Dear Sir,

LAW OF PROPERTY ACT 1925: SECTION 194
PROPOSED WORKS ON STEDHAM COMMON, CHICHESTER, WEST SUSSEX

1. I am directed by the Secretary of State for the Environment, Transport and the Regions to refer to the public local inquiry held at Capron House, North Street, Midhurst on 2-5, 9 & 10 June 1998 by Mr Alan Foster DipTP MRTPI into your application dated 4 June 1997, which was subsequently amended and re-advertised on 25 September 1997, for consent under section 194 of the Law of Property Act 1925 to the erection of a fence and 14 gates (8 bridle gates for riders and walkers, 2 kissing gates for walkers and 4 vehicle gates) enclosing 34.9 hectares (87 acres) or thereabouts of Stedham Common. The fence would be approximately on a line following the Elsted Road, the A272, and the Minsted Road, together with a corral in the south west part of the Common (originally intended to be located on the north east part of the Common), for the purpose of enabling grazing management to be restored to the heathland registered as Stedham Common, in the Parish of Stedham with Iping, in the District of Chichester, in the County of West Sussex.

2. Stedham Common, which you said was some 112 acres or thereabouts in area, is registered as common land (CL192) under the Commons Registration Act 1965. Rights of pasture, estovers and turbary were registered in respect of the land. The Common is designated as a Local Nature Reserve and a Site of Special Scientific Interest (SSSI).

3. A copy of the Inspector’s report is enclosed. The case for the proposal is set out in paragraphs 3 to 4.52 of the report. The case made by the supporters is at paragraphs 5 to 5.2 and that made by the objectors is at paragraphs 6 to 7.4. The Inspector’s conclusions are set out in paragraphs 8 to 8.25, and his recommendation in the final paragraph of the report is that consent be granted for the proposals. As the Inspector noted, in considering whether it is expedient to give consent under section 194 of the Law of Property Act 1925, the Secretary of State must have regard to the “benefit of the neighbourhood” as well as to “private interests” in the land. The “benefit of the neighbourhood” is defined as including the health, comfort and convenience of the inhabitants of any populated places in or near the parish in which the land is situated, in the context of the enjoyment of the common as an open space, and the “private interests” are defined as including the advantage of the
persons interested in the common, ie, the soil owner and persons entitled to common rights.

4. The Secretary of State has considered the application, the objections opposing it and the representations supporting it, both made orally and in writing, and the Inspector’s report.

5. The Secretary of State accepts the Inspector’s conclusions which take into account access, appearance, animal welfare, biodiversity, commoners’ rights, nature conservation, and activities on the Common. He notes and accepts the Inspector’s view that the proposed fencing and the low-density grazing would not significantly affect the general accessibility of the Common or the freedom of the public to roam at will. He agrees that the general benefit to walkers and riders would remain and that no private benefit would be materially affected. He further notes that the Trust intends to maintain its open public access policy for walkers and riders and that the materials used in the fencing would be of a type which would reduce the visual impact. He acknowledges that the fencing would result in a loss of benefit to the neighbourhood in terms of having to negotiate gates to walk or ride on the Common, and also in the local perception of the Common as a “wilderness” area and in the change to the character and local distinctiveness of the place. However, he agrees with the Inspector that the benefits to the natural habitat arising from the re-introduction of low-density grazing may be set against this loss. He further notes and agrees with the Inspector’s conclusion that the need to maintain and enhance this internationally important habitat outweighs the loss of existing benefit that would arise.

6. Accordingly, the Secretary of State, in exercise of the powers conferred on him by section 194 of the Law of Property Act 1925 and of all other powers enabling him in that behalf, hereby consents to the erection of a fence and 14 gates (8 bridle gates for riders and walkers, 2 kissing gates for walkers and 4 vehicle gates) enclosing 34.9 hectares (87 acres) or thereabouts of Stedham Common. In designing the gates you will wish to have regard to the requirements of people with disabilities and to the provisions of the Disabled Discrimination Act 1995. The fence is to be approximately on a line following the Elsted Road, the A272, and the Minsted Road, together with a corral in the south west part of the Common (originally intended to be located on the north east part of the Common), for the purpose of enabling grazing management to be restored to the heathland registered as Stedham Common, in the Parish of Stedham with Iping, in the District of Chichester, in the County of West Sussex. For the purposes of identification only, the line of the proposed fencing is shown in green, the vehicular gates are shown in blue and the bridleway gates and kissing gate are shown in red, on the attached plan.

7. A copy of this letter is being sent to West Sussex County Council, Chichester District Council, Stedham with Iping Parish Council, the Open Spaces Society and all who submitted representations and/or gave evidence at the Inquiry.

Yours faithfully

[Signature]

MRS R. COOK
Authorised by the Secretary of State
to sign in that behalf
LAW OF PROPERTY ACT 1925

SECTION 194

APPLICATION BY THE SUSSEX WILDLIFE TRUST

PROPOSED FENCING AND CORRAL AT STEDHAM COMMON

NEAR MIDHURST, WEST SUSSEX

Inspector : Alan Foster DipTP MRTPI
Dates of Inquiry : 2-5, 9 & 10 June 1998
File No : CYD/1077/1084
Tollgate House  
Houlton Street  
Bristol  
BS2 9DJ

25 August 1998

To The Right Honourable John Prescott MP  
Secretary of State for the Environment, Transport and the Regions

Sir

1.1 I have the honour to report that on Tuesday 2 June 1998, I opened a Public Inquiry (in place of Ms Gillian Grindley) at Capron House, North Street, Midhurst into an application made to the Secretary of State by the Sussex Wildlife Trust (The Trust). The application is for consent under Section 194 of the Law of Property Act 1925 to erect a fence and 14 gates (8 bridle gates for riders and walkers, 2 kissing gates for walkers and 4 vehicle gates) enclosing 34.9ha (87 acres) or thereabouts of Stedham Common. The fence would be approximately on a line following the Elsted Road, the A272, and the Minsted Road, together with a corral in the south-west part of the Common. The purpose of the fence and corral is to enable grazing management to be restored to the heathland.

1.2 The Inquiry included an evening session on Wednesday 3 June in the school hall adjoining Capron House. I carried out an initial accompanied visit to the site on the morning of that day. I closed the Inquiry on Wednesday 10 June 1998, following which I carried out a second accompanied visit to Stedham Common and adjoining Commons on the afternoon of that day. At the request of the Stedham with Iping Parish Council, I visited on my own Bartley Heath Nature Reserve, near North Warnborough, Hampshire, and Old Lodge Nature Reserve in the Ashdown Forest, Sussex on Thursday 2 July 1998.

1.3 This report includes a description of Stedham Common and its setting, an explanation of the proposal, the gist of the representations made at the Inquiry and my conclusions and recommendation. Lists of appearances, documents, plans and photographs are attached. Document 2 is a bundle of letters in support of the application or with no objection to it, and Document 3 is a bundle of letters in opposition to the application. Appendix 8 to Document 12 sets out the text of a petition opposing the application signed by 1,217 people.

2 STEDHAM COMMON AND ITS SETTING

2.1 Stedham Common is part of a surviving area of lowland heath to the west of Midhurst, mainly to the south of the A272, stretching for about 2 ½ miles from Trotton to the edge of the built up area of Midhurst. Remaining British heaths such as this are part of the western European ‘Atlantic’ heaths not found in other parts of the world. Public rights of way cross the area as can be appreciated from the map at WRJ 14 in Document 5. The village of Stedham is separated from the main part of the Common (the application site) by the A272 and a smaller area of Common which is in a stage of successional reversion to woodland. The whole
locality lies within the Sussex Downs Area of Outstanding Natural Beauty (AONB).

2.2 The application site (Plan A) is roughly rectangular in shape and is divided from Iping Common (with a visitor car park) to the west by Elisted Road, and The Quags to the east by the Minsted Road, effectively a vehicular cul-de-sac. However, this road serves the commercial sand pit to the south of Stedham Common. A distinctive ridge runs east to west across the Common, with attractive views to the north and south. The Common is predominantly dry heath, with some wetland areas and is a mix of scots pine (woodland, groups and individual trees), bracken, gorse, birch woodland and birch invasion, mature heather and young heather with purple moor grass (*molinia*) and some open grassland. The edges of the Common are characteristically vegetated but unfenced, save for the southern boundary with the sand pit. Depending upon the time of year, there are glimpses, but few uninterrupted views into the interior from adjoining roads, except in one location on the Elisted Road where post and rail fencing is proposed.

2.3 Some 35ha of Stedham Common has been owned by the Trust since 1984, is part of the 125ha Iping and Stedham Common Site of Special Scientific Interest (SSSI) and 112ha Local Nature Reserve (LNR). The Iping side of the LNR is managed by the Sussex Downs Conservation Board on behalf of the County Council as owner or lessee. Management of the LNR is co-ordinated through the LNR Committee. The whole of the LNR is in the MAFF Countryside Stewardship Scheme. Stedham Common is registered under the Commons Registration Act 1965 (CL192) and the registered areas comprise some 45 hectares in total. There is one Registered Commoner, in respect of a house and land known as Heather Cottage, Minsted, but no rights of common have been exercised since at least 1939.

2.4 The SSSI supports populations of heathland birds listed as requiring special protection under Annex 1 of the European Birds Directive (79/409/EEC), namely Nightjar, Woodlark and Dartford Warbler. The site is listed as being of National importance in Ratcliffe’s ‘A Nature Conservation Review’ 1977 (Document 7, Appendix PCT III), and referred to as one of the best remaining pieces of heathland in West Sussex.

3 THE PROPOSAL

3.1 Following public consultation and debate, the application was made on 29 May 1997 (Document 0). The proposal was re-advertised on 25 September 1997 to recognise the change in location of the corral from the eastern side of the Common to the more visually contained south-western part, in an area also used by the Midhurst Gun Club. The Trust’s deposited Statement of Case is at Document 10, and the map, at an unrecognised scale, at Plan B. A map at 1:2500 sale submitted at the Inquiry is at Plan A.

3.2 The fence would be post and wire with high tensile netting in its lower part, intermediate posts at about 4.6m centres and straining posts at about 45m centres or at changes of line (Document 5, WRJ 1.6.1). These posts would stand respectively about 1.2m and 1.5m out of the ground. At the Inquiry it was agreed by The Trust that the 2 top strands of wire would be plain rather than barbed as originally proposed. A 100m length of post and rail fence is proposed in the
north-western part of the Common beside an exposed part of the Elsted Road. The corral would also be a similar post and rail construction. The proposed fence would front onto Elsted Road, the A272 and Minsted Road, the southern boundary with the sand workings already being fenced (there being arrangements with the owner to reinforce where necessary). The existing fence around the back of the former Poultry Farm to the north-east would be upgraded with the owner’s permission.

3.3 The 4 locked vehicular entrances would have standard 3.7m wide five bar gates, secured by croppable chains to permit speedy Fire Brigade access. 1.5m wide self closing bridle gates for pedestrian and equestrian use would be provided at all bridleway accesses onto the Common and at other recognised riding tracks. At the Inquiry it was further agreed by The Trust that an additional bridle gate should be provided at the point where the Gas Ride Path emerges onto Elsted Road. Kissing gates would be provided at 2 other pedestrian access points.

3.4 The fence line would follow the green line shown indicatively on Plan A, but set back 1-3m from the highway to ensure that it would be screened as far as possible by vegetation. Gates (other than the kissing gates) would be set back some 3.7m to allow vehicles to pull off the highway and to allow safe opening from horseback. At the Inquiry The Trust agreed that, in consultation with local riders, it would be possible to splay the entrances to allow easier access for horses.

3.5 Grazing would be by breeds of cattle and ponies particularly suited to heathland habitats. Sheep and goats would not be used as the ecological advantages are less and would involve some restriction on the exercising of dogs which The Trust is anxious to avoid.

4 THE CASE FOR THE SUSSEX WILDLIFE TRUST

The main points are:

4.1 The Trust was established nearly 40 years ago and is the principal organisation in Sussex concerned with the conservation of the County’s flora and fauna. It is a registered charity and by definition its objects exist (and are sought to be achieved) for the public benefit. The purpose of The Trust is summarised as being “…to help people of Sussex enjoy, understand and take action to conserve Sussex wildlife and habitats.”

4.2 The Trust owns or manages 38 nature reserves across the County, so far as possible representative of the variety of habitats which occurs in Sussex. Grazing takes place on 16 of these reserves, 6 of which have had this form of management reintroduced. The Trust has a policy of open public access to all its reserves. At Stedham Common there are in addition, public bridleways (one of which has been reopened by The Trust by clearing away rhododendrons) and a public footpath across it. These are supplemented by informal paths which are not strictly ‘permissive’ paths but paths that are accepted and for which it is intended to provide gates.

Legal Considerations

4.3 Whilst The Trust’s proposal includes provision of many gates, the public has no right to access to this Common other than to go along the public footpath and
bridleways. However, the sole Commoner has a right of access to all parts of the Common, that access would be impeded by the proposed fence and the Commoner has in any event objected. Before forming his opinion on this matter under the Law of Property Act, the Secretary of State is obliged to “have regard to the same considerations and ...., if necessary, hold the same inquiries as are directed by the Commons Act 1876 to be taken into consideration and held.”

4.4 The preamble to that Act identified a concept described as the “benefit of the neighbourhood”. The meaning of this phrase is there set out as “having regard...to the health, comfort and convenience of the inhabitants of any cities, towns, villages or populous places in or near any parish in which the common is situated.”

4.5 So under the 1876 Act one question to be considered was whether it was expedient to proceed taking account of this criterion. The other expressed consideration is that to be given to the private interests, viz “the advantage of the persons interested in the common”, where “interested” means having a legal interest in the common. However, it is necessary to note that the preamble also recites that “…it is desirable to make further provisions for bringing under the notice of the said Commissioners, and of Parliament, any circumstances bearing on the expediency of allowing the inclosure of a common...”.

4.6 Consideration of how these matters relate, via section 194 of the 1925 Act, to the problem and issues in this case reveals:

- The “neighbourhood” is much wider than Stedham parish. In that context neither the Chichester District Council nor West Sussex County Council objects to the application;

- concerns about “health, comfort and convenience” are likely to focus on “convenience”: the convenience or inconvenience of having to use a gate to gain access to the Common;

- the interests here that have still to be assessed as “private interests” are not concerned with private gain but with improving the Common from an aspect of public interest;

- other relevant considerations must include the importance attached by the Government and the Nation to the retention and enhancement of biodiversity; and the importance also attached by the Government, as well as by those interested in conservation, to the protection and enhancement of lowland heaths;

and perhaps of most relevance:

- the inclosure is proposed in order to retain the character of the Common; not to change it.

4.7 This position is confirmed by the Procedure Notes issued by the Department which state in the last sentence that: “...the Secretary of State’s view is that the Acts do not require him, before giving his consent, to form an opinion that the proposed inclosure....will ensure for the benefit of the neighbourhood and of private interests but
merely that he shall take the ‘health, comfort and convenience’ of the inhabitants and the ‘advantage of the persons interested in the common’ into consideration in making his decision.”

4.8 This accurately and sufficiently sums-up the legal requirements. The Secretary of State must consider those factors: they are not exclusive but are to be included in the decision making process. He is entitled to apply such weight to the various considerations as in his judgment is appropriate, always approaching the subject matter on a reasoned and rational basis.

4.9 The reference in the 1925 Act to additional benefit not being given priority is probably a gloss on the statute and inaccurate. The 1876 Act expressly looks for the prospect of provisions which will enhance the “benefit of the neighbourhood” to be achieved through regulation. It is to be noted that in none of the submitted decision letters (Document 9) does the Secretary of State refer to the “priority” point.

4.10 This point of priority is relied on by the Parish Council. This reliance is misplaced because all considerations have to be brought into the decision making and none are formally to be preferred. The correct approach is that adopted consistently by the Secretary of State.

Basic Considerations

4.11 The need for the fencing stems from The Trust’s wish to reintroduce low-intensity grazing by cattle and ponies as the primary management “tool” for Stedham Common. The number of animals would depend on experience but would remain in single figures even during the most active times. This proposal is contained in the Management Plan for the Iping and Stedham Commons Local Nature Reserve (1995-2000) (Document 5, WRJ 2). This Plan has been approved by English Nature, The Sussex Downs Conservation Board and West Sussex County Council. Whilst present management techniques have reversed the progressive decline in the biological diversity of the heath during the middle part of this century, restoring grazing would revert to the regime that has maintained this habitat for thousands of years. The initial proposal to graze both Iping and Stedham Commons has now been modified, in deference to local opposition, to the current application for Stedham Common alone to allow the effects to be monitored.

4.12 The Secretary of State is invited to take a “long view” of the subject matter. This is because firstly, the evidence shows that marked changes in the structure of the vegetation on this land take place rapidly. Conditions are not static but dynamic and The Trust is striving to retain a habitat that is not a natural climax vegetation (which would be a woodland of forest trees), but one that results from a particular agricultural regime dating back to the Bronze Age, eg animal grazing, and the cutting of peat, turf, timber, bracken and gorse for fuel, bedding and other uses. Secondly, these lowland heaths are likely to become more highly valued ecologically: eg although it is now an SSSI and a LNR, the possibility exists of Stedham Common being included in the Wealden Heaths Special Protection Area under the Birds Directive. Thirdly, a decision now will affect the Common for some years.
The Public Interests

4.13 This case generates a requirement for the Secretary of State to consider some elements of conflict between various public interests and a need to decide how these should be sensibly interrelated. Despite the heat generated by this proposal, the elements of conflict are quite small.

4.14 Public interests arise here in relation to:

- the maintenance and enhancement of biodiversity;
- the retention of lowland heath both as a habitat and landscape;
- access to common land and the maintenance of that access;
- the effect of the proposed fence on the existing landscape;
- openness as a concept; and
- safety.

Biodiversity

4.15 It is necessary to keep in mind the significance attached to the Rio Convention in 1992. The UK Government is a signatory to the Biodiversity Convention and action since taken includes the positive Government response in 1996 to the UK Biodiversity Steering Group report on the measures needed to implement the Convention (Appendix IV to Document 7). The statutory functions of English Nature include the provision of advice for the Secretary of State on the implementation of policies for or affecting nature conservation, in addition to its general power to provide advice and disseminate knowledge about nature conservation. English Nature support this application and appears at this Inquiry, giving emphasis to the Nationally held view about the proper management of lowland heaths. The application is also supported by The Wildlife Trusts Partnership (The Royal Society for Nature Conservation) and The Royal Society for the Protection of Birds.

Retention of Lowland Heath

4.16 This follows immediately from consideration of biodiversity because from that point of view losses of lowland heath in the country to other uses verge on catastrophic. The extent is illustrated at Document 5, WRJ5. In England less than 17% of the heathland present in 1800 now remains. Its retention and re-establishment is a National conservation priority; it is habitat for which the UK has special responsibility, having 20% of this International resource. The Biodiversity Steering Group prepared a costed Habitat Action Plan (Document 7 Appendix IV) with the intention that a 10% increase in lowland heath should be achieved through re-establishment by the year 2005.

Access to Common Land

4.17 Public access to a common is achieved through the provisions of section 193 of the LPA 1925. Publicly accessible commons are broadly restricted to those that lay
within the boundaries of pre 1974 Boroughs and Urban Districts, a situation not prevailing here. There has been a strong movement for many years to obtain a legal right of public access to all common land. This would make little practical difference at Stedham because The Trust as owner operates an open access policy here as on its other reserves. The Trust has no intention of changing that policy or its application at Stedham and has stated so repeatedly (Document 5, WRJ 17). Nonetheless, for the reasons in paragraph 4.3 above, the Common does not “belong” to the local community. But almost everyone is a welcome “visitor” to the Common by virtue of The Trust’s open access policy.

Effect of the Fence on the Landscape

4.18 The proposal is principally for a post and wire fence (with a short length of post and rail along Elsted Road). A stock proof fence of this type is an ordinary feature of the countryside: its open nature ensures that it is usually a feature which attracts no comment. Fences are commonplace in the AONB. The effect of a fence has to be considered against the passage of time: a mature, weathered fence is likely to be less noticeable than a new one. There is substantial marginal growth around much of the reserve. Further growth around it would lessen the visibility (a minor consideration in any event) and the impact as time passes. Tufts of grass, bracken, bramble and small climbers play their part. In winter dead bracken would stand or fall against the netting and wires without harming it. Much of the surrounding scrub is in any event evergreen.

4.19 The fence at Stedham Common would be satisfactorily hidden by the marginal vegetation. There are places where the passer-by would look over the top of the fence at the Common, because the fence is in a dip, and others where it would be at the top of a high bank where the opportunity for noticing it is reduced. Scots Pines growing along some of the margins give a strong vertical emphasis to views in which a fence post would be of little significance. There will be scrub vegetation too (eg gorse) both outside and inside the fence line which would obstruct sight of the fence.

4.20 The general conclusion that should be drawn as regards the fence is that it would be as inconspicuous on this site as any fence can be. It would remain visible in some places from close to. Overall, the landscape effect would be negligible.

Openness as a Concept

4.21 These management proposals are intended so that the present openness of the Common can be retained. Under previous ownership (where timber rights were held by or on behalf of a timber company) the Common had become extensively wooded. The Trust has cleared much of the pinewood and restored the previous openness and variety of the scene at a cost of some £100,000. Some of the written objections to the application are directed at the very proposals that will retain and guarantee the openness and landscape character of the site (Document 3).

Safety of the Animals

4.22 In a setting such as this, grazing animals need to be prevented from straying. The reserve is bounded by roads on 3 sides: the busy A272 to the north with vehicles travelling up to 60 mph and sometimes more, and to the east and west by local
distributor roads. The Trust has considered 4 methods of control as alternatives to permanent fencing.

4.23 Shepherding - it is unlikely that any herdsman could keep adequate supervision over a small number of animals and prevent straying onto the surrounding roads. The animals would need to be taken off at night onto lay-back (or run-back) land, Land, transport and a full time herdsman (with relief staff) would thus be required. The revenue costs would be high and safety could not be guaranteed. There are no known examples of this form of management.

4.24 Tethering - animals would be vulnerable to dogs and to fire. High levels of supervision would be necessary to ensure that the animals were not caught up in their own tethers. If not moved frequently, animals would not obtain the necessary balanced diet that would be achieved if they were free to roam. Local erosion could occur due to overuse.

4.25 Portable electric fences - an option on some sites but requires additional fencing when moved around, or additional manpower. The equipment is subject to theft and requires high levels of maintenance and supervision, eg strimming of taller vegetation to prevent shorting out. Smaller enclosures are less effective from an ecological viewpoint, and special arrangements would be necessary to ensure that rights of way remained accessible.

4.26 “Invisible Fencing” - essentially a buried boundary wire with each animal wearing a collar which gives an electric shock when the wire is approached. Originally developed for the control of pet animals, the trials have not demonstrated that livestock can be retained within the “fenced” area. Without a visual barrier, the animals do not necessarily flee away from the defined boundary. The technology requires more years of development.

4.27 The Trust has therefore concluded that animal safety and control can only be satisfactorily achieved at a reasonable cost by a permanent peripheral fence which would, in effect, fence-out the adjoining roads.

Management Options and Issues

4.28 The Trust has given detailed consideration to the continuation and refinement of the present regime of management. Mowing can be effective in relatively large, mainly dry areas, unincumbered by such items as tree stumps and uneven ground. However these conditions do not prevail over much of Stedham Common. Mowing also tends to leave hard, artificial edges at the boundaries of the cut areas and does not control birch regeneration. Cool controlled burning in winter is a useful adjunct to grazing, but not a substitute for it. Safety controls over burning make it administratively difficult and time consuming. Whilst an effective method of stimulating fresh growth, it is weather and labour dependent and needs to be operated in tandem with bracken and birch control, eg with grazing. Manual maintenance can be carried out by both contractors and volunteers. The former are a continuing drain on The Trust’s resources and the latter are in short supply in the Midhurst area, despite numerous past efforts to stimulate interest. Volunteers can only be used successfully for those tasks which are stimulating. Many hours of, for example, birch pulling would result in loss of interest, motivation and goodwill.
4.29 It is undeniably an owner's prerogative to select a lawful form of management of his land which is consistent with the purposes for which he holds it. That proposition applies to The Trust as much as to any owner subject to the restrictions inherent in The Trust's objects. In this case the prerogative is also subject to the need to obtain permission to fence. The Parish Council's objections centre on the proposition that The Trust has selected the wrong form of management to achieve its objectives. But that selection is The Trust's prerogative. It is soundly based and was reached by reference to its own extensive experience elsewhere and is supported by a wide range of experience gained by others who have worked on similar problems over long periods. The issue on management is not about The Trust's competence in deciding on the form of management it has chosen. The issue concerns the result of that decision: the choice of management is only open to legitimate dispute in terms of its consequences to the interests of others.

4.30 Managing the land in the best possible way to achieve the objective of a diverse lowland heath habitat would achieve some continuing saving in resources year by year. This would result from the grazing animals keeping the molinia in check, including the elimination of grass litter (a fire hazard); the browsing of birch seedlings; and damage to, and so reducing the bracken stands, by trampling and lying on them. Although that financial cost is a secondary consideration, it has to be seen in the context of a continuing and acute human resource problem and the high revenue cost of contract labour. The Trust would not expect grazing to be commercially viable and would need to subsidise the grazier, including the employment of a local part-time 'looker' if the grazier was not conveniently close.

4.31 On the basis that low-intensity grazing is the optimal primary management "tool" or method, then the extent of biodiversity increases because more plant and animal species survive. The greater the diversity of plant life the greater the chance of the inclusion of rarer species, as has already occurred in part as a result of The Trust's efforts and expenditure on the site. In addition, the lowland heath landscape is retained in the historical form in which it is cherished by many people. Here The Trust is a facilitator as envisaged by its objects.

4.32 These are benefits which accrue to everyone - to the Nation - they are not benefits which accrue to The Trust, though Trust members may enjoy them like anyone else. These results operate therefore for "the benefit of the neighbourhood" as well. They can also be said to ensure the continuance of, and improvement on, the benefits which the neighbourhood, as the local part of the greater world, now enjoys.

4.33 There are minor public advantages too. Firstly, the attraction to some people of having animals present. Secondly, the regular presence of a person having responsibility for the animals, and thus for the land, on the Common. Thirdly, exclusion of (for example) New Age Travellers. These public interest considerations should be treated as separate from any particular interest of The Trust. Whilst The Trust seeks these objectives, the benefits accrue to all, to future generations as well as those of us here now.

4.34 The main argument of the objectors seems to be that "You don't need to fence the land to be able to manage it properly". That is wrong. The issue is not one of convenient management but of optimal conservation management. The latter is widely recognised by virtually everyone concerned with management of lowland
heath to be achieved by low-intensity grazing (in the South of England by cattle and ponies). There is a mass of evidence to show that this is achieving results in many other places (eg the Dorset Heaths - Document 18).

4.35 It is not an issue that the management of lowland heath requires great care. The Trust’s evidence shows it to have been the subject of many papers and of sections of more comprehensive texts. There is enormous experience and expertise behind these writings. That experience is a combination of “hands on” and direct observation of “hands on”.

4.36 The need for low-intensity grazing is recognised by professional botanists and ecologists (Document 6 References): Francis Rose (R18 and R19); Neil Sanderson (R20); Nick Michael (R14); Colin Tubbs (R22 and R23); by The Trust’s own staff and colleagues at the other County Wildlife Trusts; those working for the RSPB; and also by English Nature.

4.37 Aside from the point about an appropriate stocking rate (which The Trust regards as flexible), the Parish Council relies on the grazing of deer and rabbits, neither of which earns much support from other commentators (eg Document 6, Tubbs, R23d) and chooses to refer to grazing by domestic animals as “artificial”, apparently meaning “introduced”.

4.38 The experience of The Trust and other practitioners is that grazing is the best primary management method. The Trust believes that other methods are judged by their ability to mimic the effects of grazing. It must be emphasised that the extent and effects of grazing will be closely monitored and adjusted as the scheme progresses.

4.39 Iping Common is intended to remain unfenced at least while the consequences of fencing Stedham are evaluated: that is likely to involve a period of years because both the physical effects and the communal effects will need to be monitored or assessed over a period of time. Iping/Trotton Commons will be freely available to those who wish to avoid animals or object to using gates.

4.40 No practical alternative scheme for positive management has emerged, nor could it because none exists that does not require a huge volunteer force that The Trust could not provide (and which is simply not available) and the local community certainly would not provide, as years of history show.

4.41 This is not a habitat that should be left to be second best or third best. The reason lies in its rarity (explained by the history of alternative uses), its value in National policy and the strong desire to retain and add to that which now exists, (Document 6, Biodiversity: the UK Action Plan, R11 and R12b, § 4). It is worth noting how Forest Enterprise propose to play its part in achieving these Action Plan objectives (Document 6, R7c).

Objectors’ Complaints:

Opening and Closing Gates

4.42 The gates would be constructed as to be as user-friendly as possible. Note is taken of equestrian objection to parallel sided approaches to gates. There would be 12 pedestrian / equestrian gates round the Common. The gates will be
properly maintained for reasons of stock security. Difficulties for equestrians will be prevented as far as reasonably possible.

Releasing Dogs

4.43 The animals proposed for grazing will be few in number, are unlikely to be in the least interested in dogs (as experience elsewhere on reserves such as Bartley Heath shows) and The Trust has no wish to curtail owners letting dogs run free. So it is up to dog owners. Those with deep rooted fears (if any) can use Iping/Trotton Commons.

Petition of Objections 1997 (Document 12, Appendix 8)

4.44 In general, petitions signed by a cross section of the public are hardly worth the time spent preparing and distributing them. The amount of "thinking time" given by a person asked to sign a petition is normally measurable only in seconds. Basically the act of signing represents a "knee jerk" reaction and the wish to please, or not offend by refusing.

4.45 The headings to the petition are in any case inept. The fact that Stedham Common lies within the 983 km² of the Sussex Downs AONB has no relevance to fencing the Common. The landscape impact of fencing on the Common itself is trifling and the fence would not be noticed from more than about 100m away at most. The statement in the second part of the heading is simply wrong. Signatures to such statements neither rectify the statements nor give any weight to these tendentious and inaccurate captions.

Significance of the Plan Accompanying the Application

4.46 The original plan is perfectly clear as to what is proposed. The line of the fence is indicative; the types of gates proposed are coded. The error in the plan lay in not removing or substituting the scale when it was photocopied from A2 to A3 size. The substitute plan at 1:2500 provides the same information. The Trust would be willing to add a bridle gate where the gas pipeline clearance line reaches Elsted Road if the fence is authorised.

Recent Decisions on section 194 Applications (Document 9)

4.47 It is clear from these that the Secretary of State is primarily concerned with the principle of fencing. Fence lines on plans are accepted as being "for the purpose of identification only" at:

- Ditchling Beacon - DL § 18;
- Silchester Common - DL § 23;
- Quantocks - DL § 10 (following PLI);
- Ashdown Forest - DL § 77; and
- East Winch Common - DL § 11.

4.48 In each of the above cases fencing was consented. Silchester Common is a heath (DL § 14) and similar problems arose there. Objections were raised on all the same grounds as have been raised here (§§ 3, 4, 5, and 6 thereof). Paragraphs 15 and 16 set out the responses to those objections. The Secretary of State accepted those responses. Paragraph 22 sets out the Secretary of State's overall views on the arguments. He gave consent.
4.49 The Quantocks decision and the Ashdown Forest decision both deal with heathland areas where grazing was already carried on but affected by scrub invasion. Issues similar to those arising here arose in those cases (§ 9 of Quantocks decision letter; § 75 of Ashdown).

4.50 East Winch Common, King’s Lynn, is also heathland. The case for grazing is set out in § 3 and 7 of the decision letter. There is marked similarity to the present case in most respects. The Secretary of State accepted the arguments in favour of grazing and enclosure (§ 10).

4.51 The only decision in this list where consent was refused was Thwaite Common, North Walsham, Norfolk. The decision is plainly particular to the circumstances of that case: grazing was not a substantial issue (report § 31) and the land lay between two roads with properties looking over it (report § 3). It comprises stream-side meadow land with a rich flora. A part already fenced had become paddock-like (report § 29). The factual position makes the decision unique amongst the others.

4.52 The Secretary of State’s previous support for fencing those commons that are lowland heaths, including Silchester and East Winch, was not made with express reference to the importance of such heaths in the retention and enhancement of biodiversity. The responsibility assumed by the Government in this respect makes the case for protecting this Common, and for securing its proper management, even stronger.

5 OTHERS APPEARING IN SUPPORT OF THE APPLICATION

5.1 Mrs Christine Braiden considers that action must be taken now to prevent the further reduction of species, the decline to monoculture and the loss of the special sense of place of Stedham Common. The Trust has a good management record of SSSIs and LNRs and is well qualified to do the best for this Common. Ms Jill Barton, Head of Conservation for the Surrey Wildlife Trust, supports the need for fencing of the Common in order to reintroduce grazing and wishes to be aligned with the evidence of the Sussex Wildlife Trust. Mr Peter Booker, a resident for 40 years and a dog owner, expresses distress at the visual decline of the Common that he had seen over this period. He considers the objections to the scheme are unsupportable as gate access is easy and not an inhibition. The advice of the ecological experts should be heeded - if grazing is necessary to successfully achieve biodiversity, “go with it”. Mr John Chandler first visited the Common nearly 30 years ago. As an ecologist, he considers the full potential of the Common is dependent upon returning to traditional management methods, including grazing. The presence of a few grazing animals and the necessary fencing would not spoil public enjoyment of the Common.

5.2 Dr Christabel Barron’s family has been resident in Stedham for 5 generations, and she now is the only active commoner of a potential 27 in the area, albeit on the Northern Commons rather than at Stedham and Iping Commons. She would be interested in using Stedham Common. Grazing is important to recover the traditional character of the area, and would add to the visual pleasure. It is important than the right breed of ponies is grazed, eg Dartmoors, which have no record of being dangerous and are familiar with bracken environments. Fencing may not be desirable but is necessary adjoining the A272 for animal and human welfare reasons. Her experience of grazing at Longmoor is that her cattle have
had no veterinary problems over a 15 year period (Document 13). Heather and birch twigs are grazed by both ponies and cattle. Mr Robin Crane, as a local resident, Council member of the Sussex Wildlife Trust, Chairman of the Royal Society for Nature Conservation and a member of the Management Committee of the Itching and Stedham Local Nature Reserve considers that grazing is the essential next stage in the Trust’s restoration programme for the Common. He confirms the standard national method of recording bird numbers on the Common. Dr Timothy Rich was born and brought up in Stedham, and whilst his family still live locally, he now lives in Cardiff. As a professional ecologist and botanist, he stresses the international importance of heathlands like Stedham Common and recommends the Trust’s essential work to restore traditional management methods, particularly grazing.

6 THE CASE FOR STEDHAM WITH IPING PARISH COUNCIL

The main points are:

6.1 Stedham with Iping Parish Council request the Secretary of State to prefer the clear, fair, reasonable and objective evidence on behalf of the Parish Council and dismiss the application by Sussex Wildlife Trust for permission to fence Stedham Common.

The Application

6.2 The precise position of the fence and gates is accepted by the Trust as highly material. If the Secretary of State were minded to approve fencing, he would need to be satisfied that visual impact had been minimised. Approving a 2 metre band and trusting the landowner is wholly insufficient. He should require much greater details to be provided in that case. Further an extra gate should be provided.

The Approach to section 194

6.3 The approach in paragraphs 2-4 of the Department’s Procedure Notes is adopted. The application is necessary as the fence would impede access of the Commoner, persons exercising public rights of way and licensees. Licensing entry under an ‘open access’ policy is little different to a revocable deed under s.193 LPA 1925 (merely the byelaw and offence provisions are absent).

6.4 ‘Benefit of the neighbourhood’ is defined as the health, comfort and convenience of the inhabitants of any populated places in or near any parish in which the land is situated, and is considered in the context of the enjoyment of the common as an open space (Procedure Notes, para 3). The ‘neighbourhood’ is the area for which Stedham Common is a local place of resort. This includes Stedham with Iping, other nearby parishes and Midhurst.

6.5 The existing benefit is principally:

- the Common’s open character, free of the authority and implied restrictions of artificial barriers and laid out paths;

- the sense of invitation to the Common and communal use created by this openness (in contra-distinction to agricultural land);
its contribution to the appearance, character and local distinctiveness of Stedham with Iping parish, in particular to Minsted hamlet and Iping Common;

its contribution to the character and appearance of the AONB, and

its position as part of a series of unenclosed lands running between Trotton and Midhurst.

6.6 Fencing (and the grazing which follows) would only be an additional benefit if it contributed to the openness of the Common. Such benefit would not have priority. As regards private interests, the Commoner objects. The Trust does not seek approval because of its financial interests as there can only be benefit to The Trust’s public objects if grazing delivers material ecological improvements that cannot be achieved by any other means.

6.7 Maintenance or improvement of ecological interests and biodiversity is a relevant consideration. The harm to the existing benefit to the neighbourhood should be assessed and priority accorded to it. This means that very considerable weight should be attached to any such harm. The proposed grazing must produce materially better results than any other management method before any weight can be attached to its re-introduction.

Access and Convenience

6.8 Stedham Common is accessible from all sides except the ARC quarry to the south. There are at least 14 points where formal and informal paths enter the Common. Additionally it is possible to wander onto the common at a large proportion of its boundary. This is particularly so from Minsted Road and Elsted Road/Iping Common. Fencing will channel access to nine gates. The convenience of open boundaries will be lost. Opening a gate is less convenient, particularly for elderly dog walkers and younger or less experienced horse riders.

6.9 Additionally a bridle gate should be installed next to the vehicle gate at the post and rail fence on Elsted Road. That route is part of the Gas Ride Path continuing onto Iping Common.

6.10 Stedham Common is open and unobstructed. It is possible to wander freely over the common as a whole. This will not be improved by grazing. The accessibility and convenience of the Common will be harmed by fencing.

Appearance and Sense of Freedom

6.11 The Common is in the AONB and part of a series of unenclosed commons. It is not an agricultural field; it is not private land in a ‘Keep Off’ sense; it is an open common. The intrusion of fencing is therefore especially harmful. The only expert landscape evidence put before the Inquiry is that on behalf of the Parish Council and this concludes that demonstrable harm would be caused to the designated landscape and the character of the Common (an existing benefit). The West Sussex County Council and South Downs Conservation Board committee reports are not expert landscape assessments. The Trust agrees that the 3rd March 1997 committee report (Document 11 Appendix B) considering the visual impacts
is wrong in stating ‘Very little of the fence will be visible from the public road’. This error undermines the report’s analysis.

6.12 To demonstrate the visual effects The Trust photographed the boundary using an intermediate post as a guide. This demonstrates the prominent visibility of the fence: the post is seen in over two thirds of shots:

<table>
<thead>
<tr>
<th></th>
<th>Visible</th>
<th>Obscured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elsted Road</td>
<td>71</td>
<td>11</td>
</tr>
<tr>
<td>A272</td>
<td>35</td>
<td>57</td>
</tr>
<tr>
<td>Minsted Road</td>
<td>53</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>158</strong></td>
<td><strong>72</strong></td>
</tr>
</tbody>
</table>

6.13 The Trust’s exercise disapproves their contention that the fence is well hidden. The analysis does not take account of the need to cut down vegetation to erect and maintain the fence. The fence will be readily visible from well-used roads and the existing unfenced commons bordering it. Inhabitants of Minsted will pass the fence every day.

6.14 It will also be visible from many points on the inside of the Common. The Common is less than half a mile in length. A walker or rider will quickly cross fencelines entering and leaving the Common. Time and vegetation growth will not significantly diminish the impact of the fence. It will need to be kept clear to prevent damage by plants and for maintenance.

6.15 The enclosed Common gives an immense sense of freedom. The ability to enter and leave an open, unfenced semi-natural area is increasingly rare in Britain today. It is a vital component of the Common’s benefit to the inhabitants of Stedham and to many others. That unique sense of freedom will be lost entirely. From many parts of the Common the fence will be out of sight but a visitor will be within 250 metres of it and will know it is there.

6.16 The fence will be a mental as well as physical barrier. It discourages access. As Professor Appleton notes, a fence says ‘Keep Out’ (Document 11, Appendix K). A gate also says ‘Keep Out’ unless the person knows he is allowed in. Whilst better than a fence, a gate is much less inviting than an open unenclosed common. The real nature of this harm is shown by the strong local opposition to the fencing proposal and the preference of scheme supporters for an unfenced common.

Safety and Welfare

6.17 The proposal contains dangers for the safety of users of the Common and the safety and welfare of the grazing animals. These dangers are compounded by deficiencies in the planned grazing regime.

Animal Safety

6.18 There are eight different concerns about these proposals’ effect on the safety and welfare of animals:

- there is not enough food on the Common for the grazing animals. There is only 2-3 ha of grass, yet it is 80-90% of summer diets and 40% of ponies’
winter diets. There is inadequate grass for continuous grazing and the
Common will be overstocked. The grazing proposals rely on the
exploitation of the animals. The livestock will be forced to eat
inappropriate plants, need supplementary feeding or starve;

○ feeding concentrates, as proposed, harms the digestion of horses used to
rough grazing. It should never be done with grazing animals (Document 6,
Dr Prins, R16f);

○ bracken is toxic to horses and cattle (Document 12, Mr White, Appendix
10). Rather than expect the animals to trample bracken, the best advice is
to cut or spray large stands before introducing cattle and horses (Document
6, Dr Michael, R14i);

○ the risk of Ergot poisoning is such that Dr Rose recommends the restriction
of Stedham grazing to winter and spring (Document 6, R19i, para 11);

○ the uneven ground (rabbit burrows, rough dips and tree stumps)
makes the Common dangerous for panicked animals;

○ clay pigeon shooting can be heard across the Common. It is loud enough
to disturb but not frequent enough to cause habituation. A panicked
animal on the uneven, ‘smallish’ Common would be at risk;

○ ponies do trap their legs in wire netting of the type proposed and panic;

○ there is a risk of stock straying through open gates and causing accidents
(Dr Noble-Matthews and Cllr Farmer, paragraphs 7.2, 7.4 below). Three
kissing/bridle gates lead straight onto the A272.

Human Safety

6.19 Feeding ponies concentrates for handling purposes will encourage them to see any
person approaching them as a source of food. Their displeasure, expressed by
kicking or chasing, would be particularly dangerous to elderly walkers. A
separate danger is of dogs being distracted and pulling over their walkers (Cllr
Farmer, paragraph 7.2, 7.4 below).

6.20 The fence and gates increase the risks for riders crossing Elsted and Minsted
Roads. At present they can escape oncoming traffic by going straight onto the
Common. There will be less room to hide, especially if approaches to gates are
‘funnelled’. The danger for groups of riders is much greater. Any increase in
road accident risk from escaped animals would also threaten human safety.

Nature Conservation and Alternative Management Techniques

6.21 Stedham is a nationally important heathland. The Parish Council wants to
maintain that status. That can, and on Stedham should, be done by means other
than grazing. Stedham Common is a poor grazing site and The Trust’s proposals
are unworkable. All the suggested benefits of grazing can be achieved by other
management methods on the Common.
6.22 In 1996 the LNR Management Committee concluded that the grazing of Stedham Common alone should be 'discounted because of the severe limitation in benefits from an ecological point of view' (Document 12, Appendix 5, page 5). If anything, the report overstated the case for grazing.

Heathland Management

6.23 There are a range of heathland management techniques including grazing, controlled burning, cutting peat and turf, felling and spraying trees and scrub, pulling saplings, mowing, bracken cutting, harrowing and mechanical bare ground creation. What matters is that the heathland is managed. A variety of techniques are frequently, and rightly, listed together (eg, Document 6, Habitat Action Plan, R12b; Auld et al, R1). Natural processes also have an effect, for example, the present informal grazing of the Common by rabbits and deer, but this would be reduced by fencing.

6.24 Other management techniques can produce all the ecological benefits attributed to grazing. Four benefits of grazing are put forward by The Trust: creation of small scale mosaic; controlling birch; controlling bracken; and creation of bare ground. A fifth benefit, controlling pine, is not now claimed.

Mosaic

6.25 The creation of a mosaic of vegetation is a good thing. However, ponies and cattle prefer bent grasses to *molinia*. Ponies do not eat much heather (Document 12, Mrs Field, Appendix 4) and cattle find dry heather relatively unpalatable (Document 6, Dr Michael, R14i). A mosaic can be created by other means. A strimmer can remove small patches. Height and age diversity in heather can be created by mowing (Document 6, Auld, R1d and Rose, R18j) and controlled burning (*ibid*. Auld, R1d).

Birch

6.26 There is some evidence that ponies and cattle suppress birch growth, however this appears to be by trampling and soil changes rather than by eating it. Cattle and ponies do not eat birch out of preference (Document 12, Mrs Field, Appendix 4). Livestock effects are very limited. The Trust concedes that birch above about 75cm cannot be killed by browsing and need to be cut and poisoned or removed by hand or Hymac. The Trust claim (which is disputed) that smaller birch can be eaten but weed wipes, pulling, digging and use of a Hymac will also destroy it. The Trust acknowledge that the preferred method is to pull it out.

6.27 Birch pulling is proposed at Stedham (Document 5, WRJ2, Management Plan, compartments 8-14). The plan suggests that 3.5 such volunteer tasks (each 10 people for a 4-6 hour day) per annum will be saved by grazing. Any effects of grazing on birch can be replicated and substantially bettered by other management methods. Non-grazing methods are used in Dorset (Document 6, Auld, R1c), the New Forest (Document 12, Mrs Field, Appendix 4) and on Stedham Common (e.g. Document 12, Appendix 11, Parish News).
Bracken

6.28 Bracken is poisonous to cattle and ponies (Document 12, Mr White, Appendix 10). Rather than expect livestock to trample it, expert advice is that large stands may need to be cut and/or sprayed before the introduction of grazing animals (Document 6, Michael, R14i). Bracken is to be controlled on Stedham Common by chemical and hand methods. The Management Plan does not envisage any reduction resulting from grazing (Document 5, WRJ2).

Bare Ground

6.29 Bare ground can be created by mechanical disturbance (e.g., turf cutting, harrowing, use of a Hymac). The Trust asserts that grazing, trampling and ponies rolling on the ground will also create bare ground. However, The Trust agrees that bare ground will need to be created by mechanical means even if the Common is grazed. Plans are set out in the management plan (Document 5, WRJ2 compartments 11 and 12).

Benefits Realisable by Other Management Techniques

6.30 The benefits of grazing can be realised by other management techniques. The Trust accepts that these techniques will need to be used alongside grazing for the foreseeable future. Grazing does not remove significant levels of nutrients from the system, despite this removal being a vital element in heathland management. Mechanical removal of vegetation or turf is more effective (Document 11 Appendix H). Silver studded blue butterflies are helped by mowing (Document 5, WRJ2, paragraph 1.2.2.2) and the measures listed to help rare birds do not include grazing (ibid., para 2.4.2).

Research and Publications

6.31 The Trust asserts that grazing is recognised as the best management tool and other techniques are judged by their ability to mimic its effects. This assertion has been discredited. Of the claimed 10 references on this point, Evans (Document 6, R5) supports the ‘best management’ view only for wet heath, Prins (ibid. R16c) describes it as ‘essential’ and Sanderson says that grazing is best but explains that everyone else disagrees with him (ibid. R20i). The remaining seven references do not support the assertion. Grazing is simply a management technique, to be used on appropriate sites.

The Grazing Proposals on Stedham Common

6.32 The Trust’s proposals for the Common are ill-thought out, will not produce ecological benefits and are likely to fail. The Trust does not know what is on the Common. It has failed to survey as recommended by Auld (ibid. R1b) and Evans (ibid. R5b). The only Trust document which shows the extent of birch (mature and saplings) is a 1984 plan. The only vegetation map in the Management Plan is dated 1987, scaled at 1:10,000 and is inaccurate. The 1994 vegetation map contains less information than a Phase I habitat survey (it does not distinguish between wet and dry heath). It is now four years old and is of historic interest rather than practical importance.
6.33 The Trust does not know what they want to do with the Common. To produce a mosaic of different aged heather, the desired proportions must be decided upon (ibid. Evans, R5d). There are no clear management objectives.

Stocking Rate

6.34 The Common is poor for grazing. No more than 20% is grazeable. Some parts have little or no potential for grazing (ibid. Rose, R19k). The proposed stocking rate greatly exceeds the capacity of the Common (Document 11, Appendix E for English Nature rates).

Season of Grazing

6.35 The proposed year-round grazing is contrary to all advice. English Nature says in general grazing should only occur in the spring and summer months as winter grazing can seriously damage the heather sward and livestock can suffer (Document 11 Appendix E-3). Dr Rose advises only winter and spring grazing on Stedham to avoid the toxic effects of Ergot (Document 6, R19l). Roger Suckling advises avoiding early March to late August to avoid disturbing ground-nesting woodlarks and nightjars (Document 11, Appendix G). All this advice is swept aside by The Trust.

Accommodation Land

6.36 English Nature advises that ideally accommodation land should be adjacent to the heathland (Document 11, Appendix E-3). The Trust proposes that accommodation land should be where the grazier is based.

Supplementary Feeding

6.37 The Trust proposes supplementary feeding on site (Document 5, WRJ 1.6.3c). Use of supplementary feeding is contrary to advice and expert opinion, an error compounded by giving the feed in the SSSI (Document 11, English Nature, Appendix E; Document 6, Michael, R14g; and Prins, ibid. R16f).

Size of Site

6.38 The difficulties in grazing Stedham are made worse by its 'smallish' size. It is much smaller than other heathland projects (e.g. Document 6, Graham, R9c; Prins R16c; and Sanderson R20l).

Prospects of Failure

6.39 The Trust’s experience elsewhere gives little confidence that the flaws in the proposals can be overcome. The grazier at their Chailey reserve dropped out. Marline (a 40ha site with 10ha grassland) was fenced for grazing but the grazier has dropped out after only a month. Only one of the reasons was a road-widening scheme. Despite much more grass than Stedham Common, The Trust could not make it work.
The Nature Conservation Importance of Stedham Common

6.40 Grazing had ceased on Stedham Common by 1939, if not earlier. Other traditional management methods declined too, although the Common remained grazed by rabbits and deer. Despite this, the Common was notified as a Site of Special Scientific Interest (with Iping and Trotton Commons) in 1954. The 1977 Ratcliffe study found the Commons as one of the best heathlands in the UK. Iping and Trotton Commons became a Local Nature Reserve in 1974 and into which Stedham was incorporated in 1986. Stedham is part of the Wealden Heaths Important Bird Area. It remains a very high quality site and the Royal Society for the Protection of Birds wish it to be included in a Special Protection Area under the Birds Directive.

6.41 No species have been lost from Stedham Common at least since The Trust bought it in 1984. There is no suggestion that any will be lost. If Sanderson (Document 6, R20d) was right, the Common would be a ‘pale imitation’ of a grazed heathland and not very high quality. The Trust’s witnesses contradict him.

Conclusions on Grazing

6.42 Stedham Common has survived and prospered without grazing. What the Common needs, and is receiving, is management. With the present management regime neither it nor the other Iping SSSI commons are threatened by successional changes (Document 6, Rose, R18j). Biodiversity is maintained. The Trust rightly confirms that Stedham Common will not be abandoned if this application is refused. The spectre of a degenerating heath is banished and the Secretary of State can be confident that the nature conservation interests in the common will continue to be protected under non-grazing regimes. Grazing is simply one management technique. It is not a suitable technique for Stedham Common.

Community Opinion and Public Bodies

6.43 The vital importance of local community support for grazing is emphasised by English Nature (Document 11, Appendix E-3), a view endorsed by The Trust. The local community is against the fencing and grazing proposal. Other villages in West Sussex are concerned about possible fencing of their commons. The West Sussex County Council’s formal position is not to object. However the Chairman of the Coast and Countryside Committee, objects to the fencing proposal. It is not likely that West Sussex County Council would be prepared to fence their part of Iping and Trotton Commons.

Conclusions

6.44 The proposal causes significant harm to the existing benefit to the neighbourhood. The Common would be less accessible and less convenient. Its visual appearance would be considerably harmed and the sense of freedom greatly diminished. Avoidance of all this harm should be given additional priority.

6.45 With the exception of a few who have written to the Secretary of State preferring natural regeneration rather than management (Document 3), all other parties wish to protect lowland heath. Grazing is merely one management tool. Its benefits can be met or bettered by other techniques and it should only be used on appropriate sites. Stedham is not an appropriate site for grazing. The Trust’s
proposals are unworkable, have harmful safety and welfare implications and grazing will produce no ecological benefit that cannot be achieved by other means. It is not necessary to graze.

6.46 English Nature’s powers might prevent or curtail catastrophic overstocking or supplementary feeding, but the merits of grazing cannot be left to The Trust or the Wildlife and Countryside Act. The fencing will cause significant harm to the benefit of the neighbourhood. The Secretary of State has to be satisfied that the grazing proposals will produce ecological benefits, which cannot be achieved by other means, of such a large scale as to outweigh the harm to existing benefits. No extra ecological benefit will result. The application falls far short of this and should be refused.

7 OTHERS APPEARING IN OPPOSITION TO THE APPLICATION

7.1 Mrs Pat Blunt, as a local resident of 21 years, an officer of the Pony Club and a regular walker and rider on Stedham Common, considers the need to open gates to gain access an infringement of liberty. The healthy freedom to roam at will on the Common, with no restriction on dogs - a valued companion to many - is a highly valued local facility, with waymarking totally unnecessary. Mrs Alys Ferguson, member of Trotton with Chithurst Parish Council for 25 years and the current Chairman, considers fencing unsightly and inconvenient, and is opposed by the majority of local people. The Trust is currently doing a good job on Iping Common and she sees no reason why the current management methods should not continue and retain the valued unfenced character of the area. The grazing is inadequate on Stedham Common and The Trust would be an absent landlord. The money for fencing would be better spent on employing labour to manage the area. The approach and attitude of The Trust has been unsympathetic.

7.2 Mr Allan Walder has spent a lifetime in Stedham and considers fencing to be an unnecessary restriction. There is little grass on the Common, swampy with moss in places and not enough food to support animal grazing. As a resident farmer and horse breeder Mr Colin Darby also considers there is inadequate animal food on the Common and grazing would not be commercially viable. The closing of gates could not be guaranteed and the risk of straying animals would be real. This view is shared by Dr Priscilla Noble-Mathews, who considers that the risk of breakouts by livestock would have serious implications for safety on the A272, used increasingly by fast moving traffic, particularly motorcycles well in excess of the 60mph speed limit. Mr David Burton lives in Stedham and is concerned that it is the residents who would have to live with the implications of fencing on Stedham Common. As the owner of 3 dogs, he is concerned that problems would arise if animals were to graze the Common, resulting in him not having the freedom to roam with dogs off the leash.

7.3 Commander Brian S Mallory and his wife have walked the Common for over 40 years and cherish it as one of the last unspoilt areas for many miles around. The overwhelming strength of public opinion is against the unwelcome and dangerous proposal to fence and graze an area unsuitable for such a purpose. Firefighting would be made more difficult. Mrs Sally Greenwell, the recently appointed Chairman of West Sussex County Council’s Coast and Countryside Committee, confirmed the good working relationship enjoyed between the County Council and The Trust. Whilst recognising that the formal position of the County Council was not to object to the fencing proposals, she had personal concerns for the depth of
local feeling, encapsulated in the representations by the Parish Council, that objected to the concept of grazing and fencing of the Common. Mrs Josephine Wolfe, the sole remaining commoner on this Common but not currently exercising those rights, cannot recall grazing taking place in her childhood and thus it probably ended well before 1939. Fencing would remove that essential ambience of freedom and wild country that now exists. Mrs Linda Cartwright shares this view, considering that the Common would become like a farm, losing its essential flora and fauna. People would not want to walk amongst animals and preventing breakouts would be a problem.

7.4 Cllr Tim Farmer, stresses the importance of the Area of Outstanding Natural Beauty designation of the area, and its role within the planning framework. A fence would be extremely visible and obtrusive. It could never be fully stockproof and animals would get out onto the adjoining dangerous roads. Livestock and domestic dogs do not mix and there would be a real risk of the elderly being pulled over by their own pets whilst on leads. Ms Jacky Simpson, as a rider, considers that the inadequate set back of the gates would cause danger for unpredictable and nervous horses. Only one animal could pass through at a time and would need all the available space to manoeuvre. Dismounting would not be a solution. Horses are sociable animals and grazing ponies would be attracted by those being ridden on the Common, causing potential problems for riders.
CONCLUSIONS

The numbers in square brackets [0.0] refer to earlier paragraphs, Plans and Photos in this report from which these conclusions are drawn.

The Proposal

8.1 This application by the Sussex Wildlife Trust (The Trust) is for the fencing and gating of Stedham Common, a 35ha Site of Special Scientific Interest (SSSI) and Local Nature Reserve (LNR) just to the west of Midhurst [1.1, 2.3]. The fencing and gating would enable the Common to be grazed by ponies and cattle, thereby restoring a traditional means of using lowland heath practised since the Bronze Age [4.11, 4.12].

Basis for Consideration of the Proposal

8.2 The statutory basis for considering this application is whether, having regard to the benefit of the neighbourhood as well as private interests, it is expedient that consent should be given. The “benefit of the neighbourhood” is defined as including the health, comfort and convenience of the inhabitants of any populated places in or near any parish in which the land is situated, and is considered in the context of the enjoyment of the Common as an open space.

8.3 In the Secretary of State’s opinion, the expression “benefit of the neighbourhood” refers to the existing benefit, which is to be protected, rather than to any additional benefit to be expected as a result of the proposed inclosure. Any such additional benefit would be considered generally in assessing the expediency of giving consent; it would therefore be taken into account, but it would not be given priority. Thus the Secretary of State’s view is that the Acts do not require him to form the opinion that the proposed inclosure or work will enure for the benefit of the neighbourhood and of private interests but merely that he shall take the “health, comfort and convenience” of the inhabitants and the “advantage of the persons interested in the Common” into consideration in making his decision [4.7]. There is no material difference between the main parties on this approach [6.3, 6.4].

Benefit to the Neighbourhood - Ease of Access

8.4 I am in no doubt that local people, and those from further afield, derive considerable benefit from the Common as an open space, including for dog walking and riding [7.1-7.4]. It has added attraction for being one of a series of commons stretching for about 2½ miles to the west of Midhurst, providing walks and rides of varying lengths [2.1, 2.3]. This enjoyment of Stedham Common is enhanced by the ‘open public access’ policy operated by The Trust, making the whole Common freely available [4.2]. As of right, the public only has access via the Rights of Way [4.3].

8.5 The Common is currently unfenced apart from its southern boundary adjoining the commercial sand pit [2.2]. In theory it is thus possible to walk or ride off the adjoining roads onto the Common at will. In reality there is significant boundary vegetation, and in places steep banks, so convenient access points are more limited. On the A272 frontage, these generally relate to where roads, tracks or Rights of Way emerge from the village on the northern side. The Trust’s
proposals [Plan A] involve gates being positioned at every recognised track or Right of Way across the Common. At the Inquiry The Trust also confirmed that it would provide a further bridle gate on Elsted Road to cater specifically for the Gas Ride Path [3.3]. Thus in my opinion there would not be, in principle, a practical loss of accessibility to the Common resulting from fencing. I certainly do not agree that fencing and gating would be an infringement of liberty [7.1].

8.6 In detail, I consider that there would be a reduction in convenience for walkers, particularly those with dogs, having to negotiate kissing or bridle gates [6.8]. For equestrians I accept that there would be a marked reduction in convenience, and some element of danger, involved in negotiating bridle gates, although such gates are not unusual [6.20, 7.4]. Whilst The Trust agreed at the Inquiry to splay and set back these gates in consultation with local riders, I nonetheless accept that there would be a loss of existing benefit for local equestrian access to the Common [3.4]. I reach this conclusion notwithstanding the confidence I have in The Trust to install, and properly maintain, gates that are as user friendly as possible [4.42]. This loss of benefit will need to be balanced with other factors.

Benefit to the Neighbourhood - Freedom to Roam

8.7 The Trust has made it clear that it will maintain its open public access policy for walkers and riders. Whilst it wishes to see dogs under proper control, there is no intention to prevent owners letting their pets run free as now [3.5, 4.43]. There is a conflict of view about whether the presence of grazing ponies and cattle would be an added attraction to the Common or would result in conflict with dogs being exercised or with ridden ponies and horses [4.33, 4.43, 6.19, 7.2, 7.4]. Whilst I can understand the anxiety of those who would not be used to grazing animals on the Common, my own experience supports The Trust's view that ponies and cattle are more of an attraction than a deterrent, and conflict between grazing and domestic animals is rare. This is particularly the case where the breeds involved are indigenous to heathland habitats [3.5]. Certainly when I visited Bartley Heath, the ponies (and indeed the deer) there were indifferent to my presence. The likely low stocking rate on Stedham Common with numbers in single figures even at the most lush times would also mean that close contact with grazing animals would be the exception rather than the norm [4.11, 4.37]. I consider there would be no significant loss of benefit in the freedom to roam as a result of the fencing proposal or the grazing that would follow.

Benefit to the Neighbourhood - Appearance and Character of the Common

8.8 The existence of Stedham Common clearly contributes to the character and local distinctiveness of the parish and its surroundings. The fact that it is unfenced adds to this distinctiveness - a sense of invitation [6.5]. However, the proposal involves mainly a standard agricultural stockproof fence, supported on timber posts, a not uncharacteristic feature of most lowland landscapes, including in this Area of Outstanding Natural Beauty (AONB) [3.2, 4.18]. The Trust concedes that its photographic survey demonstrates that the fence would be visible at close quarters in about two-thirds of the shots [Photos 1, 6.11-6.13]. However I am not convinced that this is a helpful analysis. Due to the amount of vegetation around the edge of the Common, for most of its visible length the fence would be seen within or against trees, scrub, gorse and bracken. There are noticeable exceptions such as the north-western frontage to Elsted Road where a post and rail fence is proposed, because of the openness here.
8.9 Given sensitivity in its detailed routing, and a little time for the posts to weather and vegetation disturbed during construction to recover, I do not believe that the overall visual impact would be serious, notwithstanding the site being within the AONB. Nonetheless, I consider the change would be a loss of benefit to the local area which will need to be balanced against other factors.

8.10 Those opposed to the proposal consider that the character of the Common would be fundamentally harmed by the reduction in the sense of freedom and absence of authority created by the present lack of fencing [6.5, 6.11, 6.15, 7.3]. I have some sympathy for this view in that unfenced land is a scarce resource and as stated above, a contribution to the local distinctiveness and character of Stedham. However, unless close to the boundary or gates, views of the fencing from within the Common would be very limited due to distances involved and the amount of vegetation. For those who have been involved with, and opposed to, the proposal for some years, the awareness of gates and fencing would be likely to remain high, but for others, I do not believe any sense of loss of freedom would prevail for too long [3.1]. Nonetheless, I do not believe that the loss of perceived freedom can be other than a disbenefit, and again needs to be weighed in the balance.

Biodiversity and the Future of Stedham Common

8.11 The main parties and all those who spoke at the Inquiry did not disagree with the overall aim that the Common should be managed in a manner which conserves it as a rich lowland heath habitat. A small minority of those who wrote to the Secretary of State were critical of the management carried out so far and, in effect, would prefer natural regeneration which would eventually result in woodland [1.3, 4.12, 4.35, 6.21, 6.45]. I am in no doubt that given the SSSI and LNR status of the Common as one of the best remaining pieces of heathland in West Sussex; its support of birds listed as requiring special protection under Annex I of the European Birds Directive (79/409/EEC), namely Nightjar, Woodlark and Dartford Warbler; and the International importance of ‘Atlantic’ heath in the context of the UK Government’s response to the Biodiversity Steering Group’s Habitat Action Plan, it is vital that Stedham Common is managed in the best manner possible to maintain and improve its quality of habitat, balanced with its existing benefit to the neighbourhood [4.15, 4.16].

The Best Management Regime for Stedham Common

8.12 Much of the debate at the Inquiry centred around this issue. It is generally accepted that if grazing were to take place, a stock proof perimeter fence would be the only practicable way forward. Shepherdling, tethering and temporary electric fencing all have practical drawbacks that appear insurmountable. “Invisible fencing” - buried wires inducing an electric shock via a collar on the animal - which might well be an acceptable compromise solution for the future, is not yet sufficiently technically advanced [4.22-4.27].

8.13 There is no dispute that grazing was part of the traditional life of the Common over many centuries [4.11]. Nor is there any disagreement that it remains an effective management tool in the right circumstances [6.31, 6.45]. The central issue is whether the benefits of grazing can be satisfactorily replicated in the long term by the management techniques successfully used by The Trust since 1984, thus rendering the fencing unnecessary. Expert opinion varies, but I consider the
weight of evidence is in favour of the use of the full range of measures that equate to the traditional agricultural and domestic exploitation of the heathland which has resulted in the appearance and biological character that exists to a large extent today. This included the cutting of heather, gorse and bracken, turf cutting, the removal of timber and grazing [4.12].

8.14 I accept that the hand and machine work carried out by The Trust to date has done much to reinstate the character and biological importance of the heath. No species have been lost [6.41, 6.42]. However, from my site visits it is clear that mowing has left hard ‘artificial’ edges to areas of heather. The presence of grass litter (a fire hazard) and standing grasses demonstrates that the grazing by rabbits, and perhaps deer, is insufficient to reinstate the visual character derived from livestock grazing [4.30, 4.37, 6.23]. Moreover, these management techniques take more of The Trust’s resources than would be the case if the site were grazed. It is clear to me that volunteer labour is difficult to recruit locally and motivation cannot easily be maintained for mundane or physically demanding tasks [4.28].

8.15 The reintroduction of grazing would only be able to replace some manual tasks and the full range of techniques would still be required, certainly in the short to medium term, eg bracken cutting or spraying and the manual removal of birch more than about 750mm high [6.26, 6.28, 6.30]. Whilst the present methods could continue without grazing, I give weight to The Trust’s view that this Internationally important site should benefit from optimal conservation management and not just convenient management [4.34]. To continue without grazing I firmly believe would be a ‘second best’ option in terms of restoring and maintaining the full richness of the heathland habitat which has evolved from man’s activities and culture spanning thousands of years.

8.16 I give weight to the practical experience of The Trust and its supporters, notably English Nature, The Wildlife Trusts Partnership and the Royal Society for the Protection of Birds [4.15]. It already manages 16 nature reserves which are grazed, 6 of which have had this reintroduced [4.2]. I do not regard animal welfare as a determining issue in this application for fencing. I consider this to be a matter of good management. Given The Trust’s objectives and its charitable status I cannot accept that it would behave in other than a thoroughly responsible manner. A local ‘looker’ would be employed if necessary [4.30].

8.17 Evidence opposing the application does not arise from those with practical experience of heathland grazing, nor the handling of the breeds of animal most suited. The Trust accepts that it would have to pay for grazing to be undertaken here: comparison with commercial animal rearing and the nutritional requirements of such animals I do not consider to be relevant [7.2]. I prefer the opinions of the local grazier, who would be interested in turning out her own animals on the Common, and the veterinary track record of these animals [5.1]. The fears of gates being left open, and animals being involved in road accidents, I recognise as being a possibility, but the presence of a ‘looker’ and the regular use of the Common by local people I see as positive contributions in helping to prevent such incidents [6.18, 7.2].

8.18 Whilst I give little weight to the claims that there is insufficient food on the Common to support grazing, I accept that The Trust’s documented knowledge of the Common’s resources, and precisely what is to be achieved in biological terms, is lacking [6.32-6.34]. Nonetheless, although there are theoretical means of
calculating stocking rates on a seasonal basis, I do not regard such an exercise as an essential prerequisite. There is a wealth of experience and broad guidelines and I consider this, linked with the essential early monitoring of animal welfare and grazing conditions, would be an acceptable way forward. I would expect the adoption of clearly defined biological targets to feature in the review of The Trust’s Management Plan.

Community Opinion

8.19 The advice of English Nature emphasises the need for local community support for proposals that involve fencing of common land [6.43]. The formal position of both the County and District Councils is that neither objects to the proposal which is included in the LNR Management Plan [4.6, 4.11]. The Parish Council does object and was the principal objector at the Inquiry. From the correspondence, attendance and contributions at the Inquiry (particularly the evening session) it is clear to me that there is a strong body of opinion against the proposal [1.2, 1.3]. This stems mainly from those who walk, exercise dogs and ride on the Common, and enjoy the ‘wilderness’ ambience of this unfenced land. I consider it material that there appears to be limited local experience of enjoying heathland in the presence of appropriate grazing animals. It is also evident that local support for the proposal emanates from those with a deeper understanding than normal of the ecological importance of the site.

8.20 If consent were to be given for this fencing, I believe that extraordinary efforts would need to be made to involve the local community in the continuing management and monitoring of the Common and those adjoining. It should not be overlooked that Iping and Trotton Commons and The Quags will remain unfenced for the foreseeable future and any change will depend upon the success or otherwise of grazing on Stedham Common [2.2, 4.11, 4.39, 4.43]. These Commons will therefore remain available to those who would no longer find Stedham Common an attractive open space, but experience suggests that these would be few. Given the objectives of The Trust, and the involvement of other public bodies, if grazing were not successful I would confidently expect the fencing to be removed.

Private Interests

8.21 These are limited to those of The Trust and the sole remaining Commoner who has not exercised her rights in recent years [2.3]. The Trust exists for the public benefit in terms of the conservation of Sussex wildlife and habitats [4.1, 6.6]. There would be a potential long term saving in revenue expenditure if grazing were to be introduced but The Trust regards this as a secondary consideration [4.30]. The Commoner’s rights would be preserved by this proposal and would provide the opportunity for grazing to be reintroduced in substitution, or part substitution, for such management by The Trust. I do not consider private interests in this case to be a determining issue.

The Plan Accompanying the Application

8.22 The scale quoted on this plan (Plan B) is incorrect and was substituted at the Inquiry by a plan at 1/2500 scale (Plan A) [4.46, 6.2]. This is not a planning application, and I accept that the line is indicative. I take the view that The Trust is a responsible charity with aims allied to the public interest. I have no doubts
that it would align the fence in detail, taking professional landscape advice if necessary, to achieve the best practical siting consistent with least visual impact on this part of the AONB. I do not consider that the Secretary of State needs further detail. The Trust has given a public commitment that it would add a further bridle gate [4.46].

Overall Conclusions

8.23 In practical terms I do not believe the proposed fencing, or the low-intensity grazing that would follow, would affect significantly the general accessibility of the Common or the freedom of the public to roam at will. The general benefit to walkers (and their dogs) and riders would remain. No private benefit would be materially affected: the opportunity to reintroduce grazing would be an added private benefit, but I do not consider this to be a determining factor in the circumstances here.

8.24 However, I consider that fencing would result in a loss of benefit to the neighbourhood in terms of having to negotiate gates to walk or ride on the Common, and also in the local perception of the Common as a 'wilderness' area. There would be an added hazard for riders, but not one that is unique or which could not be normally overcome by awareness and care. In my view, the change in the character and local distinctiveness of the place would also represent a loss of benefit.

8.25 Balanced against this loss of existing benefits would be the reintroduction of low-intensity grazing, a traditional agricultural activity which has contributed over centuries to the habitat which exists today. Whilst it would be possible to continue the management of the Common on its present basis, I believe on the balance of evidence that the full value of this site cannot be reinstated without returning to the full range of traditional agricultural practices. Whilst not giving priority to the additional benefit that would accrue from grazing, I consider that the need to successfully maintain and enhance this Internationally important habitat outweighs the loss of existing benefits that would arise. The matter of the proposed corral was not in dispute at the Inquiry and I consider that it would not have a material effect on the existing benefit of the neighbourhood.

RECOMMENDATION

8.26 That consent be granted for the application made under Section 194 of the Law of Property Act 1925 by The Sussex Wildlife Trust to fence Stedham Common, as described in paragraph 1.1 of this report.

I have the honour to be
Sir
Your obedient Servant

Alan Foster