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From **Richard Benyon MP**
Minister for Natural Environment and Fisheries

Dear Damian

Thank you for your letter of 22 November enclosing a copy of an email from your constituent, Mrs Maureen Comber, regarding the enclosure of common land. I apologise for the delay in replying.

The Environmental Stewardship scheme, which includes both Entry Level and Higher Level Stewardship, is open to all farmers and land managers across England to support them in looking after our countryside; Natural England manages the scheme on behalf of Defra. The primary objectives of Environmental Stewardship are to conserve wildlife (biodiversity), maintain and enhance landscape quality and character, protect the historic environment, promote public access and understanding of the countryside and protect natural resources. Higher Level Stewardship aims to deliver significant environmental benefits in high priority areas. By their very nature, commons tend to feature highly against this list of objectives because they are important for their ecological and archaeological aspects and recreational interest.

Many of the most important commons are owned or managed by Wildlife Trusts or local authorities, and many commons require attention to restore and maintain the quality of the features found there. This is why managing organisations are invited to consider applying for Higher Level Stewardship where it is a condition that any applicant must be entitled to carry out the management they propose in their application. In the case of common land the Entry Level and Higher Level Stewardship guidance makes it clear that

"The signatory must go 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 opportunity for them to comment" and

"The signatory must confirm that all graziers or persons exercising rights of common who are party to the application have agreed to abide by the requirements for the options that have been chosen, and the general rules and conditions of the scheme. The signatory must also confirm that those who are not party to the application are not in a position to jeopardise the objectives and requirements of the agreement."



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This means that Higher Level Stewardship payments are made to the agreement holder to support the costs they incur in delivering the management of the site. Commoners should have agreed that the Higher Level Stewardship can be delivered on the land they hold rights on, and the rights of any commoner who does not support the Higher Level Stewardship management cannot be infringed by the Scheme. Natural England advisers also encourage all relevant applicants to follow 'A Common Purpose' which gives guidance to common land managers on how to engage the community and achieve consensus when works, such as fencing or tree-felling, are being contemplated.

Mrs Comber makes a number of points about fencing and grazing on common land. I can assure her that Natural England does not consider extensive grazing arrangements as the only appropriate management for open habitats. I understand there are a few agreements where a combination of grazing, cutting or burning are used, aided by the use of temporary fencing. Where grazing is proposed as part of the management of any habitat under Higher Level Stewardship it is because grazing is thought to be an effective tool for delivering the environmental benefits needed for the proper management of that habitat.

Fencing is not a requirement of any Higher Level Stewardship management options, although many agreement holders see fencing as necessary to allow livestock to be used safely. On common land, a frequent proposal in these circumstances is to keep any fences to the boundary of the common, specifically to maintain the openness of the site. I would add that it is not a legal requirement that common land is accessible from any point; much common land is surrounded by private land and there is no right of access across this land on to a common.

Mrs Comber raises concerns about the way that applications are considered under section 38 of the Commons Act 2006. The Planning Inspectorate is responsible, on behalf of the Secretary of State, for determining such applications to give consent to carry out "restricted works" on common land which may include the erection of fencing that may prevent or restrict access. In reaching its decisions the Planning Inspectorate must have regard to Defra's "Common Land Consents Policy Guidance" in weighing up the often different interests on a common and reaching a decision that can provide the appropriate approach to the management of that individual common. Decisions must take due regard to the criteria in the Act around public interests, interests of the neighbourhood and the interests of people. The Planning Inspectorate also recommends in its guidance that potential applicants wishing to carry out restricted works should follow the principles in 'A Common Purpose' before applying for such a consent.

I recognise the importance and value of common land for public access, biodiversity, landscape, agriculture and heritage reasons. I also accept there are many people and organisations who have strong but often differing views as to the correct approach to the management of our commons. This means that there are often many different views in particular about an application for consent for carrying out "restricted works" and there is the opportunity for people to make comments to the Planning Inspectorate on an application before the application is determined. Where a proposal for such consent will interfere with public access to a common, we would generally expect the proposal to contain appropriate and sufficient means of access to enable the public to continue to exercise their rights of access.



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All of the Planning Inspectorate's decisions on section 38 applications are publicly available on its website for anyone to read and to see the reasons for its decision on any particular application. If the Planning Inspectorate has departed from the Defra policy guidance in reaching a decision it must explain the departure from that guidance in its decision.

As to access to commons, particularly through self-closing gates, the British Horse Society has published its findings of the trial of self-closing gates as a response to the concerns that we recognise horse riders have about this type of gate and the possible injuries they may cause to a horse. Defra and Natural England were represented at the trials that took place last year to coincide with the launch of that report. I understand Natural England will be supporting the British Horse Society to conduct a further trial of 2-way opening self-closing bridleway gates so that hopefully agreement can be reached on an acceptable bridleway gate design that is stock proof, safe for horses and suitable for other users.

Yours ever

Richard

RICHARD BENYON MP



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