



Application Decision

Inquiry opened 17 April 2012

by **Martin Elliott BSc FIPROW**

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

Decision date: 27 July 2012

Application Ref: COM 231

Chobham Common

Register Unit No: CL326

Commons Registration Authority: Surrey County Council

- The application, dated 31 January 2011, 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 Mr M Pearson on behalf of the Surrey Wildlife Trust.
- The works comprise:
 - the erection of temporary electric fencing of 6779 metres to enclose five areas for summer grazing for a four year period.
- Retrospective consent is sought for 210 bollards at Burrow Hill Green.

Decision

1. Consent is granted for the works in accordance with the application dated 31 January 2011, as amended to include five 4m x 4m permanent fenced enclosures within the area of Langshot Bog, and the plans submitted with it subject to the following conditions: -

(i) all gates shall be erected to BS5709:2006;

(ii) all enclosures shall only be grazed by Belted Galloways not with calf.

For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

2. I held a public local inquiry at the Bisley Pavilion on 17, 18, 19, 20 April 2012. I carried out an unaccompanied site inspection of the application land, Chobham Common, on 16 April 2012. This was with the exception of the land at Burrow Hill Green which I inspected unaccompanied on the evening of 17 April 2012. I did not carry out a further accompanied or unaccompanied inspection following the close of the inquiry as there were no issues which required me to visit the site further. None of the parties required me to revisit the site.
3. In response to the notice of the application 47 letters of representation were received by the Planning Inspectorate.
4. A number of objections relate to any future proposal to fence the entirety of Chobham Common and for its widespread grazing. I am required to consider the application before me which is for the enclosure of five areas for summer grazing for a period of four years. Any future proposal will require a further

application under section 38 of the 2006 Act and will be subject to the required consultations and an appropriate determination; any decision will be based on the merits of the application measured against the relevant criteria.

5. Following the close of the inquiry two further representations in opposition to the application were received. These representations did not raise any new issues and were therefore not circulated to the parties.

Amendment to the application

6. The applicant sought to amend the application so as to provide consent for five 4m x 4m permanent fenced enclosures within the area of Langshot Bog (enclosure 5¹). The purpose of the enclosures is to provide for the proper conduct of survey work. No adverse representations have been made in respect of these additional works.
7. There is nothing which precludes an amendment to an application under section 38 of the 2006 Act providing there is no prejudice to any party. The proposed amendment has been included in the applicant's statement of case which has been on deposit for inspection. Opportunity has also been given to consider the effects of the amendment at the public inquiry. In addition, as pointed out by the applicant, it would be within my power to impose a condition on any consent to provide for the monitoring of the progress of the management of the main application.
8. No representations were made to suggest that the proposed amendment could not be accepted and there is nothing to suggest that anyone might be prejudiced. I have therefore based my decision on the application as amended.

Main Issues

9. 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;² and
 - d. any other matter considered to be relevant.
10. I have had regard to Defra's³ Common Land Consents Policy Guidance⁴ in determining the application which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

¹ Enclosure numbers are to be found on the plan accompanying the application

²Section 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.

³ Department for Environment Food and Rural Affairs

⁴ Common Land Consents Policy Guidance (Department for Environment Food and Rural Affairs July 2009)

11. The applicant seeks retrospective consent for the erection of 210 bollards at Burrow Hill Green. No representations have been received to this element of the application and there is nothing before me to suggest that the relevant criteria have not been satisfied. I do not intend therefore to consider this part of the application further.

Reasons

Background issues

12. Mr Milton disagrees with the Planning Inspectorate's guidance sheet 8 which states that '*as a 'section 28G authority', we must take 'reasonable steps' when considering section 38 applications in or near SSSIs 'to further the conservation and enhancement of the flora, fauna or geological or physiographical features that have led to the designation of the site. In reaching a decision, we must balance this with the normal duties under section 39 of the Commons Act 2006.'* He considers that the Planning Inspectorate is not bound by the regulation but has a duty to ensure the 'reasonable' test has been met; there is no duty to actively or positively weigh any decision.
13. I do not agree, section 28G(2) of the 1981 Act requires that the Secretary of State, or in this case an appointed Inspector, must act in a way consistent with the primary function, namely section 39 of the 2006 Act but in so doing must seek to further the conservation and enhancement of an SSSI. That function can only be achieved as suggested in the guidance, by balancing the requirements of section 28G with those of section 39 of the 2006 Act. I do not accept that there should be overwhelming evidence that the application is reasonable, by reference to section 28G, in respect of the function for which the land is held; Mr Milton contends that the land is held for public recreation and open space. The fact that the land is used for recreation does not override the other relevant criteria to be considered.
14. I address other legal issues raised, where appropriate, under the relevant considerations.

The interests of those occupying or having rights over the land

Rights of Common

15. There are common rights in respect of two properties. The rights of the property known as 'Beesholme', Gracious Pond, Chobham extend to the grazing by 5 goats, estovers and turbary over part of the common known as Old Slade. In respect of Stanners Hill Farm these rights are for estovers and piscary over the whole of the unit CL326 except land lying to the west of Westways Farm. There is nothing to suggest that these rights are exercised and no representations have been made which indicate that the proposed works will prevent the exercise of any rights. Mr Milton refers to the existence of private easements over the common but again there is no evidence before me, and no representations have been made, to suggest that the works to be authorised have any adverse effect on any easements.
16. Although Mr Milton suggests that there is potential for further registration of rights over the common he does not suggest that the works will have any adverse effect on those rights and there is no evidence of any such effects.

17. Mr Milton also refers to the dominant tenement of the traditional uses of the common namely public recreation. Whilst the public do have a statutory right of access, which I consider below, the public at large do not have a dominant tenement. The dominant tenement of a common relates to those whose ownership carries a private legal right over the common.
18. Mr Milton also suggests that no weight under this heading should be attached to the application and pre arrangement for Higher Level Stewardship (HLS) to further the nature conservation of the site as it is not payable to Surrey County Council, their contractors or agents nor any other '28G' authority. The applicant does not argue that the presence of HLS funding adds weight to their application and indeed suggest that, in the absence of any funding, the common would be managed in the same way. Nevertheless the Environmental Stewardship (England) Regulations 2005 provides that grants may be made to anyone with an interest in the land. Surrey Wildlife Trust (SWT) have an appropriate interest in the land as they lease the land from Surrey County Council.

Public rights of access

19. The public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925. Case law⁵ indicates that section 193 gives a right of access on horseback as well as on foot.
20. The proposed works will enclose five areas of Chobham Common with temporary electric fencing for a period of four years. The electric fencing will be removed when not in use during October to March. Access to the enclosures will be by self closing gates to British Standard BS5709:2006 and in respect of enclosures 1, 2 and 3 additional access will be provided by squeeze gaps.
21. A number of concerns have been raised by walkers, particularly those with dogs, as to safety and the presence of cattle, reference being made to personal experiences of difficulties and a number of other reported incidents which include fatalities. It was considered that the presence of cattle provided a psychological barrier.
22. Evidence from the applicant indicates that there are in excess of 500 million walking visits to the countryside each year. It must be accepted that some of these visits will not be to areas where livestock will be present. The most recent statistics from the Health and Safety Executive (HSE) for the period between April 1996 and March 2006 indicate that the HSE investigated 46 incidents involving cattle and members of the public. Seven incidents resulted in death but almost all of these incidents were in enclosed areas with the two most common factors in these incidents being cows with calves and walkers with dogs. Advice given in the Countryside Code is that if cattle chase a walker and their dog it is safer to let the dog off the lead.
23. SWT has undertaken a risk assessment and has put in measures to reduce any negative interactions between the cattle and the public. These include selecting a breed and individual animals known for their placidity, regular checking of stock, an emergency 24 hour telephone line, removing unsuitable stock and erecting appropriate signage. The SWT do not intend to graze the enclosures with cows with calves and have a herd of Belted Galloway cattle

⁵ *R v Secretary of State for the Environment ex parte Billson (QBD)[1998] EWHC Admin 189*

- which are placid breed and are not naturally curious animals. There will be between three and ten cattle in each enclosure. Grazing has already taken place on Chobham Common in recent years without incident between cattle and the public.
24. Although I can appreciate the concerns relating to livestock it should be noted that the proposal is to graze five enclosed areas and not the widespread grazing of the common as a whole (paragraph 4 above). Many of the concerns relate to the widespread grazing of the common. As a consequence of the application any cattle will be restricted to those areas to be enclosed and, in those areas, pedestrian visitors to the common are likely to encounter livestock. However, bearing in mind the measures to be taken by the SWT the risks from the livestock will be small and can be reduced by following the appropriate advice contained in the Countryside Code.
25. I note that SWT suggest that visitors will have the option not to enter any enclosure. However, the public do have a right of access over all of the common under the Law of Property Act 1925. Nevertheless, the land to be enclosed is very uneven and the evidence is that these areas are little used, if at all, by visitors. If any visitor, and I include equestrian users, takes the option of not entering the enclosures, given the condition of the land and the overall extent of the common, I do not consider that this will have any serious detrimental effect on access and enjoyment of the common as a whole. In any event grazing will only take place during the summer months and for the remainder of the year there will be no livestock and no restriction to access. The only areas to which access will be restricted are the 4m x 4m enclosures at Langshot Bog. No representations have been made which indicate any concerns as to the loss of access to these areas. In my view the restrictions on access to these enclosures is not significant.
26. As regards equestrian access, again a number of the representations relate to the extensive grazing of the common as a whole rather than the proposed five enclosures. Mrs Sleeman referred to Headley Heath and riders not objecting to penned cattle being used as a conservation tool. Mrs Beach, representing the Chobham Common Riders Association, formed in 1980 at the request of Surrey County Council who wished to communicate with local riders, said that initially there was support for one or two small fenced areas for grazing. However, following the submission of the application she indicated that the proposal generated great consternation. Nevertheless whilst Mrs Beach thought it likely that some people would be able to enjoy riding around the penned areas, for many the presence of cows would be a serious problem.
27. For the applicant Fiona Cooper relayed her experiences from Wisley Common, currently grazed in summer with between 20 and 30 Belted Galloways. In her experience the cattle at Wisley are incredibly laid back and take very little notice of riders/horses or dogs. She found that horses generally lose their fear of cattle if allowed to watch from a safe distance.
28. Whilst it may be the case that for some riders the presence of cattle may present a difficulty, particularly in the first instance, the evidence before me suggests that grazing of land using penned enclosures would mean that riders could, on the whole, continue to use the remainder of the common safely. Mrs Sleeman understood that riders had not objected to a similar limited regime on Chobham; this was for obvious reasons that riders knew where the cattle were and riders could continue to ride safely without the element of surprise. With

horses being animals of flight, riders could continue to ride safely without the element of surprise. In the case of the proposed works, no fence will be within 8 metres of any public bridleway or agreed horse route. As such for riders using these routes, or other parts of the common not enclosed, any cattle would be a reasonable distance from any equestrian user or equestrians will know the areas in which cattle are likely to be observed.

29. As regards the enclosed areas which equestrians are also entitled to use by virtue of section 193 of the 1925 Act it is likely that more riders will be discouraged from using these areas as a consequence of the proposed works and the grazing by cattle. However, the evidence before me suggests that the terrain in these enclosures is unsuitable for equestrian use and that this land is not used to any great extent by equestrians.
30. Given the nature of the use of the common, its size and the intention to graze the enclosures for only part of the year, whilst there will be disadvantages to some riders, particularly those with horses which are nervous of cattle, I do not consider that any disadvantage will be significant.
31. The HLS scheme requires the provision of self closing gates for grazing schemes. Representations have been made on the basis that such gates are a potential hazard to both riders and horses; a number of items of correspondence were submitted by Mrs Sleeman in relation to problems at Headley Heath. Mr Milton referred to the British Horse Society web site where accident statistics can be found. He indicated that there were 41 incidents relating to gates. However, no figures are provided as to the number of incidents involving self closing gates and therefore the statistics do not assist in ascertaining the suitability of these gates. Mr Milton also referred to recording of accidents in accordance with RIDDOR but no figures are provided as to accidents involving equestrians and in particular accidents arising from the use of self closing gates; again this offers no assistance. I was also referred to injuries to riders using Headley Heath which were caused by badly functioning gates. Fiona Cooper commented that the gates at Wisley Common, which are the same design as those to be used on Chobham Common are easy to use although there is definitely a knack. She identified the correct way to open the gates was by using the heels to hinges method.
32. It is proposed that the gates to be erected are to BS5709:2006, it is appreciated that this standard does not include specifications as to the speed of closure of any gate. The British Horse Society document 'Gates' (inquiry document 31) reports on problems with self closing gates. It indicates that such gates were initially welcomed by riders but that there has been an increasing number of accidents and incidents. However, the report suggests that all too often, self closing gates have been installed with insufficient manoeuvring space. The document also states that any self closing gate should be carefully installed to ensure that the gate remains in the open position until the horse has cleared the gateway. The report does not state that self closing gates should not be used.
33. Again, whilst some riders may be discouraged from accessing the various enclosures as a consequence of the presence of self closing gates, and I include within this the two Riding for the Disabled Groups operating from Langshot Equestrian Centre, there remains a substantial part of the common to which access will not be hindered. Further, the terrain in these enclosures in my view poses a greater deterrent to their use than the presence of gates. As noted

above the evidence is that these areas are little used by equestrians and are indeed unsuitable and potentially dangerous for such use. Overall whilst there may be some difficulties arising from the need to use the gates I do not think that any disadvantages will be significant.

34. It was considered by a number of objectors that the gates provided to access the enclosures gave an indication that users were entering a restricted area which would discourage use or act as a psychological barrier. I do not accept that this will be the case. The gates will carry signage which in my view will reinforce public access. I note the reference to the case of *Herrick & Anor v Kidner* [2010] EWHC 269 (Admin) (*Herrick*). In *Herrick* a public footpath had been obstructed by a pedestrian gate and an electrically operated gate. The gateway as a whole included three substantial stone pillars and provided access to a residential property. The obstructions significantly interfered with the public's passage on the public footpath and, given the location, had an intimidating effect on the use of the way. The obstructions had a psychological effect by indicating that walkers were entering private property. The circumstances in *Herrick* are entirely different to those which will be encountered on Chobham Common. Further, the gates in *Herrick* were unauthorised whereas the gates in the enclosure boundaries are on existing public footpaths and these have been authorised under section 147 of the Highway Act 1980. It is noted that no bridleways pass through the enclosures and therefore no gates on bridleways will need to be authorised under section 147 of the 1980 Act as a consequence of the proposed works.
35. Mr Milton raises the issue that there has been no access or equality impact assessment put forward in evidence and this is the case. Nevertheless SWT is required to have regard to access for those with disabilities. Given that the gates are to be constructed in accordance with BS5709:2006 I am satisfied that these structures accord with the requirements of the Equality Act 2010. There is no evidence before me which might indicate that the proposed works will have any direct adverse effect on those with disabilities. I have already considered above the effect of the works in relation to equestrian access.
36. There is some concern that the proposed works will result in the requirement for dogs to be kept on leads. The Surrey County Council byelaws require that any dog belonging to a person in control should be under proper control and restrained from causing annoyance to any person or from worrying or disturbing any animal. The bylaws in effect go no further than the usual requirement for dogs to be under close control; this is the situation currently applicable to Chobham Common and there is no indication that dogs will be required to be kept on leads.
37. Mr Searle was concerned that the 1936 revocable deed under section 193 of the Law of Property Act 1925 might be revoked if public activities adversely affected grazing cattle. However, there is no evidence that public activities will adversely affect grazing cattle and there is no indication from the County Council or the SWT that the deed may be revoked for this reason.
38. Mr Oldridge, a model aircraft flyer, referred to the difficulty in finding aircraft which have landed on the common. Although I can appreciate that there will be times when it is difficult to locate aircraft I do not consider that the proposed works will make that more difficult. Access will be available to the enclosures and, given that the enclosures will be grazed, the vegetation will be shorter thus making the locating of aircraft easier.

39. Overall there are some disbenefits to public access. However, bearing in mind that the proposed works are for four years, will only be in place during the summer months and will enclose land which is not often used for public recreation, I do not consider that the disbenefits will be of any significance.

The interests of the neighbourhood

40. The application does not define the extent of the neighbourhood. However, I do not consider that this means that any application must fail. Nevertheless in order to make a decision on the effect on the neighbourhood it is necessary to establish its extent. The extent of the neighbourhood can be determined on the evidence.
41. The SWT submitted that, on the basis of visitor surveys, the neighbourhood could be defined as the communities of Chobham, Windlesham, Sunningdale and Virginia Water to a distance of 5 to 6 kilometres. Alternatively the four surrounding parishes and Runnymede Borough or, in line with the agreed requirements of local planning authorities whose areas include parts of the Thames Basin Heaths Special Protection Area, a distance of 5 kilometres from the common. As suggested by the applicant this in effect amounts to the same thing and in opposition it was agreed that the neighbourhood extends up to a distance of 5 kilometres from the perimeter of the common.
42. Mr Milton argued that the interest of the neighbourhood is the same as the interpretation of the 'benefit of the neighbourhood' under section 194 of the 1925 Act. However, schedule 6 of the 2006 act expressly repeals section 194 and therefore the relevant test is as set out in section 39 of the 2006 Act; the test is different to that in respect of the previous application considered at an inquiry in 1998.
43. The Chobham Common Defence Group (CCDG) contend that the application provides no benefit to the neighbourhood as the purported conservation benefits are small and the common will not change into a favourable condition. I consider below the effects on nature conservation and my conclusions are equally applicable in the context of the interests of the neighbourhood. Whilst the Defra guidance (paragraph 3.9.2) raises the question as to whether the works will add something that will positively benefit the neighbourhood it is not a prerequisite for there to be a positive benefit to the neighbourhood for the application to be approved.
44. In relation to the proposed works preventing local people from using the common in a way that they are used to and interfering with future use and enjoyment of the common, I have already considered the effects on those with interests or rights over the land (paragraphs 15 to 39). In terms of those with rights of common there is no evidence that there will be any adverse effect. As regards public access I have concluded that there will be a detriment to some but I do not consider this to be significant. Again Defra guidance at paragraph 3.9.2 does not in my view require that works which interfere with the use and enjoyment of the land as a whole should be refused.
45. I note the assertion that there is considerable opposition to the application but some of that opposition is based on the misunderstanding that the application is for the fencing and grazing of the entire common and/or that approval of the current application will result in the fencing and grazing of the entire common. It is noted that, although few spoke in support of the application, there is

- nevertheless considerable support. It is also noted that whilst there may be opposition to the application there is a degree of consensus that something must be done to improve the condition of the common. Other than the specifics of any opposition I do not attach any weight to the level of opposition to the application or indeed the levels of support.
46. Representations were made on the basis that if horse riders moved their horses in significant numbers then equine and other local businesses would suffer. Mrs Sleeman reported that in respect of Headley Common there was a 40% drop in liveries. However, it should be noted that this was following the widespread fencing and grazing of the common; the common being previously grazed using pens without objection from riders.
47. Mr Milton said, again in respect of Headley Heath and the Punch Bowl Hindhead, that there was anecdotal evidence of a reduction of 50% in the use by horses of the enclosed common. Mr Milton also related his experience from other sites including the use of the Hindhead Commons within grazing enclosures, grazed by cattle and ponies, where use by equestrians, pedestrians, dog walkers and parents with small children dropped to insignificant levels.
48. Whilst I note this anecdotal evidence there is no evidence to suggest that the proposed fencing will have such an effect on Chobham. In respect of the Hindhead Commons the reduction in use relates to areas which were grazed. At Chobham, although areas will be put into grazing, there is nothing to indicate that there is any significant, if any, use of these areas. The evidence before me is that use of these areas would be difficult for all users and potentially dangerous for equestrians. Furthermore, as noted in the context of public access, there will be a substantial proportion of the common remaining available for those who do not wish to enter the enclosures. It may be the case that some will be deterred from entering the enclosures, noting their current lack of use, but there is no evidence that the enclosures will result in the use of the common dropping to insignificant levels. Other anecdotal evidence suggest that grazing of the common might result in an increase of use by the public although I would have thought it unlikely that this would include equestrian users.
49. Although I note the concerns, there is in my view no evidence to suggest that the proposed works will result in a reduction of use of the common such that local businesses will be adversely affected.
50. Having regard to the above, whilst there are some disadvantages arising from the proposed works I do not consider that they will have a significant adverse effect on the neighbourhood.

The public interest

Nature conservation

51. Chobham Common is a lowland heath site and is a site of national and international importance in respect of biodiversity. The common falls within a Special Area of Conservation and part of Thames Basin Heaths Special Protection Area. This designation is because the site qualifies under article 4.1 of the Birds Directive (79/409/EEC) as it is used regularly by 1% or more of the Great Britain population of species listed at Annex 1 namely Nightjar, Woodlark and Dartford Warbler. The common is also a Site of Special Scientific Interest

and is a National Nature Reserve. 95% of the site has been assessed by Natural England as being in an unfavourable condition with 75% not recovering. As an SSSI English Nature has a duty to put 95% of these sites into a favourable or recovering condition by 2010. Chobham Common is in a deteriorating condition as a consequence of a predominance of *Molinia caerulea* (*Molinia*) (purple moor grass) and encroaching scrub which has displaced the normal heathland vegetation.

Appropriate Assessment

52. Regulation 61(1) of the Conservation of Habitats and Species Regulations 2010 requires that a competent authority, which includes an Inspector appointed by the Secretary of State, must, before deciding to grant consent for a plan or project, which is likely to have significant effects on a European site must make an appropriate assessment of the implications for that site if the plan or project is not directly connected to or necessary for the management of the site. This is reflected at Article 6.3 of the Habitats Directive. For the purpose of Article 6 the term management is to be treated as referring to the conservation management of the site.
53. It is argued that the application to enclose areas of Chobham Common and to graze those areas with cattle constitutes a plan or project and that the application cannot be seen as directly connected or necessary to the management of the site. Consequently an appropriate assessment of the implications should be carried out.
54. Mr Hyman refers to the *Waddenzee* case (Case C-127/02) in the context of conservation management and the need for an appropriate assessment. However, I concur with the view of the applicant that the case does not address the issue of conservation management and the need in this respect for an appropriate assessment. Consequently the need for any appropriate assessment needs to be considered in the context of the Habitats Directive.
55. Mr Hyman also makes the point that the management plan for Chobham Common is part funded by the Strategic Access Management and Monitoring Strategy which seeks to offset the impact of urbanisation. As such it is argued that the management plan cannot be considered entirely necessary to the management of the site such that it is possible to claim exception from appropriate assessment. Article 6.1 of the Habitats Directive suggests that management plans may take a variety of forms and, in my view, whilst the management plan might deal with other issues, there is nothing to indicate that the objectives of the management plan are for anything other than the proper management of the common.
56. It is noted that one of the objectives of the application is to acclimatise the public to the presence of cattle. I do not accept that this element of the application can reasonably be seen as directly connected to or necessary for the management of the site. However, there is a need for the condition of the common to be improved and the grazing to be facilitated by the works, on the evidence of the applicant and in particular Natural England, will make a contribution to improving the condition of the site. I nevertheless accept that any improvement will be small and will not bring the site into a favourable condition. I consider further the benefits of any grazing and other management techniques at paragraphs 58 to 96 below.

57. The grazing to be implemented by SWT is necessary for the proper conservation of the site and is directly connected and necessary for the management of the site as identified in the management plan. It would appear unlikely that Natural England would support a scheme under HLS which was not directly connected with the management of any site. I conclude therefore that there is no need for an appropriate assessment to be carried out.

Grazing

58. In support of the application I heard evidence from Dr Alonso, Natural England's lead advisor on lowland heaths, Dr J Day who has been involved in the management of lowland heath, from 1971 until 2006 for the Royal Society for the Protection of Birds, and since then retained as the ecological adviser to the Society on heathland issues. Mr G Steven gave evidence as a land management adviser employed by Natural England. Evidence was also given by Mr S Fry the Senior Ranger for Chobham Common, Mr D Boddy who has been involved in heathland restoration including grazing schemes using temporary electric and permanent perimeter fencing and Mr J Adler the Grazing Manager for The Surrey Wildlife Trust.
59. The view of the witnesses is that grazing is an important component for heathland management. Dr Alonso considered that Chobham Common could only be brought into a favourable condition by way of management that incorporates sustained extensive grazing by livestock. Reference was made to the publication of the former English Nature (now Natural England) *Impacts of Livestock Grazing on Lowland Heath No. 422* (for convenience I shall refer to this report as No. 422). The findings indicate that grazing can be used to deliver the conservation objectives for lowland heaths, can produce a mosaic of micro-habitats and control to some degree invasive species and *Molinia*.
60. By reference to *Impacts of grazing on lowland heath*, Professor A Newton (BHS appendix 3) (*Newton*) Dr Day said grazing increases the amount of bare ground, increases structural diversity and the cover of flowering plants and grasses, additionally decreases the height of grasses, shrubs and scrub. *Newton* also indicates that a significant number of heathland managers reported that grazing was effective in meeting at least one of their objectives, suppressing scrub and coarse tussocky grass and improving the vegetation structure.
61. Dr Day provided evidence as to the importance of grazing in respect of invertebrate interests. Mr Fry relayed his experience of the management of Surrey heathlands and Chobham Common. In his view grazing effectively reduced the dominance of *Molinia* and increased species such as marsh gentian. Based on his experience Mr Boddy was clear that grazing, where carefully controlled, would be beneficial.
62. Mr Adler outlined that grazing livestock readily assists in creating a mosaic of habitats such as to provide maximum biodiversity. Mr Adler pointed out that there is now a significant area of Surrey's protected habitats under Natural England approved grazing management and the SWT grazing team has proven itself capable of delivering high quality conservation grazing.
63. The CCDG contended that the application is a poor proposal for nature conservation and consequently must be refused. It has to be accepted that the proposed scheme will not benefit the entire common and will only result in the

improvement of the condition of the common contained in the enclosures. In respect of these areas, given the limited timescales, they will not be returned to a favourable condition. Nevertheless this does not demonstrate that there are considerably better options for conservation. It will be the case that other management techniques will be required to improve further the condition of the enclosures and the common as a whole. However, the grazing scheme which will be facilitated by the proposed works will assist with the overall management of the common.

64. The CCDG argue that the policy of the 2006 Act is to increase the number of SSSI's in favourable condition and that this can only be based on a robust and credible scientific basis. Although it was suggested that the baseline data might be available I was not presented with any such information. However, some weight should be given to the evidence of the applicant's expert witnesses which indicates that the grazing of the common will improve its condition. Whilst one of the objectives of Defra is to increase the number of SSSIs in a favourable condition it is not a requirement that any application must bring a common into a favourable condition.
65. CCDG contend that the application hinges on it being a scientific trial to conduct research. I agree with CCDG that there is no satisfactory methodology as a basis for undertaking scientific trials. Although reference is made to the methodology outlined in the minutes of the Chobham Common Liaison Group of 18 October 2011 this is not an adequately formulated methodology and is in effect a record of what was said at the meeting. Although the applicant suggested that a condition could be imposed requiring the production of a methodology for monitoring work to be produced there are in my view insufficient details from which a condition can be granted which is relevant, enforceable, precise and reasonable; these are amongst the general principles for conditions which can be attached to a consent under section 38 of the 2006 Act.
66. I also accept that there is no indication of evidence which may be used as part of any baseline survey or scientific evidence on which any success can be measured. Nevertheless the evidence is that the Surrey Wildlife Trust have knowledge of the site as to the existence and location of any rare species and this is subject to monitoring as indicated in the management plan for the site. However, I do not accept that the application hinges on it being a scientific trial. The application is to facilitate grazing of five enclosures for the purpose of improving the condition of the common. Whilst the evidence before me is oral and anecdotal some considerable weight should be given to evidence provided by qualified and experienced witnesses including that from Natural England. The evidence indicates that whilst the grazing will not improve the whole common it will make some contribution to restoring parts of the common to a favourable condition.
67. It should be noted that the applicant seeks the amendment of the application to include five monitoring plots within Langshot Bog comprising 4m x 4m enclosures although overall there will be 50 non treatment monitoring plots on the common. Whilst there is no clearly agreed methodology before me, Mr Boddy indicated that the methodology will accord with the Jonathan Cox Associates methodology, I revert to previous observations in this respect at paragraph 65. Nevertheless there is nothing to suggest that monitoring will not take place in the future and one of the main concerns of the Chobham

Commons Preservation Committee (CCPC) and others is that there is a lack of scientific monitoring. The proposed monitoring plots will provide an opportunity to compile information as to the effectiveness of the various techniques proposed for Chobham Common in addition to the proposed grazing.

68. The five enclosures subject to the application are for a four year period. This is said to have been based on the responses to various consultations. Although the CCPC were excluded from the Chobham Common Liaison Group, and there has been some criticism of the consultation process, there is nothing to indicate that the consultations were inadequate in respect of determining the appropriate time period. Dr Day outlined extensive consultations which led to the current application. The consensus was for a period of 3 to 5 years with 4 years being taken as a compromise. As accepted by the applicant this is not sufficient time for the enclosures to attain a favourable condition. However, whilst there is uncertainty as to the availability of any monitoring data, the grazing of the land over a four year period will make a contribution to achieving favourable condition.
69. In relation to the areas chosen for the enclosures areas 1 to 3 are based on boundaries used whilst grazing the common between 1993 and 2000. These locations were discussed with Natural England. Areas 4 and 5 have been added in order to deliver targeted restoration grazing in humid heath and mire habitats. All five enclosures are located in units assessed by Natural England as being in unfavourable declining condition due to under grazing. Mr Boddy indicated that these areas contained key habitats and species which are expected to respond positively to grazing.
70. It is noted by reference to the report of English Nature report No. 422 that there is the potential for grazing to have an effect on invertebrates and reptiles. However, although the report suggests that there is some potential for adverse effects, the major reason for the decline of heathland invertebrates is scrub encroachment. Evidence from Dr Day (inquiry documents 5 to 8) suggests that grazing is beneficial to invertebrates such that it restores heathland and consequently will be of benefit to heathland species. In relation to reptiles, whilst grazing at a high intensity has the potential to damage reptile sites livestock grazing does not necessarily prejudice reptile habitats; the proposed grazing is to be at a low intensity.
71. Similarly heathland vertebrates and birds may be affected by livestock grazing. Nevertheless Woodlark benefits from increase abundance of bare ground. In respect of the Dartford Warbler intensive grazing may adversely affect populations but the proposed grazing scheme is not intensive and will provide a mosaic of habitats. Further, the Dartford Warbler nests in heather and gorse and is unlikely to be present in the proposed enclosures; the recent decline of the Dartford Warbler population is as a consequence of recent harsh winters and not as a consequence of heathland management. It is noted that the RSPB support the application and consider that grazing of lowland heath is appropriate conservation management. The applicant is clearly aware of the presence of species identified in Annex 1 of the Birds Directive and Natural England supports the application.
72. From the evidence before me grazing provides a structural diversity which creates niches for invertebrates, reptiles, vertebrates and birds. Accepting that the proposed grazing will not result in the restoration of the common to a

favourable condition the move towards that restoration will provide an improving habitat for heathland species.

73. It is accepted that the English Nature report No. 422 states that implementation of heathland grazing may have unintentional or undesirable effects arising from increased human activity, fencing, supplementary feeding and water troughs. However, the overall conclusions of the report are that grazing by livestock is an appropriate management for lowland heath to deliver conservation objectives. The report does not reach a conclusion that grazing should not take place as a consequence of the above four factors. Furthermore whilst the conclusions of the report at 12.1.1 suggest that knowledge of how to manage lowland heathland is hampered by a lack of information this is in respect of habitat requirements and the effect of different grazing regimes.
74. Mr Higgs for the CCPC raises concerns as to the grazing of the common in winter and the detrimental effect this may have on the heather. The application is for fencing to allow for grazing during the summer months only.
75. The CCPC refer to the likelihood that grazing of the common in the past would have relied upon supplementary feeding and that, as an indication as to the fickleness of the feed provided by grazing the common, the SWT had provided supplementary feeding. Although this additional feeding was for animal welfare purposes the HLS grant scheme does not permit the use of supplementary feeding. Nevertheless the SWT are clearly aware of their responsibilities in respect of animal welfare.
76. The CCPC ask that I take into account the response of the Committee to public meeting arranged for Dr Day. The correspondence refers to the concerns of CCPC in relation to the encroachment of scrub and woodland and the scepticism of the value of grazing as a restoration technique. The correspondence indicates that the CCPC are not opposed to temporary fencing and grazing where it can be shown to be beneficial but that there is clear opposition to permanent fencing. The CCPC suggest that the quickest and most effective way of restoring heather is by re-seeding; grazing alone will not restore the heather to areas dominated by molinia and scrub.
77. This correspondence suggests that, whilst other techniques should be used in the restoration of the common, grazing is an acceptable technique. I am aware that there is an absence of scientific data to support the effectiveness of grazing. However, I give considerable weight to evidence from qualified witnesses, including representatives of Natural England and those with hands on experience of the management of lowland heath, as to the fact that grazing will improve the condition of the enclosed parts of the common. It is accepted that grazing does not by itself provide for the restoration of heather nor will it result in the common being brought into a favourable condition. Nevertheless grazing will provide for a mosaic of micro habitats which will favour increased biodiversity. In terms of reseeded, the evidence of Dr Alonso is that reseeded is likely to be unnecessary due to the fact that heather seeds can be viable after 80 years. This suggests that, whilst reseeded may be an option, the creation of bare ground achieved by grazing will provide the opportunity for seeds from heather species to germinate. The applicant was clear that grazing will not be the only technique utilised in the management of the common.
78. The CCPC refer to the use of grazing as a management technique at Smarts Heath, where silver birch is taking over, and to Horsell Common, where gorse

is becoming increasingly abundant. However, no evidence is provided as to whether the circumstances are the same and whether other management techniques have been used. Mr Rimmer indicated in his experience of the grazing of part of Horsell Common that there had been a move towards the common being in a favourable condition. It should be noted that in the case of Chobham Common the purpose of the grazing is to reduce the amount of *Molinia* and it is recognised that other management techniques will be required.

79. It is argued that the area permitted for grazing permitted under The Works on Common Land (Exemptions)(England) Order 2007 is sufficient for the purpose of monitoring. Although there is an intention to carry out monitoring, one of the purposes of the application is to improve the condition of the sections of the common to be enclosed. There is nothing from the Order which suggests that the area subject to an application should be restricted.
80. Looking at all of the evidence, the grazing of the enclosures facilitated by the works will result in the improved condition of those parts to be enclosed. Some weight should be given to the view of the qualified witnesses of the applicant noting in particular that Natural England is supportive of the proposal. It may be the case that further research is required into certain aspects of the grazing of lowland heath but there is nothing before me to suggest that grazing will not be beneficial to the conservation of the common.

Burning

81. A number of representations make reference to the use of burning as a technique to help restore the condition of the common; I consider the Eyre method which utilises burning at paragraphs 85 to 90 below. Evidence from Dr Alonso indicated that whilst burning might be used as a management tool *Molinia* would come back immediately after burning; in her view the preferred option was grazing over a period of time. The evidence of Dr Day is that burning should be followed up by grazing otherwise *Molinia* growth would be encouraged. Nevertheless the applicant acknowledges that burning is an acceptable form of management in many situations and results in the removal of nitrates and above ground biomass. However, burning favours species which can re-sprout from underground organs, produces even age stands and is dependent on weather conditions and Burning Code restrictions. Dr Alonso indicated that evidence suggests burning, and mowing, cannot provide the diversity created by selective grazing.
82. Whilst burning will result in the removal of *Molinia* in the short term the evidence is that *Molinia* will re-grow without grazing. The CCPC suggest that recovery after wildfires is often rapid but this does not mean that *Molinia* will not be controlled without grazing. They also indicate, by reference to Heathland Harvest (inquiry document 38) that with controlled burning, although favourable to species such as Woodlark, the overall destruction of reptiles and invertebrates is unacceptable. The CCPC say there is a clear distinction between controlled and prescribed burning which takes place in the winter months when reptiles and invertebrates are out of harm's way.
83. Overall there is nothing to indicate that burning alone will result in moving the common to a favourable condition. It is nevertheless acknowledged that burning is cheap and does not require the enclosure of land.

84. I note concerns as to the use of burning due to the proximity of the M3 motorway and neighbouring property. However, there are areas of the common which are at a distance to the motorway and adjacent properties where this would not be such an issue. Evidence from Mr Eyre is that a carefully controlled burn could avoid the spread of smoke to sensitive areas. There is nothing to suggest that burning carried out by professional land managers could not be controlled such as to remove or reduce the potential risks arising from the spread of smoke.

The Eyre Method

85. Mr Eyre for the CCDG shared his experiences of controlling *Molinia* and restoring heathland using a variety of techniques including burning, cutting, spraying and planting mixed heath. Mr Eyre is a qualified agronomist with experience of managing heath for over forty years; he is an adviser to Natura 2000. Mr Eyre cited a number of examples of his work in upland areas of the Peak District ranging in altitude between 700 ft and 1000 ft (200m to 300m). Conditions on these sites are significantly different to those experienced on a lowland heath in the south of England. Nevertheless Mr Eyre has also carried out work on lowland heaths although this experience is more limited.

86. Whilst it seems that the management of the upland heathland sites has been successful it would appear, from the sites identified that the Eyre method is more effective at eradicating *Molinia*. This produces a heather monoculture rather than a mosaic of vegetation which is the intention at Chobham. Although Mr Eyre said that the *Eyre* method had been successful on lowland sites there is no evidence before me to support this contention.

87. It should be noted that whilst Mr Eyre advocates the *Eyre* method he considered that the technique should only be used on experimental plots on Chobham Common. This suggests that, whilst the technique has been successful elsewhere, particularly on upland heath, there is no indication that the technique will produce the desired effects on Chobham Common. Mr Eyre certainly does not suggest the use of the technique to the extent of the grazing proposed and the use of experimental plots will not move the common to a more favourable condition. No evidence has been submitted, other than the personal testament of Mr Eyre, who says he is not a 'total expert' in heathland restoration, as to the effectiveness of the *Eyre* Method; his expertise is based on extensive direct involvement in heathland management. Whilst some weight should be given to personal testament there is little evidence to suggest that the technique is appropriate at Chobham Common.

88. In relation to the use of burning, whilst this is an acceptable management technique, there is no evidence of the historic use of burning as a management technique on Chobham Common. As such, without any evidence that the use of burning is effective and not damaging to the site, such techniques, other than the trials suggested by Mr Eyre would not be appropriate.

89. The *Eyre* method also requires the use of glyphosate to destroy *Molinia*. The Herbicide Handbook: Guidance on the use of herbicides on nature conservation sites, English Nature and FACT (Forum for the application of conservation techniques) (tab 4 of the scientific references to the applicants proofs of evidence) indicates that glyphosate is toxic to most plant species. This was accepted by Mr Eyre although he suggested that, despite the risks to killing off other plants, the use of glyphosate would make the site look a lot better. He

indicated that using the appropriate techniques, a horizontal jet, it was possible to target *Molinia*. Nevertheless there is no evidence that the use of glyphosate, even with the use of appropriate techniques, will not be detrimental to the site. Mr Eyre indicated that the glyphosate could only be used in the summer months. This will be at a time when other plants may be affected.

90. Having regard to the above, I do not consider that the evidence in support of the use of the *Eyre* method is sufficient to demonstrate that it would result in the same or better outcome than the use of grazing; particularly having regard to the fact that Mr Eyre only advocates the use of the technique on experimental plots. It is accepted that the technique does not require enclosure of the area and the impacts on access are negligible. Nevertheless I do not consider that this outweighs the uncertain benefits of the use of the *Eyre* technique.

Mowing

91. Mrs Miller advised of the technique used by the army on their commons whereby the land is divided into five areas and cut on an annual rotation every five years using a forage harvester. The heather is cut and then transferred to a trailer and taken away.
92. Mrs Miller had not considered the effects on biodiversity but suggested that Hankley Common was wonderful as a consequence. Whilst the common may appear aesthetically pleasing this does not necessarily mean that the use of such a technique on Chobham Common would result in any improvement to its condition. The use of mowing would result in a homogenous habitat, although adjustment of mowing heights may offer some variation. In addition the use of mowing, whilst it can reduce the cover of *Molinia*, would generate considerable amount of cut material which would require removal. No evidence has been provided as to how this material could be dealt with. It is suggested by the CCPC that the use of equipment including mowing equipment will result in the destruction of habitat.
93. The evidence before me is that regular mowing can convert dwarf shrub heath to grassland and to be effective needs to be followed with other management techniques. This is to suppress the growth of grass and to allow heathland vegetation to compete more successfully. Whilst mowing might offer certain benefits I do not consider that mowing and the method advocated by Mrs Miller will offer, by itself, any assistance in restoring the common to a favourable condition. It is nevertheless accepted that mowing would not require enclosures to be erected.

Use of Herbicides

94. I have already considered to some extent the use of glyphosate in respect of the *Eyre* method. Given that glyphosate would need to be applied when vegetation is actively growing then vegetation other than *Molinia* will be killed. This will lead to unfavourable conditions for fauna which will lose shelter and in some cases food sources. Any dead material would need to be removed from site to remove nutrients and to provide open ground for the germination of heath species. Further, a one off application will not resolve the problem of *Molinia* growth and further applications will be required which will destroy heather and other regenerating species.

95. There is no evidence of the impacts of the use of glyphosate on a large scale on lowland heath and the impacts of the use of glyphosate would need to be examined prior to use on lowland heath. The HLS agreement does not provide for the control of *Molinia* by using herbicide and the view of Natural England is that this technique is inappropriate at Chobham and may result in damage to heathland and mire habitats. It is noted that the use of surfactants might provide for a more specific target of *Molinia* but in the absence of specific details I am unable to place any weight on this suggestion.

Conclusions on nature conservation

96. Having regard to all of the above the grazing of the enclosures, which will be facilitated by the proposed works, although not restoring these areas to a favourable condition, will provide for the improvement to the condition of these parts of the common. Whilst there are other techniques available which may assist with the restoration of the common there is nothing before me which suggests that these provide for a better overall approach such that the application should be refused.

Conservation of the landscape

97. A number of representations have been made on the basis that the proposed works will have an adverse effect on the open nature of the common. The CCPC thought that any fencing automatically creates fragmentation and compartmentalisation. The landscape would be changed and would lose its naturalness. Although the Inspector at the 1998 inquiry concluded that appropriate landscape advice should have been taken there is in my view no need to seek such advice. The applicant gave evidence in respect of the effect on the landscape and is a matter on which I am able to take a view based on all of the evidence before me.

98. During my unaccompanied site visit on the common I specifically noted the temporary electric fence at Little Arm which carried a number of warning signs. Whilst this was clearly apparent when crossing land adjacent to the enclosure, the fence and the signage was not intrusive when viewed from other parts of the common. This enclosure is typical of the works proposed although the proposed enclosures will be provided with access gates with their associated sections of fence. In my view, whilst the proposed electric fencing with its associated warning/advisory signage and the gates with their sections of fence will be visible from parts of the common, I do not consider that their presence will have a significant adverse effect on the open nature of the common. In reaching this conclusion it should be noted that the electric fencing will only be present during the summer months when the enclosures are being grazed although the gates will be in situ for the four year period. The electric fencing will also be set back from the main routes used by the public making their presence less intrusive.

99. There is nothing to indicate that the additional enclosures at Langshot Bog will have any adverse impact on the landscape.

100. Mr Roads specifically referred to the wide open vista from Staple Hill Road which would disappear but again I do not consider that the proposed electric fencing is so intrusive that this open vista will disappear.

The protection of public rights of access

101. I have already considered the effect on public access and I revert to my observations at paragraphs 19 to 39 above.

Archaeological remains and features of historic interest

102. A Scheduled Ancient Monument, the Bee Garden, falls within enclosure number 3. English Heritage has been consulted and approves the application. English Heritage states that *'The introduction of low intensity grazing on parts of the common would clearly improve the composition and quality of vegetative cover, and should enhance the protective function of ground cover over the archaeological earthworks'*.

103. No evidence has been put before me to suggest that any archaeological remains and features of historic interest will be adversely affected by the proposed works.

Other relevant matters

Familiarisation

104. The applicant has identified one of the purposes of the application is to acclimatise/familiarise the public to grazing cattle. It would seem likely that the people will become familiar with the presence of the cattle and there is evidence to suggest that the public may be attracted to the common as a consequence of cattle grazing on the site. Although the applicant argues that this is sufficient to engage the policy at 4.12 of the policy guidance 'Underlying public benefit' my understanding is that only in exceptional circumstances should account be taken of underlying public benefit. The public benefit envisaged by the guidance relates to situations involving infrastructure projects where the works proposed do not benefit the common. However, there is nothing to indicate that familiarisation by the public satisfies the policy objectives set out in the Defra guidance. As such I do not attach any weight to this aspect in determining the application.

The 1998 inquiry

105. The CCPC believes that the rejection of an earlier application, following an inquiry in 1998, should still be applicable as nothing has fundamentally changed. The CCPC say that the current application will lead to permanent perimeter fencing. This will not be the case and I revert to my observations at paragraph 4. It should be noted that the earlier application was also made under section 194 of the Law of Property Act 1925, repealed by the 2006 Act, and the relevant tests are different to those under section 38 of the 2006 Act. The point is also made that the final objective of the earlier application is identical to the objective in respect of the current application. Whilst this may be the case the application is different insofar as it seeks consent for the enclosure of five areas of the common.

106. The CCDG also point out that the Inspector at the 1998 inquiry had concluded that to restore some of the land at the expense of the remainder was not lawful or expedient. It is accepted that with the current application there will be areas of the common which will not be subjected to management. However, whilst it would clearly be preferable for the whole site to be managed to bring it into a favourable condition, the proposed works will assist in

improving the condition of those areas to be enclosed. I do not consider that to approve the application would be unlawful or inexpedient on the basis that the remainder of the common will not benefit. It is generally agreed that something must be done to improve the condition of the common and the proposed works will, although to a limited extent, facilitate the improvement of parts of the common.

Displacement of use

107. A number of representations refer to the displacement of users of the common onto other areas of the Thames Basin Heaths SPA; Mr Hyman made lengthy submissions in this respect.

108. Although I consider that there will be some adverse effect on access to Chobham Common I do not consider this to be significant. This conclusion does not suggest to me that there will be any significant displacement of use. Furthermore, there is no evidence to indicate that the proposed works will result in recreational use of Chobham Common being displaced to other areas of the Thames Basin Heaths SPA (Special Protection Area) or that if use was displaced that this will have any adverse effect on those areas. It may be the case that there is no SANG (Suitable Accessible Natural Greenspaces) capacity remaining at Chobham Place Woods but that does not mean that any displaced use will be on areas of the SPA or that use will be displaced from SANGs to SPAs. It should be noted that public use of the Thames Basin Heaths SPA is monitored by Natural England and they are fully aware and supportive of the application.

Adequate containment of livestock

109. Mr Telford for the CPRE referred to a decision in respect of Hartlebury Common and the effectiveness of electric fencing. Mr Eyre also referred to the worry of somebody cutting the fence or leaving a gate open with the potential adverse consequences arising from the large amount of traffic using local roads. However, Mr Adler for the SWT said that he had not experienced any problems with theft or vandalism during the two years that temporary fencing had been present at Chobham.

110. In my view, whilst there may be issues arising from the use of electric fences, or other temporary fencing, there is no indication that their use will present any difficulties on Chobham Common. In relation to gates there is no evidence that the proposed gates, which are in any event self closing, have presented any difficulties on other sites where they are used. Nevertheless these two scenarios are possible and put a requirement on the applicant to monitor the fencing and to ensure that any gates are so maintained such that they will close without assistance.

Animal Welfare

111. A number of representations have been made in respect of animal welfare. The Surrey Wildlife Trust have a herd of 243 Belted Galloway cattle. Animal welfare decisions made by the SWT are based on the five freedoms laid out in the Code of Recommendations for the Welfare of Livestock. The SWT Grazing team ensures animal welfare through regular inspection and by the use of volunteer 'lookers', members of the public who report any problems they observe. A 24 hour/365 day a year emergency service is provided with the number displayed at every site where Surrey Wildlife Trust graze stock. There

is nothing to suggest that animal welfare will be compromised as a consequence of the scheme.

Sustainability

112. CCDG question whether the proposal is sustainable. The point is made that the project is expensive and some weight should be given to the over reliance on a government grant particularly in times of public spending contraction. In my view the application is supported by Natural England and there is no indication that they will not provide the funds for the implementation of the project through the Higher Level Stewardship. In any event the applicant clearly indicated that the proposal to graze the common is not reliant on the HLS agreement. Should funding be removed then SWT would still manage the common in the same way although assistance would be required from members of SWT.

Modifications and conditions

113. I have already considered the requested amendment to the application relating to the monitoring enclosures at Langshot Bog (paragraph 6). I have concluded that if the application is approved then it will be modified to include these enclosures.
114. In terms of any conditions these should be necessary, relevant, enforceable, precise, and reasonable. The applicant suggested a number of conditions which might reasonably be imposed. It is suggested that there should be a requirement for gates to be compliant with BS5709:2006 or any successor standard. The requirement for gates to be constructed to the relevant standard will ensure that the 2010 Equality Act obligations have been met in respect of the structures providing access to and from the enclosures. As regards reference to any successor standard, any future requirement is unquantifiable and will result in all structures becoming non compliant in the event that a new standard is published. Given this I propose to require that any gates are erected to BS5709:2006.
115. It is also suggested that a condition should be imposed for the electric fencing to be compliant with any British Standards as may from time to time exist. I have not been provided with any details as to any British Standards which might apply to electric fencing such that they might be relevant to the proposed fencing at Chobham Common. It should also be noted that the SWT will have clear obligations as land managers to ensure that any electric fencing is to an appropriate standard. In view of the lack of any detail and the obligations of SWT I do not consider such a condition to be necessary.
116. It is further suggested that a condition be imposed for a requirement to fund independent monitoring work, for a methodology to be produced by independent professionals and for the results to be published. Professor Moss was supportive of the application subject to a condition that further research is carried out into existing and new methods of management. Mr Osbourn for the Chobham Society also sought the imposition of a condition for scientific trials to be undertaken and for the results to be made available for independent scrutiny.
117. Although the applicant refers to the methodology provided by Jonathan Cox Associates there is no clear methodology before me on which I can base a

condition. The minutes of a meeting held on 18 October 2011 are in my view inadequate to assess the appropriate methodology to be adopted. Further, I do not consider that a methodology to 'current academic standards' to be sufficiently precise. That interpretation is very much open to interpretation. In the absence of any precise parameters any condition would be difficult to enforce. In terms of funding of independent monitoring work this is not quantified and is therefore inappropriate to include as a condition.

118. The CCDG asked that if the application is approved then a condition should be imposed such that only Belted Galloways not with calf should be grazed in the enclosures. The applicant proposes to graze the enclosures with Belted Galloways which are a placid breed and not known to be highly protective of calves. However, it is SWT policy to only graze cows with unweaned calves on land not mapped as open access under the Countryside and Rights of Way Act 2000 (CROW). Given that access is provided in consequence of the Law of Property Act 1925 the access to the land is very much akin to access land under CROW. In my view it would not be unreasonable for the SWT policy to be equally applicable to the enclosures at Chobham Common. The introduction of such a condition would allay the fears of a number of objectors in respect of public safety. Consequently, I propose a condition that the enclosures should only be grazed by Belted Galloways not with calf.

Other Matters

119. A number of concerns were raised as to the fact that the exchange of common land had not been completed in respect of land known locally as the 'tank factory'. This is not a matter for my consideration.

120. Specific concerns have been raised in relation to the Higher Level Stewardship scheme. I note these concerns but I am required to consider the application in the context of the relevant criteria set out above at paragraphs 9 and 10.

Conclusion

121. Having regard to these, and all other matters raised at the inquiry and in the written representations, and to the interests set out in paragraph 9 above, I conclude that the works, on balance, will have an adverse, but not significant, effect on access to the common by the public and those of the neighbourhood. However, the proposed works will allow for the grazing of the common such that this will provide an improvement to the nature conservation of the common. This improvement will not however bring the common or the land within the enclosures into a favourable condition. Taking all factors into account, although the issue is very finely balanced, I do not consider that the disbenefits outweigh the benefits in terms of nature conservation. I therefore conclude that consent should be granted subject to the modifications and conditions identified in paragraphs 113, 114 and 118 above.

Martin Elliott

Inspector

APPEARANCES

For the Applicant:

| | |
|--------------|-----------------------|
| Mr M Boyer | Solicitor |
| who called | |
| Dr I Alonso | Natural England |
| Dr J Day | |
| Mr G Steven | Natural England |
| Mr S Fry | Surrey Wildlife Trust |
| Mr D Boddy | Surrey Wildlife Trust |
| Mr J Adler | Surrey Wildlife Trust |
| Mrs F Cooper | |

In support of the application:

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|----------------|--------------------------------|
| Mr P Rimmer | Estate Manager, Horsell Common |
| Mr J Curwen | |
| Professor Moss | Conditional supporter |

In opposition to the application:

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| Mr A Bowes | Of Counsel, Instructed by Chobham Common Defence Group |
| who called | |
| Mr G Eyre | |

In opposition to the application:

| | |
|---------------|--|
| Mrs G Head | |
| Mr R Oldridge | |
| Mrs V Rowland | |
| Mrs R Baker | |
| Mrs A Sleeman | British Horse Society County Access and Bridleways Officer for Surrey |
| Mrs J Miller | |
| Mr R Roads | CPRE Surrey Heath |
| Mr A Telford | CPRE Runnymede |
| Mr G Hyman | |
| Mr B Milton | Abbeylands, for British Horse Society |
| Mr R Searle | |
| Mr J Osbourn | The Chobham Society |
| Mr A Ince | |
| Mrs D Beach | Chobham Common Riders Association |
| Mr P Higgs | Chobham Commons Preservation Committee |

DOCUMENTS

- 1 Correspondence from Mr E Money 5 April 2012
- 2 Correspondence from Mr K Carter 3 April 2012
- 3 Statement of Mrs V Rowland
- 4 Statement of Mr P Rimmer
- 5 Buglife, Advice on managing BAP habitats, Lowland Heath
- 6 Butterfly Conservation, A-Z of Butterflies, Grayling
- 7 Butterfly Conservation, Factsheet, Silver-studded Blue
- 8 Extract from The Millennium Atlas of Butterflies in Britain and Ireland
- 9 Notes of meeting held 18 October 2011 of Chobham Liaison Group
- 10 Heather and Grass Burning Code 2007 version
- 11 Statement of Mr J Curwen
- 12 Statement of Avril Sleeman
- 13 Cattle and Public Access in England and Wales, Health and Safety Executive
- 14 Chobham Common monitoring points
- 15 Photographs with text submitted by Mr G Eyre
- 16 Survey Data Moscar Moor, Carlicotes, Howden, Piggford
- 17 Proposal to Enhance the Biodiversity of Chobham Common
- 18 Reasons for SSSI notification for Chobham Common and list of operations likely to damage the special interest
- 19 The Heather and Grass etc. Burning (England) Regulations 2007
- 20 Correspondence of Mrs J Miller 15 March 2012
- 21 Letter from Open Spaces Society to the Planning Inspectorate 3 March 2011
- 22 Surrey County Council Byelaws under sections 12 and 15 of the Open Spaces Act 1906
- 23 Countryside Code, Natural England
- 24 Statement of Mr A Telford and supplementary notes 19.4.12
- 25 Statement of Mr R Roads 17 April 2012
- 26 Statement of Mr J Hyman and accompanying correspondence 14 February 2011
- 27 Health and Safety Executive, Agriculture, Work related injuries and ill health
- 28 Health and Safety Executive advice on management of the risk from falling trees
- 29 Correspondence between Mr B Milton and Mr R Holland (Planning Inspectorate)
- 30 Open Spaces Society, The Case for Cattle Grids on Commons, Information Sheet B7, November 2008
- 31 Gates, The British Horse Society, July 2010
- 32 Submission by Mr R Searle 17 April 2012
- 33 Submission by Mr J Osbourn 18 March 2012
- 34 Statement of Mr A Ince 19 March 2012
- 35 Submissions of Mrs Beach for the Chobham Common Riders Association
- 36 Notice relating to the fencing of Chobham Common, Chobham Common Riders Association
- 37 Additional observations of Mr P Higgs, Chobham Common Conflict Overview and correspondence from Rt Hon M Gove MP 7 February 2012 and response by RT Hon C Spelman MP
- 38 Extract from Heathland Harvest, Grasses and Grazing, Chris Howkins