COMMONS ACT 2006: SECTION 38

PROPOSED WORKS ON IPING AND TROTTON COMMONS, WEST SUSSEX

APPLICATION REFERENCE: COM 749

STATEMENT OF CASE

OF

SUSSEX WILDLIFE TRUST
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SUMMARY and CONCLUSIONS

A. Iping and Trotton Commons have been open heathland since forest clearance that started in the Iron Age. Until the twentieth century grazing by livestock was an important factor in maintaining this unique landscape.

B. Lowland heathland is a rare habitat, both worldwide and within the UK, with great biodiversity value. The UK holds about 20% of this global resource, but has lost over 80% of that which existed 200 years ago. Iping and Trotton Commons make up one of the largest and finest lowland heathlands in Sussex.

C. The status of Iping and Trotton Commons as nationally important sites for biodiversity is reflected by their notification within Iping Common Site of Special Scientific Interest. These commons also support three bird species listed on Annex I of the Wild Birds Directive and two habitat types listed on Annex I of the Habitats Directive. There are many species listed under the Natural Environment and Rural Communities Act 2006 as being of principal importance for the conservation of biodiversity and there are further Red Data Book and red and amber listed species also. The legal rationale for the protection of biodiversity at Iping and Trotton Commons is compelling.

D. But since the cessation of grazing on Iping and Trotton Commons their condition has deteriorated, from many points of view. Despite the best efforts of its managers the commons are becoming overgrown with coarse grasses (in particular Molinia caerulea) and colonised by scrub. The age-old open aspect of the Commons is being lost, to the detriment of the landscape, users of the Commons and biodiversity.

E. These commons are being conscientiously managed by Sussex Wildlife Trust, using all of the recognised management methods available to them. But the full suite of necessary methods includes extensive, low-intensity, grazing. In today’s context, grazing (which does not itself require the Secretary of State’s consent) cannot take place without the fencing of extensive areas of common.

F. There is no scientific doubt that extensive, low-intensity, grazing is an important part of the sustainable management of lowland heaths. It is not the only part of such management and it has to be practiced with close attention to its effects, but it is an irreplaceable tool without which optimum site management is impossible. There are numerous examples of this; and the logic is clear – a landscape that has come into being as a result of grazing (amongst other uses) needs grazing (and other management) to sustain it. When the problem includes the excessive growth of grasses following the cessation of grazing, the solution must involve the reintroduction of grazing.

G. Thus despite hard work and good intentions the commons are not in favourable condition. The achievement of the Government’s 2020 mission of halting the loss of biodiversity and seeing at least 95% of SSSIs in favourable or recovering condition is hampered by the need to graze lowland heaths such as Iping and Trotton Commons.
H. This application is for consent to erect fencing in order to contain grazing livestock. To ensure that this fencing does not prevent or impede access to the commons the scheme has been designed to include bridle gates, field gates, kissing gates and a pedestrian gate (as appropriate) at all points where the proposed fence-line would cross a path or bridleway.

I. Section 38 of the Commons Act 2006 prohibits the erection of fencing on a common without the consent of the Secretary of State. Section 39 provides that in determining an application for consent the Secretary of State shall have regard to:

- the interests of persons having rights over the common;
- the interests of the neighbourhood;
- the public interest;
- other relevant matters.

J. “The public interest” is specifically defined to include:

- nature conservation;
- landscape conservation;
- the protection of public rights of access;
- the protection of archaeological and historic interests.

K. In relation to the section 39 criteria, it is Sussex Wildlife Trust’s case that these works:

- will not adversely affect the interests of any person with rights over the commons;
- will bring positive benefit to the neighbourhood, by increasing the historically open aspect of the commons, reducing fire risk and addressing the spread of tussocky Molinia;
- will benefit nature conservation and the conservation of the landscape;
- will protect all existing rights of access, whether by public right of way or otherwise and are fully compliant with guidance on the exercise of the public sector equality duty;
- will not adversely effect the commons’ rich archaeological heritage;
- will not lead to any other detriment.

L. Sussex Wildlife Trust proposes an “Option 2” treatment for a part of Iping Common. It is submitted that Option 2 is preferable to the original proposal because it would allow the largest possible area of the common to benefit from grazing and that it would allay concerns expressed about the visual impact of fencing in that area. It is also submitted that Option 2 cannot exacerbate any grounds for opposing the original proposal.

M. This application is supported by Natural England, South Downs National Park Authority, South Downs Local Access Forum, RSPB, Butterfly Conservation and many local people. Historic England has no objection to the proposal.
N. The Open Spaces Society recognizes the need for fencing to allow the reintroduction of grazing and appreciates that grazing will be beneficial to the site’s flora and fauna. The OSS also acknowledges that the alternatives have been fully investigated and regrets that the fence-line as proposed in the original application does not follow the perimeter of the commons. Option 2 corrects this position.

O. The British Horse Society recognizes that Sussex Wildlife Trust has endeavoured to seek and take into consideration the views of local riders and supports perimeter fencing (Option 2) rather than fencing within the common. The BHS’s design preferences and suggestions for the locations and specifications of gates have all been adopted by Sussex Wildlife Trust.

P. It is therefore respectfully submitted that there is a compelling case for the grant of consent for the fencing proposed by Sussex Wildlife Trust: in law, in science and in terms of society’s benefit from and enjoyment of Iping and Trotton Commons. All of the criteria set out in section 39 of the Commons Act 2006 are satisfied by this proposal, furthermore all of the other relevant statutory duties and Government policy point in the same direction.

Q. Put another way: none of the section 39 criteria are assisted in any way by preventing the reintroduction of the age-old practice of grazing these commons. Horse riders, dog walkers, ramblers, runners, historians, lovers of the landscape, lovers of wildlife, those with a concern about fire risk – all will benefit from a regime that brings this ancient landscape back to life. And this application is a step in that direction.
INTRODUCTION

1. By an application dated 22 October 2015 Sussex Wildlife Trust requested permission under s. 38 of the Commons Act 2006 to enclose some 78.2 hectares of Iping and Trotton Commons with a fence some 4,285 metres in length. All of the land to be enclosed is within Iping Common Site of Special Scientific Interest and it, along with nearby Stedham Common (also within this SSSI), is managed as a nature reserve with public access. The purpose of the application is to allow the enclosed area to be grazed, at low intensity, so as to further the conservation and enhancement of its biodiversity. In devising the application Sussex Wildlife Trust has had full regard to the ways in which the land is used and enjoyed by members of the public and it is confident that its proposals will not have any adverse effects on that usage.

2. This Statement of Case incorporates Sussex Wildlife Trust’s application of 22 October 2015. In relation to any inconsistency between the application as described here and that set out in the original application, this document should be taken to represent the applicant’s proposals, which have evolved slightly in order to accommodate a small mapping error and concerns expressed by members of the public. It is submitted that the practical effect of each of these two matters is only to allay certain landscape-based concerns and that neither could serve to make the overall proposal less satisfactory for any interest-group.

3. Thus, a correction and a potential modification of the fence-line are suggested in relation to the proposed fence-line at the eastern side of Iping Common. The decision-maker is invited to consider these two matters when exercising the discretion to give consent subject to such modifications and conditions as are thought fit. Full details are given in the section of this Statement of Case headed “CONDITIONS, MODIFICATIONS and ALTERNATIVES”.

Reference is made to the following classes of documents:

- The application dated 22 October 2015 (“the original application”);
- Attachments to the original application;
- Proofs of evidence of Sussex Wildlife Trust’s witnesses
- Sussex Wildlife Trust’s bundles of documents, contained in red ring binders, with each document having a unique number: [SWT document no. n].
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Butterfly Conservation Fact Sheet for Silver-studded Blue.


Photographs: Scrape by old quarry, Trotton Common.
Photographs: Iping Common fixed point views.


Aerial photograph 1947.

Aerial photograph 1966.


References cited by Dr Underhill-Day and Dr Alonso


http://www.apis.ac.uk/overview/pollutants/overview_N_deposition.htm.


IPING, TROTTON and STEDHAM COMMONS

4. Please see the Public Inquiry Map [SWT document no. 1] and its Insert [SWT document no. 2].

5. Iping and Trotton commons are contiguous but registered as two CL units, CL 100 (Iping) and CL 101 (Trotton). Both lie to the south of the A272 and the villages of Trotton and Iping and west/north of the Elsted Road leading south from Stedham and the A272. The area known as Fitzhall Heath is part of Iping Common. Stedham Common (also a registered common) is separated from Iping Common by the Elsted Road. Application maps 2, 3 and 4 show the general location of the commons and their individual extents.

6. Most of Iping and Trotton Commons is owned by Sussex Wildlife Trust. The exception is a 9 ha area of the north east of Iping Common, which is owned by the Leconfield Estate, let to West Sussex County Council and sub-let to Sussex Wildlife Trust. The Leconfield Estate land is managed by Sussex Wildlife Trust as part of the site as a whole.

7. Stedham Common is also owned and managed by Sussex Wildlife Trust. Following a public inquiry in 1998 consent was granted under the then-current law (section 194 of the Law of Property Act 1925) [SWT document no. 3] for Stedham Common to be fenced. Since then managed grazing, for conservation purposes, has taken place on Stedham Common, but not on Iping or Trotton Commons.

8. There is one property with the benefit of rights of common over Trotton Common. That property is “Steps” and the right is “to cut and take tree loppings, gorse, furze, bushes or underwood”. Those rights are exercised from time to time. There are no registered common rights over Iping Common.


10. All of the relevant parts of Iping and Trotton commons were declared a Local Nature Reserve (“LNR”) in 1978 and in 1986 the declaration was extended to include Stedham Common. [SWT document no. 12].

11. Iping, Trotton and Stedham commons are not within an area which formerly lay in a Borough or Urban District Council nor are they subject to a dedication under section 193 (ii) of the Law of Property Act 1925. These commons are not subject to a Scheme of Management under the Commons Acts 1876 or 1899. The CRoW Act 2000’s “right to roam” provisions apply.
The Commons Act 2006

12. Section 38 of the Commons Act 2006 provides as follows:

(1) “A person may not, except with the permission of the appropriate national authority, carry out any restricted works on land to which this section applies.

(2) In subsection (1) “restricted works” are –

(a) works which have the effect of preventing or impeding access to or over any land to which this section applies;

(b) works for the resurfacing of land.

(3) The reference to works in subsection (2)(a) includes in particular-

(a) the erection of fencing;

(b) the construction of buildings and other structures;

(c) the digging of ditches and trenches and the building of embankments.

(4) For the purposes of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).

13. Section 39 of the Commons Act 2006 provides as follows:

(1) “In determining an application for consent under subsection (1) of section 28 in relation to works on land to which that section applies, the appropriate national authority shall have regard to-

(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;

(d) any other matters considered to be relevant.

(2) The reference in subsection (1)(c) to the public interest includes the public interest in-

(a) nature conservation;
(b) the conservation of the landscape;

c) the protection of public rights of access to any area of land; and

d) the protection of archaeological remains and features of historic interest.

(3) Consent may be given under section 38 (1)-

(a) In relation to all or part of the proposed works;

(b) Subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit.

(4) ...

(5) Where the appropriate national authority imposes any modification or condition in relation to any consent given under section 38(1), it may on the application of any person carrying out or proposing to carry out works in accordance with the consent vary or revoke that modification or condition.”

Sites of Special Scientific Interest

14. Iping and Trotton Commons are within a Site of Special Scientific Interest. The SSSI citation, list of operations likely to damage the site (“OLDs”) and Natural England’s Views about Management are at [SWT document no. 4]. For the purposes of assessment, Natural England divides the SSSI into 3 units: Stedham Common, most of Iping & Trotton Commons and Fitzhall Heath (which is part of Iping Common).

15. Where Natural England is of the opinion that “any area of land is of special interest by reason of any of its flora, fauna or geological or physiographical features” it is its duty under s. 28 of the Wildlife and Countryside Act 1981 to notify that land as being of special interest. Natural England then has the power, within nine months of notification, to confirm the notification, with or without modifications, or withdraw it. Natural England’s predecessor authorities – English Nature and the Nature Conservancy Council – were under the same duty.

16. SSSIs that have been notified in England for their biological interest cover the best examples of the full range of natural and semi-natural ecosystems in the country and provide the core habitats necessary for the conservation of biodiversity. They help to conserve the country’s natural heritage for present and future generations. Depending on circumstances, individual SSSIs may also provide, or safeguard for the future, valuable research, educational and amenity resources. In England there are over 4,000 SSSIs, covering over one million hectares – nearly 8% of England’s total area.

17. As a SSSI, these commons are of national significance as a wildlife site. The formal SSSI citation includes the following:
“It is one of the richest examples of heathland remaining in West Sussex and is of particular interest for its invertebrate fauna which includes several rare spiders. The site is of county importance as a breeding site for heathland birds, and is the only site in Sussex for an uncommon species of grass”.

18. The evidence of Dr Isabel Alonso and Dr John Day will discuss the importance and rarity of this threatened type of habitat, while that of Graeme Lyons and Mike Edwards will describe the ecology of the site and its history.

19. However, although Stedham Common is considered to be in favourable condition the remainder of the SSSI – Iping and Trotton Commons, including Fitzhall Heath, is in unfavourable condition, albeit described as recovering. Natural England’s most recent condition assessment, with its covering letter dated 13 November 2013, is at [SWT document no. 5]. The covering letter makes it clear that the factors leading to unfavourable status can be remedied by disturbance and grazing by cattle and the letter and the assessment proceed on the basis that these matters can be addressed. It is important to note that where a part of an SSSI is described as being in “unfavourable recovering” condition, the word recovering is used in the knowledge that the site is in the hands of capable managers, funded by appropriate agri-environmental schemes and in the hope that this application will be granted, so that in due course a management regime that is capable of delivering recovery will come into being. Without this, the condition assessments would have to be revisited. For the avoidance of doubt, the ecological condition of Iping and Trotton Commons, on the ground and in the absence of consent to erect fencing, is not considered favourable.

20. Section 28G of the 1981 Act provides that an authority to whom the section applies shall have the duty set out in subsection (2) in exercising its functions insofar as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest. The section 28G (2) duty is:

“to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest”

21. The Secretary of State for the Environment, Food and Rural Affairs is an authority to which s. 28G applies and the s. 28G(2) duty must be exercised in the making of a decision on this application.

22. Sections 28J and 28K of the 1981 Act are also relevant. Section 28J provides that Natural England may formulate a management scheme for all or part of a SSSI, for the purposes of conserving or restoring the site’s special interest features. Such a scheme serves to impose on the owner(s)/occupier(s) of the SSSI a management regime designed to improve the condition of the site. Once in force, a management scheme may be enforced against the owner(s)/occupier(s) by way of a management notice under section 28K. Such a notice requires the recipient to carry out beneficial works on pain of having the works carried out by Natural England at his expense. It is a criminal offence to fail to comply with a management notice without reasonable excuse – section 28P(8), attracting a potentially unlimited fine if sentenced in the Crown Court.
23. Management schemes (and *a fortiori* management notices) are measures of last resort in Natural England’s work to achieve favourable status across SSSIs. Nevertheless Parliament, having inserted these provisions into the 1981 Act by way of the Countryside and Rights of Way Act 2000, must be taken to want them to be used when circumstances so require. A management scheme would not have the power to override the need for consent under s. 38 of the Commons Act 2006. Should this application fail, the condition of Iping and Trotton Commons would risk being downgraded to “unfavourable no change” or “unfavourable declining”, for want of the grazing that fencing would allow. Natural England would then be duty bound to consider exercising its management scheme powers. However, those powers would not extend to being able to impose the most appropriate management regime – namely one based on grazing. The inability to introduce a management regime based on grazing would therefore consign Iping and Trotton Commons to continued decline and could defeat future applications for conservation-based funding.

24. It can be seen from the list of operations likely to damage the site (“OLDs”) that “Grazing” is listed as one such operation, meaning that it cannot be lawfully undertaken without the express consent of Natural England under s. 28E (1) of the Wildlife and Countryside Act 1981. Natural England is an active supporter of the application and gives that consent.

**The Birds and Habitats Directives**

25. Article 4 of Council Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds (“the new Wild Birds Directive”) provides that the bird species mentioned in Annex I of the Directive shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. It also provides that specific account shall be taken of the following:

(a) Species in danger of extinction;

(b) Species vulnerable to specific changes in their habitat;

(c) Species considered rare because of small populations or restricted local distribution;

(d) Other species requiring particular attention for reasons of the specific nature of their habitat;

26. Three bird species listed on Annex I of the new Wild Birds Directive breed on Iping and Trotton Commons: Nightjar (*Caprimulgus europaeus*), Woodlark (*Lullula arborea*) and Dartford warbler (*Sylvia undata*). Witnesses for Sussex Wildlife Trust will give evidence about habitat change at Iping and Trotton Commons and the effects of conservation grazing on the success of these species.

conservation. Contained on that list are the following habitats, present at Iping and Trotton Commons:

- Northern Atlantic wet heaths with *Erica tetralix* (National Vegetation Classification M16, approx. 1.5ha);

- European dry heaths (National Vegetation Classification H2, approx. 40ha and H3, approx. 0.5ha)

28. Article 1 (c) of the Habitats Directive defines “natural habitat types of Community interest” as those listed in Annex I. Article 2 (2) of that directive provides that “Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest”. Article 1 (e) provides that:

“The conservation status of a natural habitat will be taken as ‘favourable’ when:

- its natural range and areas it covers within that range are stable or increasing; and

- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

- the conservation status of its favourable species is as defined in Article 1 (i)“.

29. Witnesses for Sussex Wildlife Trust will give evidence about the ecological requirements of the heathland habitat and characteristic species at Iping and Trotton Commons and will explain that the current proposal is a measure that will correspond with those requirements.

30. The Conservation of Habitats and Species Regulations 2010 (SI 2010 no. 490) as amended (in particular by The Conservation of Habitats and Species (Amendment) Regulations 2012 (SI 2012 no. 1927)) provide (Reg. 9) that “the appropriate authority” must exercise its functions which are relevant to nature conservation so as to secure compliance with the requirements of the Habitats Directive and the new Wild Birds Directive. Reg. 3(1) provides that “the appropriate authority” means the Secretary of State and this duty must therefore be exercised in the making of a decision on this application.

31. Further, Reg. 9A provides that the Secretary of State must take such steps in the exercise of their functions as they consider appropriate to contribute to the objective of:

“…the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the New Wild Birds Directive”.

32. Article 2 of the New Wild Birds Directive is as follows:
“Member States shall take the requisite measures to maintain the population of the species referred to in Article 1* at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adopt the population of these species to that level”.

* all species of naturally occurring birds in the wild state.

33. It is submitted that the policy set out at paragraph 5.20 of DEFRA’s Common Land consents policy (November 2015) does not fully reflect the obligations placed on her by The Conservation of Habitats and Species Regulations 2010 (SI 2010 no. 490) as amended (in particular by The Conservation of Habitats and Species (Amendment) Regulations 2012 (SI 2012 no. 1927)).

The Biodiversity Duty

34. The UK Government is a signatory to the United Nations Environmental Programme Convention on Biological Diversity (the Biodiversity Convention) of 1992, requiring it to “develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity”. This requirement was taken forward by Government in establishing a UK Biodiversity Steering Group to develop targets and action plans for habitats and species of key importance in safeguarding the UK’s biodiversity.

35. Sections 40 and 41 of the Natural Environment and Rural Communities Act 2006 provide a statutory framework for implementation of the Biodiversity Convention. In particular, under section 40(1): “every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”.

36. The Secretary of State for the Environment, Food and Rural Affairs is an authority to which the Biodiversity Duty applies and it must be exercised in the making of a decision on this application.

37. More specifically, s. 41 of the Natural Environment and Rural Communities Act 2006 requires the Secretary of State to publish a list of species or habitats of “principal importance for the purpose of conserving biodiversity”. That list has been produced and contains some 1,150 species and 65 habitat types. There are some 28 of these “Species of Principal Importance” (previously, Biodiversity Action Plan (“BAP”)) species found at Iping and Trotton Commons and the evidence of Graeme Lyons will identify them and indicate the management that they require. In relation to those species, subsection 41(3) requires the Secretary of State to:

“take such steps as appear ... to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section.

38. In this case, the steps necessary to further the conservation of these key species at this site involve facilitating the re-introduction of extensive, low intensity, grazing.
Biodiversity 2020: A strategy for England’s wildlife and ecosystem services

39. [SWT document no. 6]. Published in August 2011, this document contains the Government’s commitment to the implementation of the Nagoya agreement to take urgent action to halt the loss of biodiversity. It contains the following:

“The mission for this strategy, for the next decade, is:

to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people.”

...

“Actions we will take include:

...

Increasing the proportion of Sites of Special Scientific Interest (SSSIs) in favourable condition.”

40. The “2020 Mission” is:

“...to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people.

41. Outcome 1 of the 2020 Mission is:

“By 2020 we will have put in place measures so that biodiversity is maintained and enhanced, further degradation has been halted and where possible, restoration is underway, helping deliver more resilient and coherent ecological networks, healthy and well-functioning ecosystems, which deliver multiple benefits for wildlife and people, including:

1A. Better wildlife habitats with 90% of priority habitats in favourable or recovering condition and at least 50% of SSSIs in favourable condition, while maintaining at least 95% in favourable or recovering condition.”

42. The want of a suitable management regime at Iping and Trotton Commons is something that compromises the delivery of this outcome.

Common Land consents policy (November 2015)

43. [SWT document no. 7]. This guidance, produced by DEFRA, seeks to ensure that the Planning Inspectorate fulfills the Secretary of State’s functions in relation to common land in ways consistent with Government policy. Government wishes to see common land delivering this range of benefits:
• Economic;
• Agricultural;
• Biodiversity;
• Archaeological;
• Recreational;
• Cultural.

44. In relation to works, the policy objective is to ensure that “works take place on common land only where they maintain or improve the condition of the common or where they confer some wider public benefit ...” (emphasis added). In this case, it is submitted that there is no need to distinguish the maintenance or improvement of the condition of the common from wider public benefit. This proposal seeks to deliver both without detriment to either.

45. At paragraph 5.7 of the guidance it is said that:

“Commons should be maintained or improved as a result of the works being proposed on them. The Secretary of State sees section 38 as conferring additional protection on common land, rather than enabling common land to be used for purposes inconsistent with its origin, status and character. In other words, consent under section 38 should be seen as a gateway, which enables the construction of works which are sympathetic to the continuing use and enjoyment of common land, but which reinforces controls on development which are inappropriate or harmful”.

46. And at paragraph 5.12”

“Where consent is sought to fencing or other boundary features (such as walls or railings), the Secretary of State will expect an application to include provision for any means of access across the structure for the general public to conform to British Standard BS 5709 (or the current standard at the time of application). An applicant should justify any departure from the British Standard (eg to take account of local circumstances or traditional features). The Secretary of State may impose a condition in a consent requiring structures to be compliant”.

47. Sussex Wildlife Trust’s application for fencing at Iping and Trotton Commons is fully consistent with these provisions and not inconsistent with any other aspects of the guidance.

DEFRA Guidance: Providing and protecting habitat for wild birds (February 2016)

48. [SWT document no. 47]. This very recent guidance fills the gap referred to at paragraph 33, above. The Secretary of State is a “competent authority” for the purposes of this guidance and key features of it are as follows:

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“... you must aim to provide habitat that allows bird populations to maintain their numbers in the areas where they naturally live. They include:
• protected areas such as sites of special scientific interest.

You should focus on habitats for wild birds in decline but also maintain habitats supporting wild birds with healthier populations.”

“Protect the habitat
Preserve, maintain or establish the habitats that have been identified, or create new ones. You can do this if you are a competent authority in different ways, including any of the following:

• …
• consider bird populations when consulting on or granting consents …
• …”

49. This guidance makes specific reference to protecting birds on lowland heathland and it explains that competent authorities can improve habitat conditions on lowland heathland in any of the following ways:

• “Restoring heathlands … by ensuring appropriate grazing and cutting, and addressing sources of pollution and nutrient enrichment
• Expanding and reconnecting fragments of heathland …
• Planning and development control …
• Consider the economic and public value of lowland heathland ecosystems when making future decisions on land use.”

Emphasis added

50. The publication of this guidance is timely and important. It confirms (and at no point is inconsistent with) Sussex Wildlife Trust’s contention that steps must be taken to protect bird habitat at Iping and Trotton Commons. In determining this current application the Secretary of State is a “competent authority” and full regard must be paid to this guidance.

Recognition of the benefits of “conservation grazing”

51. It is submitted that both Parliament and the Secretary of State recognize that “conservation grazing” is capable of being beneficial to common land, in the appropriate ecological circumstances, since the Works on Common Land (Exemptions) (England) Order 2007 (SI 2007 no. 2587) specifically allows temporary fencing in the interests of nature conservation.

52. Since the coming into force of the Commons Act 2006 the Secretary of State, via appointees, has dealt with many applications for consent to erect fencing for the sole purpose of containing grazing livestock for conservation purposes. In the great majority of these cases consent has
been granted, often without a public inquiry. A particularly noteworthy decision is “COM 302 – Pebblebed Heaths Commons, East Devon” [SWT document no. 8] in which, without hearing evidence, it was concluded that “I consider that the proposed works will benefit and conserve the special status that much of the commons currently hold and therefore that they will have a positive impact on nature and conservation”. And “I accept that there will be a continual need for the works to remain if the biodiversity and landscape benefits are to be maintained”.

53. DEFRA Guidance: Providing and protecting habitat for wild birds (February 2016) [SWT document no. 47] confirms (page 8) that appropriate grazing and cutting can improve habitat conditions on lowland heathland.

54. Sussex Wildlife Trust understands that the great majority, or all, applications under section 38 of the Commons Act 2006 to fence lowland heathland SSSIs for the purposes of conservation grazing have been granted consent.
CONDITIONS, MODIFICATIONS and ALTERNATIVES

55. Section 39 (3) of the Commons Act 2006 expressly allows the consenting authority to give consent to all or part of the proposed works, subject to such modifications or conditions as are thought fit. This is a clear departure from the previous law. Under section 194 of the Law of Property Act 1925 it was not possible for the Secretary of State to impose conditions or alter the detail of the proposal.

56. The Planning Inspectorate’s Common Land Guidance Sheet 6, headed “Section 38 consent: Modifications and Conditions” [SWT document no. 9] makes clear that modifications or conditions can be imposed upon proposed works so long as they are necessary, relevant, enforceable, precise and reasonable. As regards fencing, the types of modification or condition that may be considered are set out as:

- “Type, length and height of fence;
- Area enclosed;
- Number, type and location of access points (with appropriate level of detail, eg mounting blocks for riders, provision for the disabled);
- Removal of fencing and restoration of land (when time limit reached)”

Emphasis added

The line of the fence – the Correction

57. As mentioned in the Introduction to this Statement of Case, Sussex Wildlife Trust is here suggesting a correction to its original application, relating to the line of the fence in the eastern part of Iping Common. This is referred to as “the Correction”.

58. The fence-line as originally proposed is shown in the maps attached to the original application. The application’s Map 1 is relevant because it shows land ownership. Part of the east side of Iping Common is owned by the Leconfield Estate (“the Leconfield land”), numbered “2” on application Map 1. The Leconfield land is let by the Estate to West Sussex County Council and in turn sub-let by the County Council to Sussex Wildlife Trust for use as a nature reserve for a term expiring in 2030.

59. Maps 5 of the original application shows the proposed fence-line in red and it can be seen that it skirts the edge of the Leconfield land, leaving that land outside of the fencing (and therefore ungrazed).

60. Please see [SWT document no. 1] “the Public Inquiry Map” and its Inset [SWT document no. 2]. The original line of the fence in the eastern part of the site goes through points A, B, C, D and E. The Leconfield land lies between this line and the eastern edge of the common.

61. However, it has been discovered that the Leconfield land is slightly smaller than originally shown and, therefore, that the fenceline can be moved slightly so as to include a slightly larger area
within the grazed enclosure. This error relates to the land defined by points C, D, E and F on the Public Public Inquiry Map and Inset, which is in fact owned by Sussex Wildlife Trust and not by the Leconfield Estate.

62. Accordingly, the Correction seeks to adjust the proposed fence-line to follow points A, B, C, F and E on the Public Inquiry Map.

63. The Correction has material benefit to the proposal, in that (i) it allows a (slightly) larger area of common to benefit from grazing and (ii) moving the fence from points C-D-E to C-F means that, by good fortune, it will be better concealed by existing vegetation and the lie of the land.

64. It is submitted that the Correction may serve to allay some concerns about the visual impact of the fence, but that it is incapable of increasing any concerns relating to fencing and grazing generally. It has both ecological and visual benefit.

The line of the fence – Option 2 - a Modification

65. As mentioned in the Introduction to this Statement of Case, Sussex Wildlife Trust is also suggesting a modification to its original application, also relating to the location of the line of the fence in the eastern part of Iping Common. For the sake of clarity, this is referred to as “Option 2” (with the fence-line set out in the original application, subject to the Correction, being “Option 1”).

66. As has been explained, the Leconfield land at the eastern side of Iping Common is let to West Sussex County Council and sub-let to Surrey Wildlife Trust. Option 1 avoids placing fencing on the Leconfield land, with the result that the Leconfield Land (which is lowland heathland, like the rest of Iping Common) would not benefit from grazing if Option 1 is approved.

67. However, Sussex Wildlife Trust has been informed by land agents acting for the Leconfield Estate that the Estate’s owner does not object to an application being made for consent to erect fencing on the Leconfield land, under the Commons Act 2006, but does not wish to influence the process of obtaining such consent and reserves the right to refuse landowner’s consent should Commons Act 2006 consent be granted.

68. Accordingly, and in view of comments made about the potential visual impact of its original proposal, Sussex Wildlife Trust now proposes its Option 2. It is submitted that this potential alternative may serve to allay some concerns about the visual impact of the fence, but that it is incapable of increasing any concerns relating to fencing and grazing generally. It is also the case that Option 2 would serve to allow grazing on the largest possible area of the common and would therefore be of even greater benefit to the ecology of the common than Option 1. The Inspector is invited to specifically view the Option 1 and Option 2 fence-lines. The Option 1 fence-line, with the Correction, will be staked-out before the inquiry. The line of Option 2 will not need staking out, as it is close to the boundary of the common and will be described in the evidence of Jane Willmott.
69. On the Public Inquiry Map the corrected **Option 1** links points A, B, C, F and E.

70. On the Public Inquiry Map **Option 2** links points A, G, F and E and closely follows the site boundary, where the fence would be shielded by vegetation.

71. The **Inset** to the Public Inquiry Map shows this area at a larger scale, and includes the gates required by each of the two options in order to allow uninterrupted access to the common at all points where access occurs.

72. It should be noted that the Leconfield Estate has not committed itself to granting landlord’s consent to the erection of the **Option 2** fence-line. Accordingly, Sussex Wildlife Trust respectfully submits and requests as follows:

A. Both **Option 1 (with the Correction)** and **Option 2** should be considered, on their respective merits;

B. If the Inspector is minded to grant consent for the **Option 2** fence-line a secondary, fall-back, consent ought **ALSO** be granted for **Option 1**, subject to the condition that Option 1 should only be implemented if Landlord’s consent is not forthcoming, within a reasonable period of time, for Option 2.

**Time limits**

73. The original application requested permanent fencing, on the basis that it took centuries of grazing, with other uses, to bring heathlands into an open condition and that the successional forces that would see it overgrown by scrub and trees are ongoing and continuous. It is therefore anticipated that proper management of these commons ought always to involve an element of grazing. Sussex Wildlife Trust therefore seeks permanent consent for its proposed fencing.

74. The original application then suggested that if a time-limiting condition is to be imposed it should be 25 years, and not less, because that is the approximate “life” of fences of this sort and that it would be a waste of capital resources, as well as detrimental to the management of the common, for a shorter limit to be applied. Sussex Wildlife Trust maintains this position.

75. It is notable that section 38 consent has been given for permanent fencing of a large area of common before. In the Pebblebed Heaths Common, East Devon, decision (COM 302, cited earlier) it was said that:

   “21. The applicant has applied for the works to be permanent on the basis that “the human management of lowland heathland, primarily by grazing, has for centuries maintained the open heath, and when grazing has stopped, invariably the heathlands have started to scrub up and revert to woodland. Such heathlands have been prevented from succeding to their natural condition as climax woodland only by human intervention in the past and that situation is expected to continue to the foreseeable future.” The applicant expects the management of the heaths by grazing to continue indefinitely and so the need for the works to remain. I have taken
into account paragraph 3.7 of Defra’s guidance and objections received to permanent fencing. I accept that there will be a continual need for the works to remain if the biodiversity and landscape benefits are to be maintained. Therefore, since I have concluded that the works will not have an unacceptable impact in respect of the interests identified in paragraph 5 above, a temporary consent cannot be justified.” Original emphasis.

76. There are many cases in which time-limiting conditions have been applied to fencing consents. There is not great consistency in the length of the time limit. 15 years has been applied frequently, as have shorter periods. The longest time-limiting condition appears to be in the case of COM 371, Brown Moss, 30 years. However, time-limiting conditions in existing decisions ought to be viewed with care because in some instances the applicant, for reasons of its own, specifically requested a short time-limit.

Alternatives

77. Whilst s. 39 (3) does not give discretion to impose an entirely alternative solution to the problem at hand, the Common Land consents policy of November 2015 stipulates that the Secretary of State will wish to know what alternatives to the application proposal have been considered and the reasons for rejecting them.

78. The original application explained that a number of alternatives had been considered, and rejected. Sussex Wildlife Trust’s witnesses will give evidence as to the nature and effectiveness of alternative aids to grazing, such as: perimeter electric fencing, temporary electric fencing enclosures and “invisible” fencing.

79. Sussex Wildlife Trust’s witnesses will also give evidence about other management tools for use on lowland heaths, such as cutting, mowing, burning and turf stripping. It will be explained that some of these activities are not alternatives to grazing, but complimentary to grazing and that they will continue to take place in parallel with a low-intensity grazing regime.
THE FENCING PROPOSAL

80. The evidence of Jane Willmott will describe in detail the nature and location of the proposed fence-line (and the two Options for treating the eastern part of Iping Common), plus the nature of all of the proposed gates and the rationales behind the choices of gates. The following are key conclusions from the evidence of Ms Willmott:

81. Option 1, as corrected, would enclose 78.95 hectares of Iping and Trotton Commons by a fence of 4,370 metres, with a requirement for:

   • One safety corral;
   • 7 kissing gates;
   • 1 pedestrian gate;
   • 17 bridle gates;
   • 11 four metre field gates;
   • 1 two and a half metre field gate.

82. Option 2 would enclose 87.4 hectares of Iping and Trotton Commons by a fence of 4,305 metres, with a requirement for:

   • One safety corral;
   • 8 kissing gates;
   • 1 pedestrian gate;
   • 14 bridle gates;
   • 8 four metre field gates;
   • 1 two and a half metre field gate.

83. Wherever it is proposed that new fencing crosses a point of access to or across the common (public or private) appropriate gates will be provided. In each case, the design of those structures seeks to minimise hindrance or visual intrusion, insofar as is consistent with safety.

84. The fence and its associated gates will be compliant with all relevant British Standards.
THE EQUALITY ACT 2010 AND BRITISH STANDARD BS 5709

85. At para. 4.5 of the Common Land consents policy (November 2015) the issue of fences and access is addressed, with the words “

“... Where works are intended to restrict access to part of the common, eg fencing, how will the public continue to have access to that part after the works are in place eg will the fencing include stiles, gates, where the Secretary of State will consider her duties under the Equalities Act in particular etc? …”

86. The Secretary of State may consider that a decision under section 38 of the Commons Act 2006 is one to which the “Public Sector Equality Duty” (s. 149 Equality Act 2010) applies. This duty does not apply to Sussex Wildlife Trust in its preparation of this application, because, unlike the Secretary of State, it is not a public authority. However, in its application, its Statement of Case and in its evidence to the public inquiry Sussex Wildlife Trust supplies all of the information necessary for the Public Sector Equality Duty to be complied with by or on behalf of the Secretary of State.

87. The Public Sector Equality Duty (“PSED”) relates to the following protected characteristics:

- Age;
- Disability;
- Gender reassignment;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation.

88. The PSED requires public authorities to have due regard to the need to:

- Eliminate discrimination, harassment, victimization and any other conduct prohibited by or under the 2010 Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

89. The Government’s guidance on the Equality Act 2010 is at [SWT document no. 10]. It can be seen from this guidance that compliance with the PSED involves the following:

- An awareness of the requirements of the PSED;
- Consideration of the PSED before and at the time the decision is taken;
- Real consideration, with an open mind;
• Sufficient information;
• No delegation;
• Review – the aims of the PSED apply not only at the point of decision-making, but during implementation and afterward.

90. However, the guidance makes it clear under the heading “Common misunderstandings about the Equality Duty” that there is no prescribed process for complying with the PSED and no requirement to carry out a specific Equality Impact Assessment.

91. At para. 5.12 of the Common Land consents policy (November 2015) it is stated that:

“Where consent is sought to fencing or other boundary features (such as walls and railings), the Secretary of State will expect an application to include provision for any means of access across the structure for the general public use to confirm to British Standard BS 5709 (or the current standard at time of application). An applicant should justify any departure from the British Standard (eg to take account of local circumstances or traditional features) and the Secretary of State may impose a condition in a consent requiring structures to be compliant”.

92. Further, there is specific DEFRA guidance “Authorising structures (gaps, gates & stiles) on rights of way – Good practice guidance for local authorities on compliance with the Equality Act 2010” [SWT document no. 11]. That guidance stresses the advantages of adopting a standard for structures, incorporating the “least restrictive access” principle. It goes on to endorse BS 5709 as a suitable example of such a standard.

93. The evidence of Jane Willmott will show that Sussex Wildlife Trust has designed this application with BS 5709, and other relevant British Standards, firmly in mind. A condition requiring structures to be compliant would be welcome.

94. BS 5709 covers gaps, pedestrian gates, bridle gates, kissing gates and various other structures and it sets out a number of rules that compliant structures will obey:

• The least restrictive option must be chosen;
• It must be reasonable to have a structure in that place;
• There must be sufficient manoeuvring space to allow the structure to be negotiated;
• At vehicular roads, structures must be set back at least 4 metres from the carriageway;
• Compliance must be on-going and structures must be repaired or replaced as necessary;
• The ground within 2 metres of the structure should be firm and free of surface water, except after rain;
• There should be no barbed wire or electrical fencing within 1 metre of the structure or its manoeuvring space;
• There should be no protrusions likely to catch clothes or cause injury

95. Thus compliance with BS 5709 includes consideration of location as well as physical make-up of the relevant structure. There are reputable suppliers of gates and similar structures which, when
properly located and integrated into a fence-line, will be BS 5709 compliant. Sussex Wildlife Trust will use one such supplier.
THE INTERESTS OF PERSONS HAVING RIGHTS IN RELATION TO, OR OCCUPYING, THE LAND (AND IN PARTICULAR PERSONS EXERCISING RIGHTS OF COMMON OVER IT)

96. There is one property with the benefit of rights of common over Trotton Common. That property is “Steps” and the right is “to cut and take tree loppings, gorse, furze, bushes or underwood”. Those rights are exercised from time to time. There are no registered common rights over Iping Common.

97. Sussex Wildlife Trust has consulted the single rights owner and at their request has included within its proposal a field gate the sole purpose of which is to facilitate the exercise of these rights of common.

98. There are not thought to be any private easements of access across any of the relevant land.
THE INTERESTS OF THE NEIGHBOURHOOD

Positive benefits

99. Sussex Wildlife Trust believes that its proposal will bring real benefit to those living in the neighbourhood who use the common for activities such as walking, cycling, running, riding, dog-walking, picnicking and the general enjoyment of the countryside. As a site visit will demonstrate, the vegetation underfoot at much of Iping and Trotton commons, except on paths, is tussocky and difficult to walk across. There are dense stands of *Molinia* grass that are neither pleasant for recreation nor beneficial to biodiversity. Grazing, over time, will help to arrest the spread of *Molinia* and will help to restore not only the conservation interest of the site, but its accessibility to the public.

100. As dry vegetation accumulates, fire risk increases. The risk is not only that a fire may start, but that having started it will be stronger, hotter and more dangerous if a significant fuel load is present. *As Molinia* spreads and its dead leaves accumulate as “thatch” in ever-larger tussocks the risk of a serious fire increases. The reintroduction of grazing will have an impact on both existing combustible material and the accumulation of further fuel load, although the effects will be slow.

101. Openness is a visual feature of lowland heathland that dates back as far as Iron Age times. It is only in the last one or two generations that this landscape heritage has started to be lost at a great rate. Inherent in this proposal is the desire to restore an ancient landscape, complete with an age-old low-intensity grazing regime. This, together with the interest inherent in biodiversity is a benefit to the neighbourhood in its own right.

Loss of existing use?

102. As the evidence of Jane Willmott makes clear, this proposal has been designed in such a way that wherever a public right of way or a “de facto” path (ie one used by members of the public, but not a public right of way) meets the proposed fence-line it is accommodated by an appropriate type of gate, in each case complaint with BS 5709. It is submitted that as a result of this approach categories of user who currently enjoy the commons will be able to continue to do so completely unhindered.

103. As the evidence of Gary Baldock will establish, the grazing regime that is proposed for Iping and Stedham Commons will be fundamentally different from “ordinary” commercial cattle rearing on improved farmland. “Conservation grazing” is something that Sussex Wildlife Trust has considerable experience of and it can be asserted with complete confidence that the numbers of animals involved and their density on the common will be low. Furthermore, the animals involved will be selected for docility and their ability to thrive on the vegetation and ground conditions at this site. The inquiry will hear evidence of Sussex Wildlife Trust’s experience and practices in “conservation grazing” and the mechanisms available for monitoring stock and dealing with day to day occurrences.
104. Experience from other heathland sites with comparable grazing regimes suggests that the number of interactions involving livestock is likely to be small and the interactions themselves benign. Cattle dung is commonly encountered in all rural areas and is less hazardous and objectionable than dog faeces.

**Local Nature Reserve**

105. On 10 November 1978 Iping and Trotton Commons were declared a Local Nature Reserve, under section 21 of the National Parks and Access to the Countryside Act 1949. On 19 August 1986 this declaration was extended to include Stedham Common. [SWT document no. 12].

106. These statutory declarations are an explicit recognition of the site’s benefit to its locality and a justification for the proper management of its biodiversity.

**Consultation**

107. The evidence of Jane Willmott will describe two thorough exercises in local consultation carried out by Sussex Wildlife Trust in accordance with the requirements of “A Common Purpose – a guide to community engagement for those contemplating management on Common Land” [SWT document no. 13]. The purpose of these important exercises was to seek to explain management options to neighbours and visitors and to gauge their views.
THE PUBLIC INTEREST

108. As a matter of law (s. 39 (2) of the 2006 Act), the public interest in this case includes the public interest in:

   a) Nature conservation;
   b) The conservation of the landscape;
   c) The protection of public rights of access to any area of land; and
   d) The protection of archaeological remains and features of historic interest.

109. Paragraph 4.5 of “Common Land consents policy” re-states these statutory criteria as follows:

   • Recreation and access;
   • Nature conservation;
   • Impact on the landscape;
   • Protection of archaeology;
   • Local heritage.

110. The following discussion is structured around the statutory criteria for considering the public interest, with cross-references to criteria set out in policy.

Nature conservation

111. The nature conservation case for including grazing as part of the management of lowland heathland sites such as Iping and Trotton Commons is overwhelming. The evidence of Dr Isabel Alonso, Dr John Day, Mike Edwards and Graeme Lyons address this at both national (indeed international) and local level. That this is a matter of scientific orthodoxy is further confirmed by the availability of agri-environmental funding for schemes of this sort.

Conservation of the landscape

112. A very significant spin-off from the proper management of Iping and Trotton Commons will be the restoration and conservation of an ancient landscape, the development of which has been inextricably linked to the activities of man in the area for thousands of years. A landscape created and maintained by human intervention since the Iron Age is being lost through neglect.

113. The heritage of this area extends beyond recent generations, during which period grazing died out at this site. That heritage is not protected by allowing the largest public open space in the neighbourhood to degenerate into a condition not seen here for hundreds or thousands of years.
The protection of public rights of access to any area of land

114. As has been said, in the design of the fencing proposal there has been one over-riding objective: to ensure that wherever a public right of way or a “de facto” path (ie one used by members of the public, but not a public right of way) meets the proposed fence-line it is accommodated by an appropriate type of gate, in each case complaint with BS 5709. Any part of the commons useable by members of the public at the moment will remain useable, in the same way, after implementation of this scheme.

The protection of archaeological remains and features of historic interest.

115. There are archaeological remains and features of historic interest present at Iping and Trotton Commons – a Roman road and prehistoric tumuli among them. The public authority with responsibility in this area is Historic England, and they do not object to this proposal, saying

“... it is our view that the proposals do not have any significant impact on designated heritage assets. We note that fencing passes relatively close to scheduled monuments on the east and west perimeters of the common, and acknowledge that this does introduce manmade structures within the wider setting of the monuments, but think it unlikely that the fencing will have a significant negative impact. We also think that the introduction of grazing on the common will improve vegetation control, both on, and in the area surrounding, the monuments.”

116. Historic England’s letter of 30 November 2015 goes on to note the presence of undesignated heritage assets on the common, and the possibility of as-yet undiscovered sites. It is therefore recommended that a program of “enhanced desk based assessment, survey, recording and mitigation (as required) is undertaken prior to enclosure and that such a program of work is devised in conjunction with the County Archaeological Officer. Sussex Wildlife Trust is happy to comply with this.

117. More generally, the raison d’etre for the entire project is to take steps to restore Iping and Trotton Commons to the condition and appearance that developed there from the Iron Age onward and which subsisted until relatively recently. The entire landscape of these commons is a matter of historical interest and it is this, as well as features of biological interest, which is being lost for want of grazing.
ANY OTHER MATTER CONSIDERED TO BE RELEVANT

118. Certain objectors to this proposal have expressed concern that introducing cattle to Iping and Trotton Commons increases the risk of the spread of bovine tuberculosis (bTB).

119. It is to be noted that the introduction of grazing to this site does not require the consent of the Secretary of Statute pursuant to section 38 of the 2006 Act. It does require the consent of Natural England, which it has.

120. This aside, the evidence of Bill Pepper, a vet with specific expertise in bTB, will make clear that any such risk is, in the context of bTB within the countryside generally, minimal. It will also be explained that Sussex Wildlife Trust deals with all animal health issues in thoroughly professional ways and has taken steps to prevent its cattle from moving from East to West Sussex.

121. The following are relevant:

121.1. Cattle owned by Sussex Wildlife Trust are subject to exactly the same regime of testing and control as are commercial herds.

121.2. Following the discovery of an infected animal amongst Sussex Wildlife Trust’s herd of 5 cattle at Stedham Common Sussex Wildlife Trust has decided that it will no longer move cattle from East Sussex (a high risk area for bTB) to West Sussex (a low risk area).

121.3. The infected animal was discovered in February 2015. It had been in West Sussex since being moved there from East Sussex in 2013 and had had 7 bTB tests, including a Pre Movement Test, before being moved.

121.4. Sussex Wildlife Trust’s stock at Stedham do not come into, or close to, nose-to-nose contact with any other cattle.

121.5. Official figures show that in the year to August 2015 21,464 cattle were moved into West Sussex from elsewhere. During that period, Sussex Wildlife Trust moved no cattle into West Sussex.

121.6. The largest number of cattle likely to be used at Iping and Trotton is between 15 and 30 and they will not come from East Sussex.

29th February 2016