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To "Debbie Prismall" <debbie.prismall@surreycc.gov.uk>

bcc

06/11/12 18:23

Subject FW: Cattle grid licence application - Hindhead

History:

Debbie

Please will you send a complete plan and map of the area with the fence lines drawn in and the s193 common land shown? As it is there is an enormous amount of unlawful fencing on the common which should be removed as part of any s38 application in line with s29 NTAct 1907 and s23 NTAct 1971. I am surprised that SCC as HA is even considering this application before you have the full application for fencing and in the full knowledge of the arguments against such a scheme.

The other thing is that the byways do not I believe form part of a carriageway in terms of the HA1980 but yes it is a highway as it is a right of way for vehicles. The reasoning is that there is a need for the take of the common land for the bypass gates and the associated vehicular carriageway to become part of the highway being a vehicular carriageway. As such you cannot grant a licence but use the power of the highway authority to provide ie construct, so a licence is not appropriate as in s147 [see HA1980 s82(3)]

Given the inalienable status of the NT common land I would expect the Highway Authority to arrange for exchange land for the bypass gates and to confirm that the byways are and always have been as per the list of streets, vehicular carriage ways [d class roads] maintainable at public expense.

That is always assuming that the cattle grids are actually required for the management of the common and that it is classified as agricultural, with commoners' rights for the grazing of stock.

I would remind you and the NT that stewardship monies cannot be used to pay for statutory duty which to my mind includes cattle grids on highways and gates on rights of way maintainable at public expense or fencing where there is already statutory access.

Perhaps a more appropriate scheme would be a perimeter fence so as to reduce the internal paddockisation of the common and the unblocking of the present unlawful impediments to lawful public access in line with the duty of the National Trust to hold the land for the benefit of the public as open and unenclosed manorial waste common land. It would be appreciated if you could advise what s147 licences or s82 approvals already exist with dates of works and any supporting consents.

Bob Milton Kilnside Farm

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