

Law of Property Act 1925: Section 194  
National Trust Act 1971: Section 23

## Application for consent to erect buildings or fences or to construct works on common land

- You will need to seek help from the **commons registration authority** in your area (the county council or unitary authority) when completing parts of this form.
- Where an application affects:
  - a town or village green (Note 1B);
  - land subject to a Scheme of Regulation and Management (Note 11); or
  - a metropolitan common in Greater London (Note 19); you are advised to contact the Common Land Branch for advice **before** submitting an application.
- This form should also be used for applications under Section 23 of the National Trust Act 1971 (Note 20).
- When completed, send the form together with the relevant enclosures to the address given above. (See checklist on page 11).

### Note 1

Under section 194 of the Law of Property Act 1925 (see Appendix D), the erection of buildings or fences, or the construction of works, which prevent or impede access to land which was subject to common rights on 1 January 1926 (the date the section came into force) may be unlawful without the Secretary of State's consent. It is the responsibility of the applicant to decide whether there is a need to apply for consent, although the Department can offer informal advice.

Local authorities and others with a legal interest in the land can take action against unlawful works.

### Note 2

Before making any application for consent, you should find out from the appropriate **commons registration authority** (the county council or unitary authority) whether the land has been registered as a common, or as a town or village green, under the Commons Registration Act 1965. Although this form refers to common land only, section 194 also applies to town or village greens which were subject to rights of common on 1 January 1926 (see Notes 1 and 1B).

### SECTION A - The Land (see Notes 1 and 2)

1. Name of common:

2. Located in the:

(a) Parish of:

(b) Borough/District of:

(c) County of:

### SECTION B - The Applicant

3. Title:  Forename(s):

(e.g. Mr/Mrs/Miss/Ms/Dr)

Surname:

Organisation:

4. Full postal address:   
  
  
  
 Postcode

Telephone No. (incl. national dialling code):

Fax No. (incl. national dialling code):

E-mail address:

**Note 3**

You will need to consult the commons register (held by the registration authority) before answering the first two parts of section C, and you will also need to provide us with a copy of the ownership, rights and land register sheets when submitting your application. Registered common rights can include: pasture; turbary; estovers; piscary; pannage or common in the soil.

**Note 4**

You should give a full description of the proposal and consider whether there are any buildings, fences or works in addition to the main proposal for which consent should also be sought. Care should be taken to state all areas with sufficient accuracy. Difficulties may arise if it is subsequently found that an area has been under-estimated and it may be in your interest to round the area upward to the first place of decimals or whole number as appropriate. It should be noted that there is no power to give retrospective consent but, where works are known to have commenced or been completed, applications are considered and determined as if no works had begun. Applications for temporary fencing or works should clearly state the period of time for which consent is sought. If the fencing is still required once the time limit has expired you will need to consider whether further consent under section 194 would be required.

**Note 5**

(This note only applies where planning permission is required for your proposals). Consent can only be given for the works that you have described in the application form and in the published notice (see note 12). If, having advertised the proposals, they are subsequently changed by, say, the imposition of conditions on a planning permission, you may have to withdraw your application and submit a fresh one. Therefore, to avoid abortive work, you may wish to consider awaiting the grant of planning permission, where it is required, before seeking consent under section 194.

**SECTION C - Area of Common and Common Rights**  
(see Note 3)

- 5. What is the total area of the common as registered? 85 ha
- 6. Specify the nature of the registered common right(s), if any, to which the land is subject:

Grazing rights held by Trustees of Gorham's Gift for up to 252 sheep.  
Grazing rights held by Kirby Farm for up to 100 sheep.

To what extent are the common rights exercised?

Rights held by Trustees of Gorham's Gift exercised by tenant of Stud Farm with their authority.  
Rights held by Kirby Farm not exercised

**SECTION D - The Proposal** (see Notes 4, 5 and 6)

- 7. Do the proposed works involve:
  - (a) fencing? ..... YES  NO
  - (b) other works? ..... YES  NO

If Yes to (a) only, or to both (a) and (b), answer all remaining questions.  
If Yes to (b) only, complete questions 8-9, then go straight to question 13.
- 8. Is the fencing/work to be constructed:
  - (a) permanent? .....
  - or
  - (b) time limited? .....

If 'time limited', for how long will it be needed?

Line A - up to 12 months, only when stock present for  
Line B - up to 6 months every year  
Line C - up to 6 months every year

- 9. Describe the proposed works below. For any works that do not involve fencing, include the area of common land required. Further specific information on fencing proposals is required by questions 10-12.

Three lines (A, B and C) of electric fencing with associated access gates.

continued above opposite

**Note 6**

Part 1 of the Countryside and Rights of Way Act 2000 introduced a public right of access on foot to all registered common land (to which a right of access does not already apply). This right can be subject to certain exceptions and limitations. This is a factor that will be very carefully considered when determining applications. For fencing proposals, question 12 must be answered as fully as possible.

...continued

If there is insufficient space for your answer, continue on a separate sheet and tick this box

10. Please give details of:

(a) the type(s) of fence proposed

3 strands of wire supported with fencing stakes with associated insulators, batteries and signs.

(b) the length and height of fencing

A = 507m  
B = 420m  
C = 336m } Up to 1m high.

(c) the area of the common to be enclosed by the fence

A = 4.3Ha  
B = 62 Ha  
C = 0.5Ha

(d) any existing fencing on the same area of common for which consent is not being sought

No.

11. Please give full details of the need for fencing. This should cover: why the fencing of the type proposed is required; what the objective of the fencing is; and why its length is as proposed.

Standard 3 wire electric fencing that conforms to British Standard has been chosen that is suitable to be used on a public access site. The use of electric fencing ensures permanent fencing can be avoided, thereby having less of a negative impact on the landscape and public access.  
Objectives: Line A - To enclose sheep or other stock from Stud Farm so that grazing rights of Ambrose Gosham Trust can be satisfied, to prevent stock straying onto track.  
Line B - To ensure Mr Carr's cattle do not come into contact with stock from Stud Farm and to ensure cattle do not stray onto track used by residents.  
(continued on other sheet)

Question 11 cont.

Line C – To ensure that the Cross Dyke Scheduled Monument is not damaged by overgrazing or poaching.

12. (a) Please state what other measures (i.e. alternatives to fencing) have been considered, and why these are not available, or not considered to be practicable.

Management options for the Tye were discussed in the application under Law and Property Act, Section 194 for fencing on Telscombe Tye in August 2002. Grazing the Tye was found to be the most appropriate form of management due to the benefits for wildlife, landscape and recreation. Defra have recommended cattle graze the Tye, sheep will continue to graze the area north of the track enclosed by electric fence lines A+B.

- (b) Please outline the measures being taken to ensure that the public (and any others with rights e.g. common rights holders) will have access to the land after the fencing is in place.

Insulated metal spring pedestrian gates will be placed in at least 2 places on each of the 3 lines of electric fencing, providing walkers with an entry and exit point at suitable locations.

Bridleway Telscombe 4 follows the line of fence line B for the most part, but deviates from the track in 2 places, where the bridleway joins the track at the eastern end a permanent bridle gate will be installed with insulated fencing either side to protect riders and their horses (see enclosed East Sussex County Council guidance).

Where line A and B form a corridor, it will be ensured that at least a 10m gap between the two fences will be maintained.

- (c) Please give details of any measures being taken to mitigate the visual effect of the fencing.

Electric fencing needs to be obvious to the public to avoid them coming into contact with it, hence the warning signs to be placed every 50m on each line. The height and general appearance of standard 3 wire electric fencing is not sufficient to have a significant effect on the landscape.

### Note 7

In deciding whether or not to give consent under section 194, consideration must be given to the **benefit of the neighbourhood** as well as to **private interests** in the land. Other relevant factors, including any objections which are lodged, must also be taken into account. The "benefit of the neighbourhood" is defined as the health, comfort and convenience of the inhabitants of any populated places in or near any parish in which the land is situated, and is considered in the context of the enjoyment of the common as an open space. The "private interests" are defined as including the advantage of the persons interested in the common, i.e. the landowner and persons entitled to common rights. The question on which an opinion has to be formed in the context of section 194 is whether, having regard to the "benefit of the neighbourhood" as well as to the "private interests", it is appropriate that consent should be given.

The expression "benefit of the neighbourhood" refers to the existing benefit, which is to be protected, rather than to any additional benefit to be expected as a result of the proposed fencing or works. Any such additional benefit would be taken into account, but it would not be given priority as a consideration.

### Note 8

The information that you provide should be as full as possible, particularly in regard to the benefit of the neighbourhood and to any private interests in the common. While applicants usually provide sufficient information as to the facts (e.g. the nature of the proposal and the extent to which the common rights are used), they do not always develop sufficiently their case as to why they regard the proposal as being necessary and appropriate, having regard to the benefit of the neighbourhood, and why it is necessary to use common land. Applicants are therefore advised to carefully consider these points in completing the application form.

## SECTION E – Justification for the Proposal

(see Notes 7 and 8)

13. Give further details as to the nature and purpose of the proposal that would help the Secretary of State decide the application. In this section you **must** explain in as much detail as possible whether, and if so how, the proposals contribute to the health, comfort and convenience of the inhabitants of the neighbourhood within the general context of the common as an open space. Please also say why it is necessary to use common land.

The preferred management grazing regime on the Tye was discussed in the application made in 2002 (CL1 1/3/02). Having chosen conservation grazing, it has become necessary to prevent Mr Court's cattle from mixing with stock from Stud Farm.

It has also become necessary to prevent cattle having access to the track to Lardour and St. Michael's House, aligning the proposed fence lines A and B. Much correspondence has occurred with Mr and Mrs Marzillius (copy of letters enclosed), who are very concerned about cattle on the track when riding their motorbikes, especially in the dark. Telscombe Town Council would like to ensure residents can safely access their properties.

Line C is to ensure the cross dyke is maintained and enhanced by appropriate grazing and to avoid over grazing or poaching and erosion caused by cattle hooves. English Heritage supports this proposal. This is a very important feature which the public would benefit from being well looked after. During the 6 month grazing period (January to June), it would be intended to erect the electric fence once the need to avoid the cattle accessing the cross dyke has been identified. Line C, together with the access gates, provides a cattle free route for walkers from the village to Telscombe cliffs which has been requested by some residents of Telscombe Village.

If there is insufficient space for your answer continue on a separate sheet and tick this box

**SECTION F – Designations**

14. (a) Is the proposal on, or near, a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC) or a Special Protection Area (SPA)? ..... YES  NO   
If Yes, please give particulars, identify on the map (see Section K) and provide evidence that English Nature has been consulted. (The address for English Nature is at Appendix C.)

- (b) Will the proposal affect a Scheduled Ancient Monument? ..... YES  NO   
If Yes, please give particulars, identify on the map (see Section K) and provide evidence that English Heritage has been consulted. (The address for English Heritage is at Appendix C.)

*Copy of scheduled Monument record enclosed.  
copy of letter from English Heritage enclosed.*

**SECTION G – Adjacent common land and previous applications**

15. (a) Are you aware of any previous applications to carry out works on the common? ..... YES  NO   
If Yes, please give particulars and identify the works on the map (see Section K).  
Please also show any other existing buildings, roads, fences or other constructions.

*An application was made in August 2002, (CL11/3/02),  
for permanent boundary fencing on the common.*

- (b) Is there adjoining or closely adjacent common land of a different registration number or village green? ..... YES  NO   
If Yes, please give particulars and identify the boundaries on the map (see Section K).

*CL23*