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A Common Purpose:

A guide to agreeing management on common land



THE NATIONAL TRUST



Open Spaces Society



ENGLISH
NATURE



Rural Development
Service



The Countryside Agency

Landscape
Access
Recreation

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We welcome feedback on the approach set out in this document. Please send comments to:
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Foreword

Common land, one of the oldest institutions in England and Wales, includes some of our countryside's finest assets. In England common land covers over 379,000 hectares, an area slightly larger than the county of Hampshire. Common land has been fundamental to traditional rural existence for centuries, and remains vital to agriculture and the rural economy of many areas. Over half of all commons are designated as Sites of Special Scientific Interest because of the many rare and unusual habitats and species they support. Common land is rich with archaeological information that has often been lost elsewhere. For many local communities access to common land has been a key part of daily life for centuries, providing fresh air, a sense of belonging and identity, and room to stretch on untamed and open land very different from the surrounding landscape. The Countryside and Rights of Way Act established for the first time a right of access on to all common land.

Common land is valued for all these interests and more. Often such uses are complementary and no special intervention is required, but many commons are not receiving enough basic management to keep them in good shape for these various purposes to co-exist. Because so many people value them so highly, they can be fertile ground for disagreement when there are proposals to review management.

This guide aims to remove the potential for controversy, by setting out a process for planning management of common land that takes proper account of the views of all interested parties.

The confederated partners of Natural England - the Countryside Agency, English Nature and the Rural Development Service, together with the National Trust and the Open Spaces Society, have worked closely to develop the guide and strongly endorse the approach it embodies.

If you are trying to bring a common into better management, or if you just care about its future, we commend this to you as a route map to agreeing a common purpose.

The aim of this document is to introduce and outline a process that anyone concerned with the long-term management of common land can follow and implement. The approach is based on the principle of working with stakeholders to create increased levels of awareness of the issues and values related to their common and the range of possible solutions that would tackle the one while respecting the other. By developing an increased understanding of all stakeholders' views, and agreeing the problems before proposing solutions this approach seeks to promote the development of sound, effective management proposals based on co-operation.

It is important to remember that not all common land was registered under the Commons Registration Act 1965. Such land may still be regarded as common land and may still have rights of public access.

It is not suggested that this approach should be used on every common: many sites already have a close working arrangement between stakeholders. The approach has been developed to help address the problems that develop on commons where groups or individuals become concerned that their interests have not been properly considered when changes in management practice are being proposed. The precise details of the process will vary from one location to another but the underpinning principles should largely remain constant.

Common land is subject to a considerable diversity of legislation, some specifically prepared to protect and regulate commons, others related to broader issues that occur both on and off our commons. It is not the role of this document to try and propose any form of ranking or weighting for the differing forms of legislation; this could only be done through a formal government review. This approach seeks to encourage interested parties to identify appropriate solutions to agreed problems, instead of attempting to measure the importance of one Act against another.

Having set out the aim, these golden rules form the underpinning principles on which the process is based:

Golden Rules

1. Common land is valued by many people for different reasons. What people value may differ but they are united by the strength of their concern.
2. Progress is least likely when one interest in a common attempts to sideline the others, or forces change upon them.
3. Regular communication amongst stakeholders is critical in building and maintaining trust and confidence between parties, and should start from a very early stage in the process.
4. Lasting progress is most likely when:
 - People respect and try to understand each others' values and aims;
 - people recognise that all perspectives are valid and that everyone will have things in common;
 - They keep an open mind about what form any change should take, until they have properly explored the various options and the impacts on others;
 - Any change brings benefit to the neighbourhood and wider interests.
5. Complete unanimity may not be possible but a broad consensus should be the aim.

This Guide will help you to:

- Identify the various groups with interests in your common;
- determine their key aims;
- involve them in considering the options for management and the implications for them;
- Work for an agreed outcome.

This Guide will not make your decision for you, but it should help inform the decision-making process and improve the prospects of reaching agreement.

How to use the Guide

If you consider the management of a common may need to be reviewed you are advised to follow these stages:

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Note

This process has been developed for commons where the practice of wide stakeholder inclusion in management planning has yet to be established, or where management proposals can be predicted to be contentious. The steps can be condensed somewhat where co-operative stakeholder involvement is already established, although it is recommended that the procedures be followed in full for major management reviews to ensure that no stakeholders, or management options, have been overlooked. It may be that full stakeholder involvement is not required for all potential management planning, for example where the changes being proposed are trivial. However the general presumption should be for open, inclusive communication.

Stage 1 – Outline the issue(s) to be addressed and your own broad management aims.

This stage focuses specifically on your own perspective for the common in question. It is important to spend some time capturing these before moving on to the other stages as it will help everyone understand what it is you are trying to do and why. Record:

- Your concerns about the present situation;
- your hopes for the future of the common;
- your broad management aims for the common;
- what legislation, controls, and agreements (legislative or otherwise) already apply to the common – a clear understand of these will help define possible potential solutions later on. (The Commons Registration Officer and others such as the Chair of the Parish Council or the landowner are good sources of this information, but it may be necessary to consult more widely).

Note: at this stage avoid all preconceptions about any particular management options for achieving your aims, e.g. if you wish to prevent scrub encroachment, state this is a broad aim without identifying whether this should be achieved by grazing, burning, cutting, or any other available mechanism. You are also just starting the investigation into controls and agreements.

Once you are satisfied you have a good grasp of the issues move on to Stage 2.

Stage 2 – Obtain the other stakeholders' perspectives.

First, you need to identify who the stakeholders are. This may be straight forward but on some commons it may take longer. Use the Table on the next page as a start to determine what and who this would include. Broadly there are three categories:

- **Those with a legal interest** e.g. Landowner (often called the 'owner of the soil' on common land), commoners (those with registered rights of common), tenants, easement holders and sporting interests.

- **The local community or communities.** There is no single contact here but start with the Clerk to the Parish or Community Council, other local groups like the Civic Society and identify areas of the community that adjoin the common directly.

- **Other relevant interests** (see Table 1). Use the list as a start to see what subject areas are relevant to your particular common and try to find an appropriate contact. Table 1 is not definitive; consider which other interest groups may be relevant to your common.

Remember that the list you end up with is unlikely to be comprehensive at this stage, as the very act of contacting the stakeholders you first record may reveal others who need to be included.

Table 1 (part a): Identification of Issues and Stakeholders

	Issues – Key Values and benefits of common	Examples of Stakeholders	Context, Policy and Legal Considerations
Agriculture	<ul style="list-style-type: none"> > Pasture for sheep, cattle, ponies > Turbary & Estovers > Pannage > Contribution to rural economy 	<ul style="list-style-type: none"> > Active commoners > (Non-participating) right holders > Landowners (“soil owners”) > Tenants > Grazing licensees > Commoners’ Associations > NFU/CLA > Statutory Body: Defra 	<ul style="list-style-type: none"> > Common Agricultural Policy > Agri-environment schemes > Management Agreements > Local Acts of Parliament > Local Byelaws
Nature Conservation	<ul style="list-style-type: none"> > Wildlife associated with stable conditions > Examples of semi-natural habitats > Uncommon plants, invertebrates and other wildlife > Natural landforms 	<ul style="list-style-type: none"> > Local wildlife enthusiasts > Wildlife Trusts > Natural History Societies > Local and County Specialists > National Trust > RSPB > Particular interest groups (e.g. Butterfly Conservation, BSBI etc) > Statutory Body: English Nature 	<ul style="list-style-type: none"> > Statutory designations (55% common land is SSSI) > International designations (SPA, SAC, Ramsar site) > Local wildlife/geological designations > Protected species
History/ Tradition	<ul style="list-style-type: none"> > Long history of traditional management (centuries) > Integration with local settlement > Key element within manorial system > Historic landscapes 	<ul style="list-style-type: none"> > Local History Groups > County History Societies > Local and County Specialists > Sites and Monuments Record (local authority) > National Trust > Statutory Body: English Heritage 	<ul style="list-style-type: none"> > Sites and Monument Record > Scheduled Ancient Monuments > Historic Landscape Designations > County Designations
Landscape	<ul style="list-style-type: none"> > Scenic rural environment > Unsown, “wild” appearance > Minimal invasive signs of human intervention > Open vista 	<ul style="list-style-type: none"> > Local Residents > Public who view common from homes, or during travel > Visitors travelling to enjoy site > Amenity Groups e.g. Open Spaces Society > CPRE > National Trust > Local and County specialists > Statutory Body: Countryside Agency 	<ul style="list-style-type: none"> > Areas of Outstanding Natural Beauty > County-based landscape designations > Designations in Structure and Local Plans > Designations in Village Design Statements > Countryside Character Maps
Archaeology	<ul style="list-style-type: none"> > Earthworks retained in absence of ploughing > Artefacts preserved in undisturbed soils 	<ul style="list-style-type: none"> > County Archaeological Societies > Local and County Specialists > Sites and Monuments Record (held by local authority) > National Trust > Statutory Body: English Heritage 	<ul style="list-style-type: none"> > Sites and Monument Record > Scheduled Ancient Monuments > County Designations
Access	<ul style="list-style-type: none"> > Opportunities for peace and tranquillity > Fresh air and exercise > Communal (uncharged) facility > Appreciation of open space, scenery, wildlife 	<ul style="list-style-type: none"> > Local residents > Visitors including children > Walkers including Ramblers’ Association > Open Spaces Society > Local Authorities > Local Access Forums > Disabled user groups > Riders, including British Horse Society and livery yards > Statutory Body: Countryside Agency 	<ul style="list-style-type: none"> > Statutory public right of access e.g. through CRoW Act, rights of way > Local Byelaws > Government policies on health and exercise > Government agencies e.g. Highways, Police, Fire. > Rights of access for utilities > private easements

Table 1 (part b): Identification of Issues and Stakeholders

	Issues – Key Values and benefits of common	Examples of Stakeholders	Context, Policy and Legal Considerations
Recreation	<ul style="list-style-type: none"> > Energetic sports and pastimes > Competitive Events > Training > Specific recreational pursuits (as permitted) – model aircraft, cycling, riding 	<ul style="list-style-type: none"> > Sports Clubs > Recreational Groups > Specialists Societies > Central Council for Physical Recreation > Local Access Forums > Local Authorities > Statutory Body: Sport England 	<ul style="list-style-type: none"> > Rural White Paper welcomes range of activities in countryside > Government policies on health and exercise > Strategy for Sport > Existing rights and restrictions > Current legislation and byelaws
Game Management & Shooting	<ul style="list-style-type: none"> > Grouse moor management > Pheasant/partridge shoots > Deer > Rabbits > Rough shooting 	<ul style="list-style-type: none"> > Game Clubs > Shooting Clubs > Moorland Association > Game Conservancy trust > British Association Shooting & Conservation > Statutory Body: Defra 	<ul style="list-style-type: none"> > Legitimate quarry species > Regulations on firearms > Local Byelaws
Community and Culture	<ul style="list-style-type: none"> > Often intimate historic links with fringing community/ies > Contribution to settlement identity and sense of belonging > Site of community events > Perceived as local amenity for residents > Enhances property prices > Visual link to/from common and settlements > Tourism – local and national 	<ul style="list-style-type: none"> > Local residents > Local event organisers > Community groups > Local History societies > Parish Councils > Statutory Body: Countryside Agency 	<ul style="list-style-type: none"> > Local Plans > Local development framework > Community Strategies > Village design statements > Regional plan

There is also a range of specific regulations that apply to common land – see ‘legal requirements’ section in Annex 1 and ‘the policy and legal framework for common land’ set out in Annex 2.

Once you have identified potential interests make contact with key stakeholders, arranging meetings with those whose interests are intimately associated with the common. These contacts are critical and should aim to:

- 1) Share your current thinking and broad aims for the common; and
- 2) Find out about the stakeholders’ broad aims, any concerns they have about the present situation, and their hopes for the future of the common.

At the end of each contact conclude by identifying key areas of agreement and concern. Let other stakeholders know what the next steps are and when they can expect to hear from you again. Reassure them that you are seeking to approach everyone, bearing in mind that news travels fast in many communities.

Basically, this is an exploratory phase and some good tips are to:

- > Retain an open mind;
- > Be inclusive and build up trust;
- > Use non-technical language; and
- > Communicate regularly and widely.

Once you have made contact with key stakeholders and identified main areas of agreement and concern consider how to bring Stage 2 to a close. One idea would be for a meeting bringing groups of stakeholders together. This can take some time to organise so try and involve other stakeholders to help you. Alternatively you may choose to summarise all views in a short document and distribute this amongst the stakeholders.

Either way, you need to share:

- The areas of concern, the hopes and broad management aims relating to each stakeholder (accepting that not all will have views or want to be involved);
- The key areas of agreement and concern among all stakeholders who participated.

This is likely to generate some discussion and may need subsequent revision.

Once finalised, you need to review (in the light of the areas of concern and agreement above) your original aims alongside those of others. Determine whether it is necessary or desirable to continue with your proposals. It may be that your own broad management aims (recorded in Stage 1) have changed as a result of talking with other stakeholders and action is no longer considered appropriate. Or it may be very clear that there is currently little opportunity to make progress due to the divergence of views. In most cases, though, you will need to consider how the areas of concern and agreement might be taken forward and this is the point at which to move to Stage 3.

Stage 3 – Examine the range of management options available

By starting this stage you are saying that something needs to be done in order to tackle the key areas of concern and agreement identified in Stage 1. This stage seeks to find out what the options are and which is both most suitable to the task(s) and acceptable to the various stakeholders. Note that it remains important for this stage to be inclusive, involving all key stakeholders identified in Stage 2 or a smaller group agreed by the stakeholders.

1) List all management options.

As a group, list the full range of management options that might be relevant in tackling the key areas of concern and agreement identified in Stage 1. It is likely that there will be a number of techniques to tackle a particular area of concern or agreement. For example, if the broad management aim suggested in Stage 1 is the prevention of scrub encroachment, then the management options might include grazing with various types of stock, different methods of cutting, burning or a combination of these. Whilst financial considerations may govern the practicality of implementing various options, at this stage do not prioritise options but seek to be inclusive.

Generate a list covering all areas.

2) Seek any technical, legal or other professional advice

- Where there is a national designation make early contact with a local representative of the relevant statutory agency (See Table 1 for the appropriate agencies for each area and Annex 1 for a summary of the processes involved).
- Permission is also required from the landowner for various activities, so ensure they are well briefed and actively involved (see Annex 1).
- Permission may also be required for activities such as cutting down trees or undertaking work near a watercourse.
- The policy and legal framework for common land is complex and can be very localised (see Annex 2). Consider the possible legal constraints that may apply; for example, consent is required from the Secretary of State for works or fencing (see Annex 1).

3) Identify the benefits, drawbacks and risks of each available option

As you receive advice begin to identify the positive and negative aspects of each option. You might like to use the template in Table 2 as a way of assessing the benefits, drawbacks and risks associated with each option. These are working documents and will change as advice is received and the issues are discussed amongst stakeholders. Where Secretary of State permission is required a key consideration is the 'benefit to the neighbourhood' of the proposed works. For details of the process see Annex 1.

The law, as explained in Defra guidance, defines the 'benefit of the neighbourhood' as the health, comfort or convenience of the inhabitants or any populated place 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.

Consideration also needs to be made of the 'private interests', these are defined as including the advantage of the persons interested in the common, i.e. the landowner and those entitled to exercise common rights.

It is important to note that when considering an application to erect fencing or other works on a common Defra must decide if it is expedient to grant the request having taken into account the existing benefits to the neighbourhood and the interests in the land. Defra are not looking for a 'net benefit' compared to the existing benefits but they do have to take these factors into account. Therefore, if you feel there is a benefit to the neighbourhood or the private interests it is important that this is made clear, preferably with support from those concerned, so it can be taken into account.

4) Shortlist the options that appear feasible and are worth presenting as potential solutions.

Draw Stage 3 to a close by using a short-listing process whereby each option identified at the start is evaluated. The best options are obviously those with the greatest benefits and fewest drawbacks identified by all stakeholders.

By the end of this stage there needs to be a clear idea of the advantages and disadvantages of each of the option(s) worthy of further exploration, before moving on to the consensus building exercise in Stage 4.

Table 2 – Researching the management options, worked example: *Nether Topping Common*

Broad Management Aim: maintenance of open grassland conditions, and prevention of scrub encroachment. Note this worked example is the product of lengthy discussions and the result of possibly 3 or 4 months work, there would be a considerable amount of work supporting each set of ✓ or ×. The comments are meant to give a flavour of this.

Stakeholder Areas of Interests	Evaluation	Management Options and Implications						Comment
		Grazing	Burning	Mowing	Turf Stripping	Selective Felling	Do Nothing	
Agriculture	<i>There are no active commoners although of 14 right holders, 3 have expressed willingness to graze sheep.</i>	✓✓	× ₂	×	×	×	×××	1 type / number of stock & timing of grazing to be agreed 2 might benefit grazing
Nature Conservation	<i>See site objectives. Notified SSSI for chalk flora and invertebrates. Part of Topping Hills cSAC.</i>	✓✓✓ ₁	✓✓ ₃	✓✓ ₅	✓✓	✓✓	×××	3 agree area and timing of burn 4 safety issues to be checked
History/ Tradition	<i>"Topping Downs" first recorded 1279, and managed for sheep until mid 20 century</i>	✓✓✓	××	×	×	×	×××	5 type of machinery is critical
Landscape	<i>Site comprises mixed chalk grass-scrub landscape, with establishing birch woodland</i>	✓✓	×	✓	× ₆	✓	××	6 short-term impact on landscape and access, will improve
Archaeology	<i>Bronze-age barrows (overgrown) and undated field boundaries (possibly iron age)</i>	✓✓	✓	✓	×××	✓✓	××	7 impact on access during work
Access	<i>c 100 visitors daily, mainly villagers, and in summer from nearby town Topping Magna</i>		✓ ₄	✓✓	× ₆	✓✓✓ ₇	××	
Recreation	<i>Occasional orienteering. Bridleway on site. Otherwise informal games, model aircraft.</i>		✓	✓✓		✓✓	××	
Game	<i>Visited twice year by foxhounds from Topping hunt. Rough shoot of rabbits.</i>						✓✓	
Community/ Culture	<i>Abuts Nether Topping village, with which it is identified, and is visible from most properties</i>	✓		✓		✓	✓	
Cost Implications		Med	Med	Med	High	High	None	
<p>CONTEXT - Description of Site: 94 hectares of undulating downland and scrub/birch on Lower Chalk and clays, bisected by tributaries of Avon.</p> <p>Current Condition: The SSSI is currently recorded as in "Unfavourable Declining" condition. Certain plants and invertebrates for which the site has been recognised since mid 19th century have not been reported in the last ten years.</p> <p>Recent Changes: Reports from older residents, an account of the common featuring in the Book "Topping History", a painting by Leakey dated 1905, together with a collection of photographs taken in the 1940s, confirm that the site has gradually scrubbed over during the 20th century. Without intervention the site will become scrubby inaccessible woodland during the next 20-50 years.</p>								

Stage 4 – Selecting the most appropriate management option(s)

The most suitable management option should be determined through an inclusive participatory exercise that considers the shortlist of potential solutions. This will clearly vary according to the size of the common and the number of stakeholders involved. On a common involving many complex issues and/or strongly held views, expertise in consensus-building techniques may be necessary. It might be possible to receive some external help, or to seek the involvement of a neutral chairman or facilitator.

Ultimately, what you are looking for is a consensus, or a common purpose, between the various stakeholders regarding the best way forward for the management of the common.

Some Principles of Consensus

- Commit yourself to abide by outcomes
- Be open, honest and build up trust
- Be inclusive at all levels and times
- Have a common information base
- Share responsibility for outcomes and implementation.

(Adapted from Bishop 1996)

1) *Involve all stakeholders, including local residents and interest groups*

There are various approaches that could be used. Consider the range of consultation methods and their advantages and disadvantages: public meetings, one-to-one meetings, open or drop-in days, presentations, public notices, newsletters, site walks, local media, and questionnaires.

Link the type of approach to the stakeholder; for example members of the public might welcome a drop-in day to see what is planned, while the landowner would appreciate a one-to-one meeting.

Note:

- All stakeholders should accept the **equal** relevance of every other interest.
- Whilst some interests may have agreed techniques through which the importance of any site can be evaluated, this is not possible in most cases. Avoid generating conflict by asserting that particular interests are more important than others.
- The overall objective is to accommodate the aims of as many interests as possible whilst causing least possible disadvantage to others.

2) *Analyse the results and make them publicly available.*

Once the various exercises are complete you will need to analyse the results and present them to the public, preferably with assistance from other stakeholders. There may be overwhelming support for the preferred option, qualified agreement provided that some issues are resolved, or little support from stakeholders.

3) *Taking account of these comments*

Be open about the results you received and present a way forward seeking to mitigate unwelcome aspects where possible, providing a further period for comment. If you are close to an agreement, you can proceed to Stage 5; otherwise you need to consider whether to proceed. If you do then prepare a strategy to address the concerns raised, and record any concerns that have not been taken into account, including reasons why. Alternatively you may decide to revisit Stage 2 or 3 and examine different solutions.

4) *Take stock*

Before moving on to Stage 5 it is important to reflect on the lessons learnt from the consultation process. For example, it may be appropriate to prepare a Statement on Agreed Management, which summarises the conclusions reached. Such a document could contain:

- The key areas of concern and agreement identified in Stage 1;
- An outline of the preferred management option and why it was proposed and selected;
- A note of any concerns held by stakeholders about this option;
- The endorsement of stakeholders.

Consideration should also be given to producing a longer term Vision for the common. This may be in the form of a Declaration of Importance and Future Management or the development of a Management Plan that would govern action taken in the pursuit of that vision. (See Good Practice Guide in further reading). This is also a good time to double-check that the chosen option does not fall foul of any of the legislation relevant to the site.

Note:

It may be in some instances that consensus is not achievable. In such cases it is essential to record why a particular management proposal has been adopted and what objections have been made. It may be decided that this option is still considered appropriate and to set these views to one side. Alternatively, it might be appropriate to revisit the other options considered to see if a different solution or compromise is more acceptable and can take some of the objecting views into account. In the case of the latter begin Stage 4 again.

Stage 5 – Implement

Implementation falls into three main areas.

1) Seek any necessary permission

The requirement for various consents and authorisations should have been identified earlier, and this stage may involve simple clarification or confirmation. Where statutory consent is required, such as an application for planning permission, a notice to carry out listed operations on an SSSI, or a Section 194 application, then the various procedures will need to be followed. In relation to s194 applications, the fact that this guidance has been followed will be an important piece of supporting evidence for your submission. Note that for some works several separate permissions may be required, due to the variety of legislation that can apply. Securing permission under one Act does not negate the need to secure permission under others, for example obtaining planning consent does not remove the need to secure approval under s. 194 of the 1925 Law of Property Act should the proposed works include the erection of any building, fence or other work that prevents or impedes access to a common. (See Annex 1).

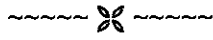
2) Decide and document who does what and when

This is a crucial and often overlooked stage of implementation. It basically changes the written document or plan into a working process. It is important for everyone to see who is responsible for all the different aspects involved, including who makes particular decisions and the associated lines of communication.

3) Implement the agreed management, together with regular monitoring and review.

Now you are able to celebrate implementing the agreed management. Remember to undertake regular monitoring that will demonstrate the impacts, positive and negative, of the works done. Review the results periodically to ensure that the desired outcomes are being achieved. It is sometimes helpful for those who had reservations about particular aspects in this process to be involved in the monitoring and review of management.

Stage 5 is an ongoing process. Agree a point for a major review (e.g. in five years time) when you can share the successes as well as drawbacks of the work done so far. Use this opportunity to share the plans of the key stakeholders for the next five or so years.



Annex 1: Legal Requirements Relating to Common Land in England

The aim of this annex is to highlight any legal requirements that any active management resulting from the general discussions and consultation may require. It should be read in conjunction with Annex 2, which outlines the policy and legal framework for common land in England. Common land legislation also covers Wales but the agencies involved will be different so the resulting processes are also likely to be different.

1. Applications under the Law of Property Act 1925, section 194 for the Secretary of State's consent to undertake works on common land.

Under section 194 of this Act consent is required from the Secretary of State for any works or fencing which prevent or impede access to land that was subject to rights of common on the first of January 1926. Where works are erected illegally the local authority or owners can apply to the county court under section 194(2) to have them removed.

You are advised to speak with the Common Land Branch, Defra, based in Bristol. (www.defra.gov.uk)

However there are three stages to an application:

STAGE 1 - What to do before an application is submitted:

- Consult with interested parties, and seek to get a consensus on the works proposed [In essence if you have undertaken this Code of Practice you are more likely to achieve consensus.]
- Consider whether planning permission is required. [Defra advise applicants to obtain this first] Please note that obtaining planning permission for work on a common does NOT remove the need to apply for Secretary of State permission.

It is a legal requirement for the proposed works to be advertised and the local authorities to be informed. [Defra offer guidance on wording etc.]

STAGE 2 - Submitting an application

- The forms can be downloaded from the websites above together with guidance notes on how to complete them. [They must be completed in full together with maps, extracts from the commons registers and a copy of the published advertisement.]
- On receipt of the application, Defra will circulate it to consultees such as English Nature. [Involve these organisations beforehand as outlined in the Code of Practice. Defra now require that you notify the Open Spaces Society of any application]
- You will receive any correspondence and have a chance to respond. The Case Officer may also ask for additional information.
- Most cases are decided after the exchange of written representations between the applicant and interested parties. There are however circumstances where a local inquiry will be held. In such cases an inspector from the Planning Inspectorate will be appointed to take the inquiry and provide a written report and recommendations to the Secretary of State.

STAGE 3 - The decision

- The decision has to take into account "the benefit of the neighbourhood" and the "private interests" in the land.
 - Benefit of the neighbourhood is defined as the health comfort or 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 decision, in the form of a letter, will be communicated to the applicant and copied to all interested parties.

If successful it is very important to ensure that the works carried out are consistent with the consent received and the channels of communication opened up during the consultation period are maintained.

2. Management operations on an SSSI.

Where the common has been wholly or partial designated a Site of Special Scientific Site Interest (SSSI) English Nature need to be consulted before carrying out any activities specified in the notification. It is best to be on the side of caution and consult them about all management work on a designated common. Further information is contained on www.english-nature.org.uk/special/sssi.

3. Management operation on a SAM

Where the common has been wholly or partial designated a Scheduled Ancient Monument (SAM) then English Heritage need to be consulted before any management is undertaken. SAMS are designated to protect sites against disturbance and from metal detecting. Any management operations that are likely to disturb the soil in and around the designated area will require consent from EH. Further information is contained on www.english-heritage.org.uk, following 'conserving historic places' icon.

4. Management impacting on a water course/body

Should any proposed management have an impact on or be close to a watercourse or area of water it is important to consult with the Environment Agency. For further details see www.environment-agency.gov.uk and follow the icon for 'business and industry' for further details of your legal obligations.

5. Obtaining a Felling Licence

If the management proposed requires the felling of trees it is likely that a felling licence is required. These are obtained from the Forestry Commission. It is the responsibility of those undertaking the felling or engaging other to do the work to ensure that the appropriate authority has been secured before any felling takes place. Full details of the exceptions and the procedure are contained in the booklet 'Tree felling – getting permission' available from any Forestry Commission Conservancy Office. For more details see www.forestry.gov.uk/planting.

Annex 2: The policy and legal framework for common land (including reference to further reading, support and advice).

Note – this section is not definitive, but sets out to give a good starting point.

Legal mechanisms relating to common land

Local Acts 1844 to 2002

Such Acts are numerous, the earliest example being the Southampton Marsh Act 1844 and the most recent example the Greenham and Crookham Commons Act 2002.

Commons Act 1876

Commons Act 1899

The 1899 Act permits district councils to manage and improve commons in the interests of public access and recreation while preserving the rights of commoners. Generally used where rights of common are no longer exercised but the common remains a locally important area of open space. The Act enables a scheme to be formulated by the district council, including the power to enact byelaws to regulate behaviour on the common. Schemes of regulations under both the 1876 and 1899 Acts may apply, as may Section 22 of the 1899 Act.

Open Spaces Act 1906

The Act enables local authorities to purchase open space in the interests of recreation. Under section 10 of the Act, such land must be kept open for public recreation.

National Trust Acts 1907 to 1971

Only applicable to commons owned by the National Trust. Under section 29 of the 1907 Act, the land must (subject to certain permitted works) be kept unenclosed and un-built upon and remain as open space for public recreation and enjoyment. The vast majority of commons owned by the National Trust have been declared inalienable, that is to say a third party may not acquire them. Under the Acts (1907-1971), there may also be open access over the area owned and/or byelaws to control public behaviour. In addition there is considerable scope for powers for the management of commons including, under a recent judgment, the power to fence and undertake other works with consent from the Secretary of State.

Commons Act 1908

Allows the commoners to supervise the grazing of uncastrated animals, the supervision being funded through a levy. The Act requires that a committee be established to enforce the agreed Regulations.

Law of Property Act 1925

Where common land is subject to an open right of access under section 193 of this Act, certain 'orders of limitation' may prohibit certain activities such as the playing of golf by non-members. However, section 193 of the Act makes it a criminal offence for the public to drive, camp or light fires on the common.

Under section 194 of the Act, the Secretary of State's consent is required for the erection of any building, fence or other work that prevents or impedes access. If something is erected without the necessary consent, a county or district council or person with an interest in the common can apply to the county court for an order for the removal of the unauthorised erection and the restoration of the land. For details on how to apply to the Secretary of State see Legal Requirements section above (Annex 1)

Countryside and Rights of Way Act 2000

This Act will introduce an open right of access to all registered common land, as well as mountain, moor and heath, in 2005. Section 68 of this Act also addresses the problems related to vehicular access over common land. Section 2 of the Act also strengthens the powers of the Government in relation to the management of sites designated for their nature conservation value. (See article in *British Wildlife* by Phillips M and Huggett D, April 2001, p 237-243)

Public Health Act 1871

Metropolitan Commons Act 1866

Inclosure Act 1845, Section 147

Acquisition of Land Act 1889, Section 19

Commons may be purchased by local authorities under the Local Government Act 1972, the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968, the Wildlife and Countryside Act 1981, or individual County Council Acts. Chobham Common was purchased in 1968 by Surrey County Council under the Surrey County Council Act 1931. There is also special legislation related to the Metropolitan Commons Act, which applies to certain commons around London. (See further reading.)

European Directives

There are now obligations under European legislation that will impact on the management of commons, where they are designated as Special Protection Areas (under the Birds Directive 79/409/EEC) or Special Areas of Conservation (under the Habitats and Species Directive 92/43/EEC). The obligation is on Member States to maintain or restore the specified interests of designated sites.

Further reading, advice and support

Uhbi N and Denyer Green B (2004) *Law of Commons and Towns and Village Greens*. Bristol. Jordans.

Offers a practical explanation of the law, comprehensively covering a wide range of issues from the classification of common land to its regulation and management. It will also include the key legislative materials. There is currently no other legal work dedicated solely to common land.

Common Land Forum (1986) *The report of the Common Land Forum*, Cheltenham: Countryside Commission, CCP215. [Report of the lengthy discussion regarding the future of common land between 1984 and 1986.]

Countryside Commission (1990) *Common Knowledge?*, Cheltenham: Countryside Commission, CCP281. [Figures and maps on distribution of common land by county.]

Clayden P (2003) *Our Common Land: The Law and History of Commons and Village Greens*, Henley-on-Thames: The Open Spaces Society. [General background reading relating to the law and history of commons and village greens now in its fifth edition.]

Defra (2000) *Better Management of Commons - Consultation Paper*, London: Defra.

Defra (2002) *Common Land Policy Statement*, July 2002, London: Defra

Defra (2003) Consultation on agricultural use and management of commons, London: Defra

[Defra website aimed at providing information about commons and the latest news relating to consultation documents etc. www.defra.gov.uk/wildlife-countryside/issues/common/index.htm]

DETR (1998) *Good Practice Guide on Managing the Use of Common Land* London: DETR. [Reference guide to assist managers of and those interested in common land, including template for a management plan. Copies available via Defra Bristol office 0117 3728000]

Denman DR, Roberts RA and Smith HJF (1967) *Commons and Village Greens*, London: Leonard Hill. History of common land.

Department of the Environment, Transport and the Regions (2000) *Biological Review of Common Land*, Bristol: DETR. Research on a county by county basis of all common land over 1 hectare in size.

English Nature (1999) *Unravelling the Mysteries*
[Booklet aimed at nature conservation managers outlining the importance of common land.]

Gadsden G (2004) *The Law of Commons*, London: Sweet & Maxwell. [Legal text covering the law surrounding common land, in its second edition]

Hoskins WG and Stamp D (1963) *The Common Land of England and Wales*, London: Collins. History of common land.

Open Spaces Society (2004) *Buildings, Fencing or other Works on Common Land*, Henley-on-Thames, The Open Spaces Society.

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Consensus Building Sources

Acland, A.F. (1992) *Consensus-Building: How to Reach Agreement by Consensus in Multi-Party, Multi-Issue Situations* (London, The Environment Council).

Etchell, C. (ed) (1996) *Consensus in the Countryside: Reaching Shared Agreement in Policy, Planning and Management*, Proceedings from a workshop (Cardiff, Countryside Recreation Network). [Available from www.countryside-recreation.org.uk/publications.asp]

Healey, P. (1998) Collaborative planning in a stakeholder society, *Town Planning Review*, 69(1), pp. 1-21.

Wilcox, D. (1994) *The Guide to Effective Participation* (Delta Press, Brighton).

