



# Application Decision

by **Richard Holland**

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

Decision date: **11 April 2018**

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## **Application Ref: COM/3187734**

### **Hazeley Heath, Hartley Witney, Hampshire**

Register Unit No: CL49 and CL100

Commons Registration Authority: Hampshire County Council

- The application, dated 11 October 2017, 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 Hart District Council (HDC).
  - The works comprise:
    - (i) the construction of 3449 metres of fencing with public access gates along the western part of the southern boundary of the common to the east of the B3011;
    - (ii) excavation of four wildlife ponds;
    - (iii) excavation of a 50 metre flood alleviation ditch;
    - (iv) construction of a viewing platform;
    - (v) installation of a cattle handling facility;
    - (vi) installation of 220 short wooden posts (dragons teeth) totalling 550 metres along Mansion Drive (also known as Police College Road);
    - (vii) installation of two meter cabinets and associated temporary trenches and safety fencing for the installation of 'invisible fence' electricity cables; and
    - (viii) installation of ten mounting blocks each side of bridleway entrances.
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## **Decision**

1. Consent is granted for the works in accordance with the application dated 11 October 2017 and the accompanying plan, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. all gates shall meet British Standard 5709; and
  - iii. all fencing shall be removed no later than 25 years from the date it is erected.
2. For the purposes of identification only the works are shown on the attached plan.

## **Preliminary Matters**

3. The installation of below ground electronic 'invisible' stock control fencing does not form part of the application as HDC considers it not to need section 38 consent. However, the two meter cabinets and the installation of an electrical supply to them from a nearby overhead pylon do form part of the application.
4. 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

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

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by Natural England (NE), the Open Spaces Society (OSS), Mattingley Parish Council, Hartley Whitney Parish Council, Mr John Collman, Mr Peter Phillips, Mrs Jenny Richardson and Mr JE and Mrs C A Savill.
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. CL49 is described in the common land register as the tract of about 51.91 hectares called Hazeley Heath in the parish of Hartley Witney. CL100 is described as the tract of about 136.53 hectares called Hazeley Heath in the parish of Mattingley. HDC made the application on behalf of itself and the Royal Society for the Protection of Birds (RSPB) (although the application form names only HDC as the applicant) which together own 85% of the combined units. The proposed works are restricted to land within their ownership.
9. The register for CL49 records two rights of estovers and one right to graze three horses or three donkeys over the whole unit. The register for CL100 records two rights of estovers and two rights to graze cattle (20 and 15 respectively) over part of the unit. HDC has advised that no grazing rights are exercised and that no rights of estovers are exercised as far as it is aware. Both units are also subject to rights of way easements in favour of various local properties. All those having rights and easements were consulted about the application; none have commented. There is no evidence before me to suggest that the proposals will 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 to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with the interests of the protection of public rights of access. The main purpose of the works applied for is to allow the introduction of grazing onto the common land by erecting post and wire stock-fencing to prevent livestock from encroaching onto the B3011 road. A small post and rail fenced cattle handling facility (corral) is also proposed. A number of separate nature conservation, amenity and estate management works are included in the application, as listed above and considered separately below. These will, along with the fencing, have some impact on use of the common land by local people and on public access more generally.
11. The post and wire fencing proposals include provision of 19 access gates along the 3,449 metres route. This comprises 13 multi-purpose access gates, three field gates and three pedestrian 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.

HDC has clarified that multi-purpose means access gates suitable for pedestrians, wheelchairs, buggies and horse riders. There is no evidence to suggest that any currently used access points or desire lines are left uncatered for by the gate proposals. I give weight to the OSS' view, reached following its visit to the site, that the application takes full account of public rights of access. I am satisfied that public rights of access onto the common will not be unacceptably harmed by the fencing.

12. HDC has anticipated the desirability of a future review of the continued need for the fencing and suggests that a time-limited consent period of 25 years is appropriate. HDC has also confirmed that all gates for horse riders will be as recommended by NE and the British Horse Society. In its representation NE advises that the relevant British Standard is BS5709 (Gaps, Gates and Stiles). I consider that limiting any consent to 25 years and requiring all gates to adhere to BS5709 is appropriate and can be secured by conditions attached to any consent.
13. The available area of common land for local use and public access will be reduced slightly as the footprints of the ponds, ditch, corral and meter cabinets will become inaccessible. Each pond will cover an area of a maximum of 130 square metres and, assuming that it may be up to 2m wide, the proposed ditch footprint may be up to 100 square metres. The corral will be approximately 80 square metres and the cabinets will each be 1.15 square metres. This amounts to a loss of approximately 700 square metres from the 188 hectares of common land forming the two units. It equates to 0.038% of the common land, the loss of which I do not consider to be unduly harmful to the interests of the neighbourhood and public access.
14. The meter cabinets will not, as structures, benefit the interests of the neighbourhood or public access. However, the invisible fencing is an integral part of the grazing plans and requires such cabinets as part of the necessary electrical infrastructure. I am satisfied that this outweighs the small level of harm that the cabinets will cause to these interests.
15. Three of the ponds are to be sited near the eastern boundary and will therefore not interrupt use of an open area of the common. The fourth pond and the ditch will be sited more centrally in the vicinity of the access track/bridleway (the Wedgewood Farm track) that runs through the common and links the B3011 in the south to Wedgewood Farm in the north. Sited here, the pond and ditch may impact on public access across the common to a greater extent. However, they are proposed to be sited here to assist drainage on the common and to help prevent run-off flooding problems at Wedgewood Farm, about which Ms Richardson and Mr and Mrs Savill have raised concerns. This suggests the area is generally wet and may therefore attract little footfall.
16. I am satisfied that the three eastern ponds will not significantly harm the interests of the neighbourhood or public rights of access and that any harm to these interests caused by the ditch and central pond is outweighed by the benefit to the common of improved drainage.
17. A viewing platform giving views across the heathland is proposed as part of an RSPB plan for improving visiting arrangements. It is described as a trapezium shaped area and will have a footprint of less than 25 square metres. It is to be positioned just off the Wedgewood Farm track. The end facing the track will be level to the ground, making it wheelchair and buggy friendly, and it will rise to no more than 400mm above ground level at the opposite end. It will be suitably surfaced for public safety. An accompanying interpretation board will assist visitors to listen and look out for heathland birds. I am satisfied that the viewing platform will not present a serious impediment to public access as visitors could easily walk over or around it and that it will be a benefit to those with an interest in the site's wildlife.
18. I am satisfied that the proposed dragon's teeth, which will be set 2.5m apart, will also not present a serious impediment to access as visitors could walk between them. They will be wide enough apart to cater for wheelchairs and buggies. I consider that they will be of benefit to the neighbourhood as they will prevent unlawful vehicle encroachment onto the common. I further consider that the proposed mounting blocks at bridleway entrances will facilitate public access on horseback and will therefore be of benefit to the neighbourhood.

## *Nature Conservation*

19. The proposed works sit within the Hazeley Heath Site of Special Scientific Interest (SSSI), which forms part of the Thames Basin Heath Specially Protected Area (SPA). The application is made mainly for the purposes of enclosing livestock to control scrub encroachment by way of grazing and thus improve the condition of the heathland habitat for which SSSI status is given. It is also made to support aquatic invertebrates such as dragonflies and damselflies through the introduction of ponds.
20. HDC acknowledges that as landowner it has a duty to take reasonable steps 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. The works are proposed to that end. For the purposes of condition assessment the SSSI is divided into four units. NE has confirmed that none of the units are in a favourable condition, although some are deemed to be recovering because of scrub removal already carried out under the supervision of the RSPB. Mr Phillips has raised concerns about how the scrub removal was carried out but it does not form part of this application and cannot therefore be considered.
21. Mr Phillips has also raised concerns about the validity of taking a grazing regime forward in the light of what he feels are flawed results from a five year grazing trial carried out between 2009 and 2014. He does not contest the need for scrub control but would wish it to be by means other than grazing so that there is no need to fence the common. HDC acknowledges the lack of significant results from the grazing trial but points to wider evidence that grazing is a proven tool for heathland management. HDC advises that non-grazing methods will continue, mainly the removal of birch and periodic coppicing to regenerate gorse, but that wet areas and those with uneven topography are more suited to control by grazing.
22. I am satisfied that scrub management is necessary to bring the SSSI back into favourable condition and that grazing, in association with manual and/or mechanical scrub control, will contribute to that aim. It follows that the proposed stock fencing will further those interests by facilitating a suitable grazing regime. I consider the fencing proposals and the creation of new ponds to be in the long term interests of nature conservation.

## *Conservation of the landscape*

23. The meter cabinets will be an alien feature in the landscape, although I consider that their scale and positioning means they are likely to have a very small visual impact. I give weight to NE's view that ponds and viewing platforms can be regarded as a usual part of a heathland landscape. Mr and Mrs Savill question the need for the viewing platform and consider that viewing from the Wedgewood Farm track is adequate. I accept that it will be a new feature that is not necessary to facilitate the proposed grazing scheme. However, it will be constructed of stone or gravel contained within wooden sleepers and will be placed next to the track. I am satisfied that as such it will cause little visual harm to the landscape and that any such harm will be outweighed by the benefit to visitors; in particular wheelchair and buggy users who will be able to safely enjoy the view from an elevated position.
24. The other structures/features are those concerned with enclosing the common land and providing controlled access to it. Mr Phillips points out that the heath has remained unfenced for hundreds of years and I accept that the fencing, gating and dragons teeth proposals are likely to have some harmful visual impact on the traditional landscape.
25. HDC says the 3449 metres of post and wire fencing will be set within existing woodland, behind banks and at low points, where present. It will be inconspicuous both from the road and from the common, where there is no footpath along the roadside boundary. Vegetation will be allowed to grow around the fencing to lessen its visual impact. Gates will be tied back when cattle are not present, which will lessen their visual impact. I am satisfied that these measures are likely to limit the visual impact of the fencing as much as it can be.

26. HDC says the 550 metres of dragons teeth will be 0.45 metres high and be of soft wood. They are proposed to be placed on each side of Police College Road to counter an expected increase in the risk of vehicular encroachment onto the heath from the road following the opening up of this part of the heath by the on-going scrub clearance and increased use of the road for parking due to the re-development of the nearby police college. I am satisfied that any visual harm to the landscape caused by the dragons teeth will be outweighed by the benefit to the landscape in preventing vehicular encroachment onto the heath.
27. The main purpose of the proposals is to bring the land back into favourable condition, which includes preserving it as a heathland landscape. I consider the proposals to be in the long term interests of the landscape.

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

28. There is no evidence to suggest that the proposed works will harm this any features of historic interest or any archaeological remains.

#### *Other matters*

29. Those making representations also raised a number of other issues. These include the existing condition of the application land and of the Wedgewood Farm track and adjacent bridleway; the risk to persons and the environment from livestock; the implications for traffic using the B3011 road; and the proliferation of ragwort on site. HDC has said that it will continue to discuss such issues with them outside of the application process. In any case, these issues are not relevant to the determination of this application.

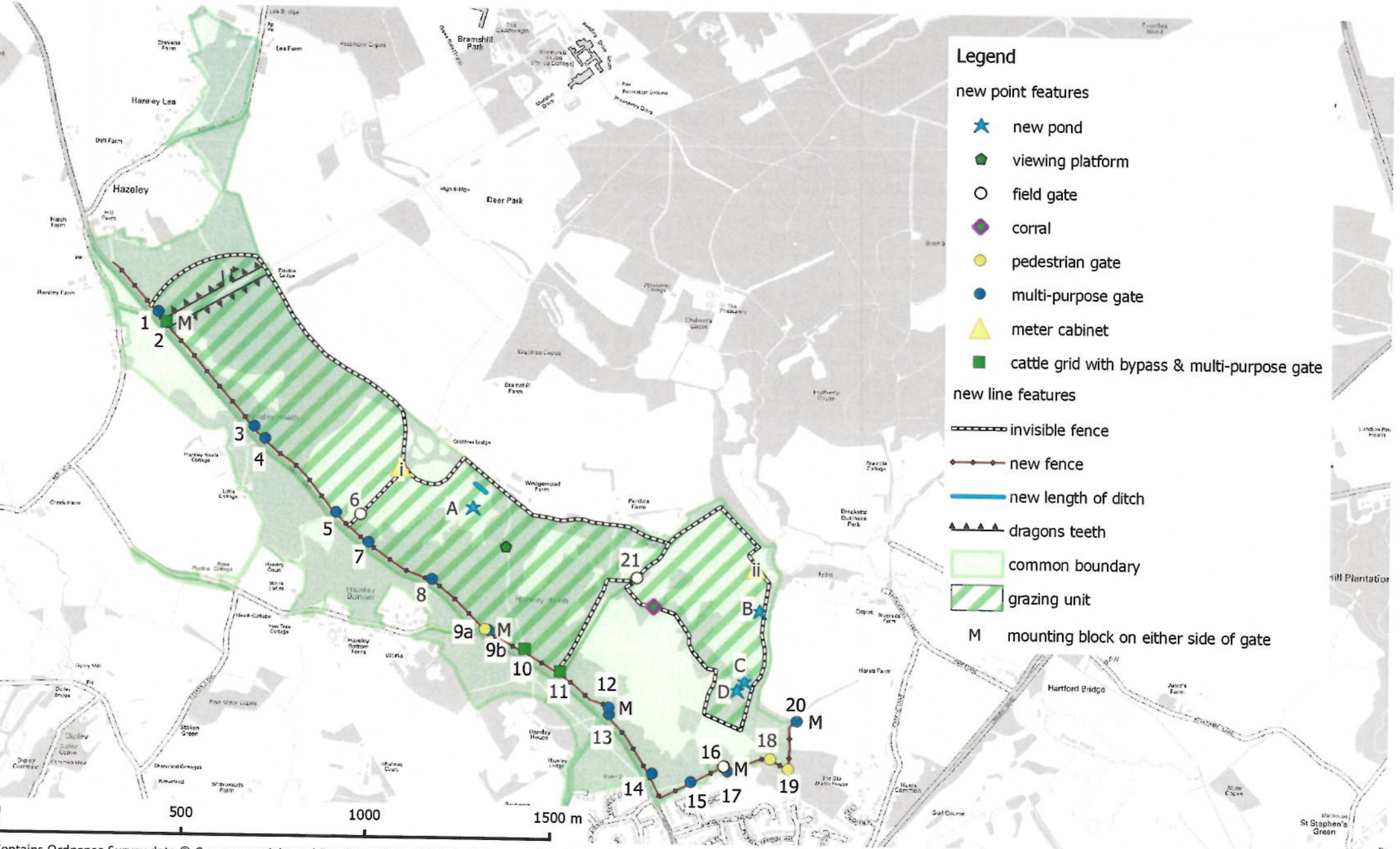
#### **Conclusion**

30. I consider that the proposed works will not significantly harm any of the interests set out in paragraph 8 above; indeed, they are likely to benefit nature and landscape conservation interests in the long term. I conclude therefore that consent should be granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**

com/3187734

Map 6: Application map



Legend

new point features

- ★ new pond
- ⬠ viewing platform
- field gate
- ◆ corral
- pedestrian gate
- multi-purpose gate
- ▲ meter cabinet
- cattle grid with bypass & multi-purpose gate

new line features

- invisible fence
- new fence
- new length of ditch
- ▲ dragons teeth
- common boundary
- ▨ grazing unit

M mounting block on either side of gate