

## SURREY COUNTY COUNCIL

## LOCAL COMMITTEE (WAVERLEY)

DATE: 14 DECEMBER 2018



SURREY

LEAD OFFICER: DEBBIE PRISMALL, SENIOR COUNTRYSIDE ACCESS OFFICER

SUBJECT: CATTLE GRIDS LICENCE REQUEST – HINDHEAD COMMON

DIVISION: WAVERLEY WESTERN VILLAGES AND HASLEMERE

**SUMMARY OF ISSUE:**

To consider a request from the National Trust for the installation of cattle grids and bypasses on Hindhead Common.

**RECOMMENDATIONS:**

**The Local Committee (Waverley) is asked to agree that:**

1. A notice be published and displayed pursuant to section 82(4) & (5) and Schedule 10 of the Highways Act 1980 relating to the installation of cattle grids and bypasses on BOATs 21a Haslemere and 500, 501, 502 & 503 Thursley, as shown on drawing no. 3/1/14/H50a, for a statutory period of not less than 28 days for objections and representations to be made. If there are no objections, the cattle grids and bypasses may be installed. If objections are received that they are forwarded to the Secretary of State for determination.
2. Officers negotiate and enter into an agreement with the National Trust in pursuance of the powers in section 87 Highways Act 1980.

**REASONS FOR RECOMMENDATIONS:**

Officers do not have delegated powers to proceed with cattle grid applications. Officers support the installation of cattle grids and by-pass gates in light of the Secretary of State's decision to grant permission for fencing.

**1. INTRODUCTION AND BACKGROUND:**

- 1.1 The National Trust has applied under Section 82 of the Highways Act 1980 for the installation of cattle grids and by-pass gates on Byways Open to All Traffic (BOATs) 21a, 500, 501, 502 and 503 on Hindhead Common. The 6 locations are shown on drawing no. 3/1/14/H50b (attached at **Annex 1**). Initial consultation following that application has been carried out in accordance with section 82(1).

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1.2 Members may recall approving at their meeting on 20 September 2013 a previous application from the National Trust for cattle grids with by-pass gates on Hindhead Common. An objection had been received and the Committee resolved to:

- (i) *Consider the objection*
- (ii) *Agree, in light of the officer's report, that it is expedient to place cattle grids and provide by-pass gates on BOATs 21a Haslemere and 500, 501, 502 and 503 Thursley (as shown on Drawing No. 3/1/14/H50) and that the purpose for which a right to install gates is exercisable will be adequately achieved by the provision of a cattle-grid.*
- (iii) *Approve the submission of the application to the Secretary of State for Transport for determination.*

1.3 At the time no submission had been made by the National Trust to the Secretary of State for the associated fencing works and it was decided to wait before re-submitting the cattle grid installation request until a fencing application had been made and determined.

1.4 The National Trust has now applied and received consent from the Secretary of State for the Environment, Food and Rural Affairs under Section 23 of the National Trust Act 1971 to carry out restricted works on common land. The approved works comprise the erection of a total of 3144.3 metres of new permanent fencing including 5 cattle grids with bypass gates and 11 pedestrian/ equestrian gates. It also includes the retention of 7682.2 metres of existing fencing including 10 existing and 1 proposed new field gate, 3 cattle grids and the replacement of existing pedestrian and bridle gates with 21 pedestrian/ equestrian gates plus 1 new pedestrian/ equestrian gate.

1.5 The fencing is required in order to continue and extend an established traditional practice of conservation by pony and cattle grazing, which maintains the heathland vegetation from being colonised by woodland. The full extent of the grazing area needs to be enclosed in order to prevent animals escaping on to nearby properties and roads and causing damage and danger. Fencing within the grazing area creates separate units within which grazing animals can be contained or excluded to facilitate stock management. All of the land involved is owned and occupied by the National Trust.

1.6 Where BOATs cross the fence-lines, cattle grids are needed to allow legitimate motorised vehicle access with bypass gates for other users. To allow the cattle grids to be retained/constructed, in accordance with the fencing consent, The National Trust has requested the installation of cattle grids and by-pass gates under section 82 of the Highways Act 1980. Since submitting the original application, the number of cattle grids required has been reduced from 9 to 7 and as a result this new application from the National Trust has been submitted.

1.7 The locations are shown on the plan attached at **Annex 1**. The numbering of the locations relates to the description of works detailed below:

- 1) **BOAT 21a Haslemere** – existing cattle grid. Install a new timber 3.0m wide, 2-way opening bypass gate on eastern side.

- 2) **BOAT 502 Thursley** – existing cattle grid. Replace the existing gate with a new timber 3.0m wide, 2-way opening bypass gate.
- 3) **BOAT 500 Thursley** – install new 3.6m wide cattle grid and 3.0m wide bypass gate approximately 3.0 metres east of junction with public bridleway 103 Thursley. Part of existing pond to be filled in and bypass gate constructed on southern side of cattle grid.
- 4) **BOAT 500 Thursley** – install new 3.6m wide cattle grid and 3.0m wide bypass gate on western side of cattle grid.
- 5) **BOAT 501 Thursley** – existing cattle grid and bypass gate. Widen equestrian manoeuvring room around gate.
- 6) **BOAT 500 Thursley** – remove existing cattle grid and reinstate level surface. Install new 3.6m wide cattle grid and 3.0m wide bypass gate approximately 3.0m north of junction with BOAT 501.

1.8 Two objections have been received to the proposals. One from a cyclist who is concerned that the proposed cattle grid and gate at point 4 looks to be in the middle of a long hill climb. He says it would then be difficult for cyclists to restart the climb having had to get off their bike, open and then close the gate. Also that the installation of cattle grids would be impassable by bikes without suspension. In response, Matt Cusack, the National Trust lead ranger for the site has confirmed that the cattle grid is on a very gradual slope and it would be easy for a cyclist to negotiate a gate. All of the proposed cattle grids are generally on level ground. He has offered to meet the objector on site to look at any specific issues.

1.9 The other objection has been raised by a local horse rider and carriage driver who has concerns about the hazard cattle grids pose to horses. She understands the need to introduce cattle for grazing to the common land but as there are so few safe routes for riding and carriage driving it would be disastrous to restrict access. She requests that the gates beside the grids should be at least 1.5m wide for carriage drivers and easy to open and close. In response, all of the cattle grids will have 3.0m wide bypass gates beside them, built to the British Standard, suitable for cyclists, horse riders and carriage drivers. The gates will be easy to open and close.

## 2. ANALYSIS/ LEGAL COMMENTARY:

2.1 Sections 82 to 90, together with Schedule 10, of the Highways Act 1980 give highway authorities power to provide and maintain cattle grids, where it is considered expedient so to do, for controlling the passage of animals along the highway. Such cattle grids may be so provided following representations of owners and occupiers of agricultural land or otherwise, and the highway authority must carry out a preliminary consultation exercise with any such owners and occupiers as it considers requisite. Where cattle grids are provided, highway authorities are required to provide an alternative by-pass route for animals and traffic that cannot use the cattle grid.

2.2 An agreement is needed under section 87 of the Highways Act 1980 before grids can be placed in any land not forming part of the highway and not owned by the highway authority, or to provide a by-pass on land not belonging to that authority.

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2.3 There is an exception to this in that where, after complying with schedule 10 to the Act, the authority determine, as respects any common or waste land not forming part of, but adjoining, the highway, that it is expedient so to do, the authority may place a cattle grid in, or provide a by-pass on, any of that land notwithstanding that it is not part of the highway and not owned by the authority.

2.4 The provisions of Schedule 10 also apply before a by-pass can be installed along any part of a highway.

2.5 Schedule 10 says (this is set out in **Annex 2**): -

### 1

Before determining under Section 82 or 86 of this Act, the questions :-

- a) Whether it is expedient to place any part of a cattle grid in, or provide a by-pass on, any such land not forming part of a highway and not belonging to the highway authority as is mentioned in section 82(4), or
- b) Whether it is expedient to provide a by-pass along any part of the highway, or
- c) Whether the purpose for which a right to install gates is exercisable will be adequately achieved by the provision of a cattle grid.

a highway authority shall comply with the following requirements :-

the authority shall -

(a) publish in 2 successive weeks in one or more local newspapers circulating in the area where the cattle-grid is to be, or has been, provided a notice -

(i) stating generally the question for determination.

(ii) naming a place within the said area where a copy may be inspected free of charge at all reasonable hours of such plans or other descriptive matter as appear to the highway authority to be requisite for enabling the nature of the question to be understood, and

(iii) specifying the time (which shall not be less than 28 days from the date of the first publication of the notice) within which and the manner in which representations may be made to the highway authority, and

(b) display a like notice in a prominent position at the place where the cattle-grid is to be or has been provided.

### 2

If no representation is duly made under paragraph 1 above, or if every representation so made is withdrawn, the highway authority may proceed to determine the question.

**3**

(1) Where a representation is duly made as aforesaid and not withdrawn, the following provisions have effect.

(2) Where the highway authority is not the Minister, the authority shall forward the representation to the Minister, together with their observations thereon and their proposals, in the light of the representations, for determining the question.

(3) The Minister shall consider any representations received by him (and, where the highway authority is not the Minister, the authority's observations and proposals forwarded to him as aforesaid) and shall either cause a local inquiry to be held or afford to any person by whom a representation has been duly made and not withdrawn and, where the highway authority is not the Minister, to that authority, an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(4) After the Minister has considered the report of the person who held the inquiry under sub-paragraph (3) above, or the person appointed under that sub-paragraph, as the case may be,—

(a) the Minister may, where he is the highway authority, proceed to determine the question;

(b) where he is not the highway authority, the authority may determine the question in the affirmative if the Minister consents, but not otherwise, and subject to compliance with any conditions subject to which his consent is given.

(5) Notwithstanding anything in sub-paragraph (3) above, except where a representation is made by a highway authority other than the Minister, the Minister may, if satisfied that in the special circumstances of the case the holding of a local inquiry or the affording to the person making such representation as aforesaid of an opportunity to be heard by a person appointed by the Minister is unnecessary, proceed without compliance in this respect with the provisions of the said sub-paragraph (3).

(6) As soon as may be after the determination of the question, a notice of the determination shall be sent by the Minister to any person by whom a representation has been made under the foregoing provisions of this Schedule.

**4**

For the purpose of displaying a notice as required by paragraph 1 above, a highway authority may, on the highway or on adjoining land (whether or not belonging to the authority), erect and maintain posts or boards or affix a notice to any building or structure; but the powers conferred by this paragraph shall not be exercised on land off the highway which is occupied, except with the consent of the occupier.

2.6 If cattle grids were installed this would allow, with the fencing, conservation grazing maintaining the internationally important heathlands on the Punchbowl and Hindhead Common. The by-pass gates would allow easy access for users

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of the BOATs. It is therefore considered expedient that the cattle grids and by-pass gates are installed.

### **3. OPTIONS:**

3.1 It is the Officer's recommendation that a Notice be published and displayed in accordance with Schedule 10 of the Highways Act 1980 inviting representations on the application.

3.2 The alternative solution would be to reject the application at this stage.

### **4. CONSULTATIONS:**

4.1 Various user groups and other organisations have been consulted including Waverley Borough Council, Haslemere Town Council, Thursley Parish Council, County Councillors Richard Hampson and David Harmer, Cycling UK, Auto Cycle Union, British Driving Society, British Horse Society, Open Spaces Society and The Ramblers. Site notices were put up at the 6 locations inviting comments.

4.2 Legal Services have been consulted and approved this report.

### **5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:**

5.1 The National Trust has agreed to undertake all of the works and maintain the structures in the future. If notices are published this will incur an advertising cost of approximately £1,200, which would be met by the National Trust. If objections were received and maintained and caused a Public Inquiry to be held, costs in the region of £2,000 would be met by the National Trust.

### **6. EQUALITIES AND DIVERSITY IMPLICATIONS:**

6.1 The cattle grids and by-pass gates will provide access for all users of the BOATs.

### **7. LOCALISM:**

7.1 There are no significant implications arising from this report.

### **8. OTHER IMPLICATIONS:**

Area assessed:	Direct Implications:
Crime and Disorder	There are no significant implications arising from this report.
Sustainability (including Climate Change and Carbon Emissions)	
Corporate Parenting/Looked After Children	
Safeguarding responsibilities for vulnerable children and adults	
Public Health	

## **9. HUMAN RIGHTS ACT 1988:**

9.1 Local Authorities are required to act to uphold European Convention rights which are now enforceable in British courts as a result of the Human Rights Act 1988. Primary legislation, of which the WCA 1981 is an example, may require the County Council to act in a different way. While the Council must interpret primary legislation in a way that is compatible with Convention rights that duty does not apply if the County Council could not have acted differently. In this instance it is first necessary to consider whether the action recommended to members touches on a Convention right. The making of this order may affect the rights of the landowner/ occupier under Article 8 of the Convention, the right to a peaceful enjoyment of one's possessions. The Act makes it clear that such rights may only be interfered with in a way that is in accordance with the law. The recommendation to Members is not considered to be in breach of the Act.

## **10. CONCLUSION AND RECOMMENDATIONS:**

10.1 Members are asked to consider the proposal and approve the publication and display of a Notice under section 82 and Schedule 10 of the Highways Act.

10.2 Members are also asked to approve the negotiation and entering into of an agreement with the National Trust in pursuance of the powers in section 87 Highways Act 1980.

## **11. WHAT HAPPENS NEXT:**

11.1 Should Members decide to accept the application, a Notice will be published in accordance with the statutory procedures, in two successive weeks in one or more local newspapers circulating in the area and placed on site stating generally the questions for determination set out in 2.2 above. All interested parties and user groups will be consulted.

11.2 After the advertising period has expired, if any objections have been received the proposal will be submitted to the Secretary of State for Transport for determination.

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### **Lead & Contact Officer:**

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### **Consulted:**

See Section 4

### **Annexes:**

- 1 Drawing No. 3/1/14/H50b
- 2 Schedule 10 of Highways Act 1980

### **Sources/background papers:**

File: Hindhead Cattle Grids 3/1/14, including all relevant correspondence and documents can be viewed by appointment at Surrey County Council Merrow Offices.

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