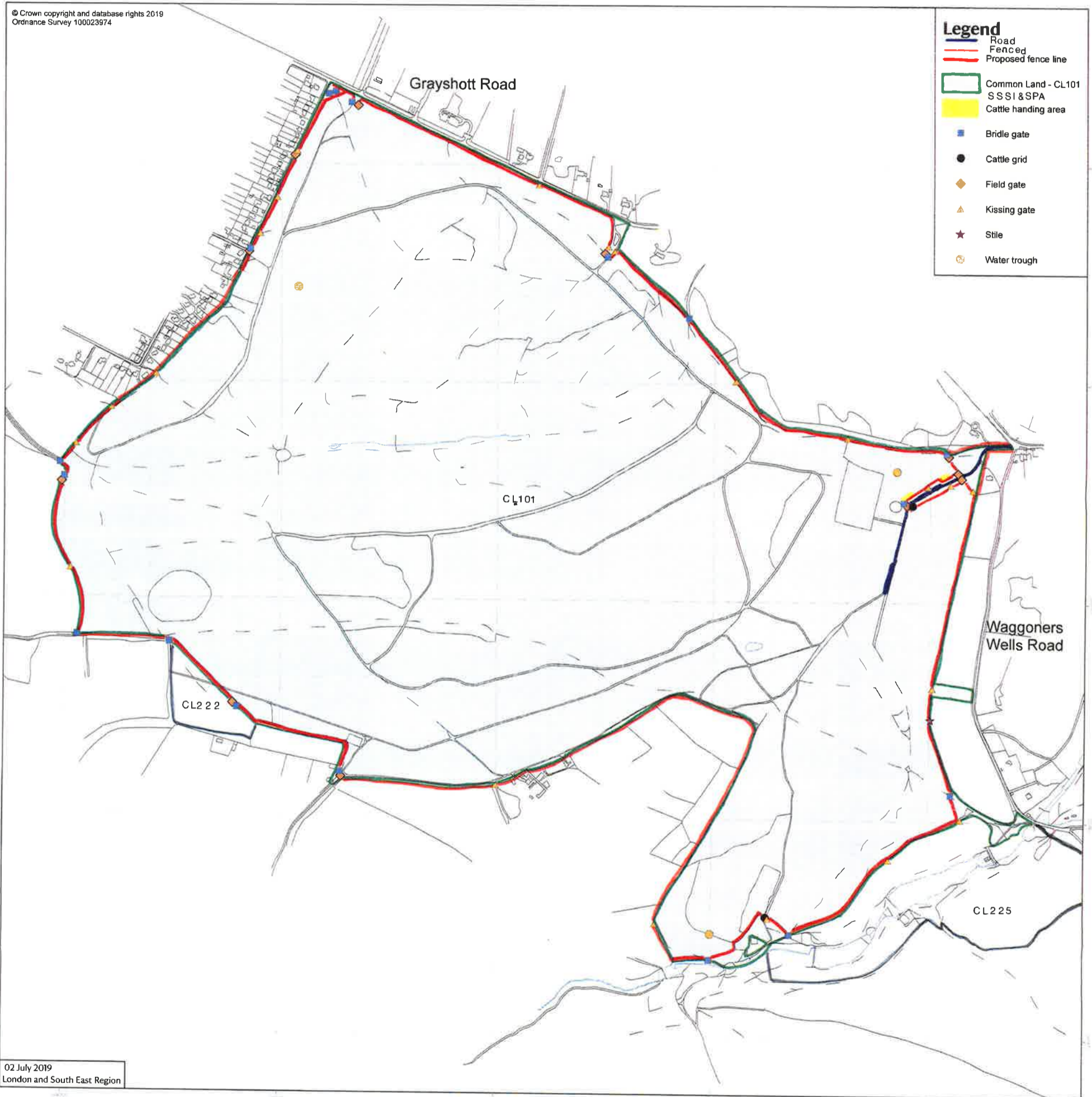


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