

The Right Hon Michael Gove, MP  
Secretary of State for Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London SW1P 3JR

31 August 2017

Dear Secretary of State

### **Section 38 of the Commons Act 2006**

The legislation relating to registered commons and the designation principles of Areas of Outstanding Natural Beauty exist to protect the prescribed land from activities which do not “conserve and enhance the natural beauty” or allow for “quiet enjoyment” or “open-air recreation”. In particular, section 38 of the Commons Act 2006 states that any works which “have the effect of preventing or impeding access to or over any land” need consent from the Secretary of State, a function delegated to the Planning Inspectorate.

At Newlands Corner near Guildford in Surrey (registered common Albury Downs CL344), the Commons Act is not protecting the common as it should. Environmentally, this is a very sensitive site, with tree experts rating it one of the four most important ancient woodlands in Western Europe, and with many protected species in its habitats.

Notwithstanding this, the leaseholder (Surrey County Council) and its managers (Surrey Wildlife Trust), with the knowledge of the land owner (Albury Estate), have been renting the common out to organisers of large events over several years, for financial return, without seeking permission from the Planning Inspectorate for fences and structures as required under section 38 of the Commons Act. The public, due to its ignorance of the law, has been unaware of this infraction of the legal requirements until recently. This has denied the public its democratic right, under regulation 9 of the Works on Common Land (Procedure) (England) Regulations 2007, to make representations about proposed works.

A list of the main events over the last year is attached. For each of these events, we have obtained confirmation from the Planning Inspectorate that consent should have been sought or that it was advisable to do so and have advised Surrey County Council and Surrey Wildlife Trust of the necessity to make an application. Consent has never been sought or obtained, so the law has simply been ignored for the sake of financial return. The Act and guidance make no distinction between temporary and permanent fences and structures, quite rightly as a temporary work can have a more destructive effect than a permanent one, and it includes impeding as well as preventing access.

The events have been substantial, for example on 30 July 2017 the common was used as a hub for 25,000 cyclists taking part in Ride London, with an adverse effect on this sensitive environment, greatly impeding access with hundreds of metres of metal fencing, and with dozens of structures including toilet blocks, marquees, bicycle racks, rehydration stations

and large advertising signs. We reminded Surrey County Council and Surrey Wildlife Trust two months before the event that permission was needed.

The legislative framework is designed to protect the registered commons' environments and the rights of commoners and the public, not to facilitate income generation. At Newlands Corner, generating an income from the site is a construct of Surrey County Council and Surrey Wildlife Trust in order to get over their financial difficulties. However, many of these activities will have a permanent negative effect on the landscape and environment.

Surrey County Council and Surrey Wildlife Trust perceive a need for the situation to be 'clarified' in guidance to be able to continue an increasing number of inappropriate activities to suit their own and others' financial self-interest. I understand that Councillor Goodman of Surrey County Council has written to you about this. These activities, and the 'works' involved, do not have the intrinsic interests of the commons at heart. Erecting artificial play structures, selling Christmas trees from Scotland and motor bikes from Germany on the site and using it as a hub for Ride London (promoting Prudential PLC "an international financial services group") do nothing to improve or conserve directly the habitats or the natural beauty of the common. They certainly impede access for Surrey residents.

In terms of reducing the financial burden on the public, the Save Newlands Corner Campaign Group has offered to set up a 'Friends of Newlands Corner' to take over the funding and management of access to the site without introducing parking charges or play structures, but Surrey County Council has rejected the idea that it should give up management control.

The law is not currently protecting the common at Newlands Corner, or other commons in the UK. We suggest the following ways in which the law could be strengthened to prevent inappropriate exploitation of these important natural environments and habitats:

1. Since land owners can currently avoid responsibility, if another body proposes to carry out works, the legislation should place a clear responsibility upon the land owner (or others with long term delegated management responsibility) to ensure that applications to carry out works have been made, and consent received, before works take place.
2. Give the Secretary of State enforcement powers, delegated to the Planning Inspectorate, so that he can;
  - require land owners to remove works that do not have consent;
  - fine the land owner for allowing such works to take place without consent;
  - require an application for consent to be made when advance notice is received of proposed works, where an application has not been submitted, and impose a fine where this requirement is not complied with; or
  - take out an injunction in cases where prior knowledge is obtained that works are proposed which do not have prior consent.

3. Since there is no right of appeal for Planning Inspectorate decisions, which can only be challenged by applying to the High Court for judicial review, either introduce a right of appeal or reinstate a £5,000 cap on costs to make a challenge feasible.
4. Since intentions to carry out works are not published widely, and important organisations are probably unaware of them, require the Planning Inspectorate to publish all applications on its website.
5. Since the Planning Inspectorate cannot currently change its decision, amend this so the decision can be changed if the application is found to have been seriously flawed or if fresh evidence comes to light.

These changes would greatly help to conserve and protect the natural environment of our commons, the original intention of the legislation.

I look forward to your response. Kind regards.

**Sally Blake**  
**Coordinator of the Save Newlands Corner Campaign Group**

## **Appendix**

### **Newlands Corner – Activities Without Legal Consent**

Surrey County Council (SCC), and its managers Surrey Wildlife Trust (SWT), have been carrying out activities for financial return at Newlands Corner, and possibly other sites, without obtaining the necessary legal consent from the Planning Inspectorate (PINS) under s.38 of the Commons Act 2006. As both organisations know, any works that impede or prevent access to any part of a registered common, including fences and structures, however temporary, legally need consent, as does resurfacing the land and making ditches and banks.

Furthermore, carrying out these works without following the prescribed process, deprives the public of its legal right to make representations to the Planning Inspectorate before the works take place.

From 3-7 August 2017 about half the car park at Newlands Corner, which is part of the common, was taken over by a film crew with about 20 huge vehicles and trailers impeding and/or preventing access. Some exceeded the 7.5t weight limit for the site. Permission was not sought from PINS. The vehicles and trailers were also blocking the bridleway and may have been dangerous to children.

From 29-30 July 2017 the whole car park was taken over to accommodate 25,000 cyclists as one of the Ride London hubs, with hundreds of metres of metal fencing, metal bike racks, toilets, marquees, tables and large signs. Access was impeded and/or prevented throughout. Despite SCC and SWT being written to about two months before the event reminding them that permission must be applied for, permission was not sought from PINS. SCC has conceded that permission should have been sought.

On 25 February 2017, the local BMW dealer, Vines of Guildford, held a motorbike sales event with a trailer, gazebo and stands, all of which were considered to be structures by PINS under s.38. Permission was not sought from PINS.

During the month of January 2017, six areas of concrete about 6ft by 3ft were laid down on the main slope to accommodate new benches. These may or may not have needed permission, even PINS did not know, but it should in that case have been sought as resurfacing of the common with concrete is specifically mentioned in section 38. Permission was not sought from PINS.

During the month of December 2016, a Christmas tree compound including a cabin structure surrounded by Heras fencing was set up. PINS confirmed that the cabin was a temporary structure and that the temporary fencing did not seem to fall into the exceptions listed in the legislation. Permission should have been sought from PINS but was not.

We can provide photographic evidence and correspondence with PINS to confirm all these breaches and that SCC and/or SWT have been made aware of them.