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20 May 2013

From Richard Benyon MP
Minister for Natural Environment and Fisheries

Dear Damian

Thank you for your letter of 2 April enclosing a copy of a further one from your constituent Ms Maureen Comber of The Old Cottage, Frith End, Bordon, in response to my letter of 26 March. I am sorry the reply is late.

I will address Mrs Comber's letter point by point.

1. Natural England has checked the sites referred to in question 1 of Ms Comber's letter. It cannot identify the specific sites at Telscombe Tye or Cornwall but in all the other cases the applicant has formally confirmed that they have "*gone to reasonable lengths to contact all graziers or persons who are entitled to exercise rights of common, in particular those actively exercising rights on the land, and provide an opportunity to comment [on the application]*". The applicant also signs to confirm that "*[commoners] who are not party to the agreement are not in a position to jeopardise the objectives and requirements of the scheme*". This shows that the applicants have formally stated that active commoners were consulted prior to the stewardship application being submitted.
2. Ms Comber states in question 2 of her letter that Higher Level Stewardship (HLS) agreements have been made without the agreement of the commoners. To clarify; a HLS agreement is made with the applicant, who makes a formal declaration in their application that they are able to deliver the management outcomes for which they have applied. It is for the applicant to ensure that appropriate liaison arrangements are in place with any active commoners. Natural England is not involved in the internal agreements between applicants and commoners. If the agreement holder is unable to fulfil the HLS agreement for any reason, Natural England may take steps to recover funds, as is outlined in its guidance on the HLS scheme.



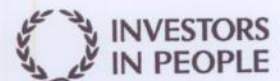
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Ms Comber states that consultations are not genuine and Natural England has already decided how sites are to be managed. This is not, however, how HLS agreements are made. Natural England does not define how management must be done; it is the applicant who decides the management they wish to carry out, and then applies for HLS. As previously stated, any consultations are the responsibility of the applicant if and when they decide that the management which they have committed to deliver requires approval. The responses to consultations are considered by the Secretary of State, or an inspector appointed by him, independent of Natural England.

3. The abolition of the Commons Commissioners was included in the Commons Act 2006. As this has now passed through both Houses, it has received Royal Assent and the relevant section has been commenced. Neither of the coalition partners included commitments in their manifestos to overturn the Commons Act.
4. Mrs Comber says she remains unclear as to what constitutes 'vesting' of common land and asks for a definition. When seeking the meaning of a word or phrase in legislation there are three principle sources:
 - Firstly, look in the legislation in which the term is found and the accompanying explanatory notes. Section 45 of the Commons Act 2006 provides a power for local authorities (including National Park Authorities) to protect common land but does not define vesting. The local authority power is restricted to protecting against unlawful damage and the ability to take legal action against any offence committed over the land.
 - Secondly, if there is no elaboration on the meaning within the legislation or explanatory notes, then the dictionary definition is relied on; and
 - Thirdly, there is the case law where the courts set legal precedents by filling in the gaps with their own interpretation. This can extend to obiter comments in the courts, i.e. opinions or asides which fall outside the points of law to be examined in a court case.

There is of course guidance too, but generally it takes its cue from one or more of the sources above. If Mrs Comber requires detailed advice which is specific to a particular common then I suggest she obtains this from a lawyer as, unfortunately, Defra does not provide such advice.

5. Natural England recognises the value of grazing used in combination with cutting, burning and other techniques for the management of habitats on commons. Grazing animals can have a more selective impact on heathland swards than machinery and can slow down the rate at which scrub expands across a site, but they do not replace cutting and burning.



6. In question 6, Ms Comber raises issues surrounding great crested newt surveys. Although great crested newts are relatively common in some areas, numbers of newts across the country have dropped markedly in the last 20 years, with an estimated 25% decline in the population in the UK since 1994. It is for this reason that careful consideration needs to be given to the potential impacts of new developments on newt populations where they are present. As noted by Ms Comber, great crested newts are protected under the Conservation of Habitats and Species Regulations (as amended) 2010 (otherwise known as the Habitats Regulations) so they are a material consideration in the determination of planning applications.

In order to assist developers, consultants and local planning authorities, Natural England provides advice on best practice guidelines for how great crested newt surveys should be undertaken, how impacts upon great crested newts can be avoided and mitigation measures which would be deemed suitable to protected great crested newts. This is available here: <http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/default.aspx>.

*Yours ever
Richard*

RICHARD BENYON MP

