



PRESS RELEASE

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Rush Films' proposal to film at Blackbushe

The Yateley Society is sympathetic to Rush Films' proposal to construct a temporary film set at Blackbushe, but we cannot see how this can be done legally and lawfully within the filming schedule set out in their planning application to Hart District Council. Blackbushe is part of Yateley Common which has layer upon layer of environmental protections. At a public meeting called by Rush Films last Friday, Peter Tipton, spokesman for the Society, outlined six permissions required if set construction and filming were to take place. In fact Peter had missed one permission, and there are seven. Several of these seven have consent procedures set out in law, and take considerable time to be processed by the various authorities who administer them. It is not just a matter of rushing through a normal planning application.

When the Society's trustees met on Monday they could not believe how little time had been allocated by Rush Films to secure planning permission, and why they had not been advised how long it would take to secure the permissions attached to each layer of environmental protection. Trustee Philip Todd remarked "If only they had started months ago we could have helped them through each step of the various processes."

Despite the attractions of filming locally several trustees endorsed County Councillor Adrian Collett's remarks at the Friday meeting that we must do everything possible to make sure the *Special Protection Area for Wild Birds* is protected, by rigorous adherence to the procedures set out in the European Directives. The Society must continue to support the decisions made by Natural England, as the "competent national authority."

Even if Rush Films abandons its plans to film at Blackbushe the seed has been sown that Blackbushe is an attractive filming location. In 1985 BCA was granted planning permission to transfer its auction site to Blackbushe only on the condition that 138 acres of registered common land, including the proposed filming site, would be transferred to a public trust. BCA and the County Council have been wrangling over the terms of the trust for 25 years. If only a procedure could be set up in advance to secure permissions to film outside the nesting season income could be secured to fund the public trust to bring the SPA up from its present status of "*Unfavourable - Declining*" to become at least as good as those parts of Yateley Common well managed by Hampshire County Council Rangers, and by Hampshire Wildlife Trust.

NOTES FOR EDITORS:

1. The Yateley Society is a registered charity inaugurated in 1981 as a Civic Trust with its *area of benefit* as Yateley Civil Parish. It has four charitable *object clauses* including one seeking better development planning outcomes for Yateley and another seeking to protect its biodiversity, particularly the lowland heath of Yateley Common and its rare species.
2. The seven permissions required by Rush Films are:
 - 1) permission from the owner, British Car Auctions;
 - 2) planning permission from Hart District Council, as the Local Planning Authority;
 - 3) agreement from Natural England that the plan or project will not significantly affect a “European Site”, that is the Thames Basin Heaths Special Protection Area for Wild Birds;
 - 4) agreement from Natural England that the Castle Bottom to Yateley and Hawley Commons SSSI will not be adversely affected;
 - 5) agreement from Natural England to enclose temporarily the area of “open access land” designated under the Countryside and Rights of Way Act 2000;
 - 6) permission from Hampshire County Council to block one or more rights of way
 - 7) permission from the Secretary of State for the Environment to enclose common land temporarily.
3. The current conservation status of Unit 7 of the Castle Bottom to Yateley and Hawley Commons SSSI is “unfavourable - declining”. Other units managed by Hampshire County Council and Hampshire Wildlife Trust are “Unfavourable - recovering”.
4. Unit 7 of the SSSI, which wraps round the disused runways and perimeter track of the old airport coming right up to the tarmac, is designated a Special Protection Area for Wild Birds (SPA) governed at the highest level by the EU Wild Birds Directive. The original Directive issued as 79/409/EEC of 2 April 1979 has been substantially amended several times. In the interests of clarity and rationality the Wild Birds Directive has been codified and issued as Directive 2009/147/EC of the European Parliament and of the Council dated 30 November 2009.
5. All plans and projects which may in any way affect an SPA are governed at the highest level by Article 6 of the EU Habitats Directive 92/43/EEC of 22 May 1992. This Directive has been brought into UK law by a succession of Statutory Instruments since 1994 and is currently regulated by the Conservation of Habitats and Species Regulations 2010, and the similarly named amendment regulations of 2011. Recently amendments of the regulations have been necessary on an annual basis because of amendment to the EU Directives and because of case law.
6. Sites designated under the EU Habitats Directive are called “European Sites” in European Law and “International Sites” in English Law. It is not surprising that

members of the public are not aware that they may be entering a *European or International Site* since there are no notices around the site to inform them.

7. An SPA must originally have been designated as an SSSI. Therefore an SPA is also regulated by the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000 (CROW). The latter amends the former but also brought into law the concept of "Open Access Land" commonly referred to as the "right to roam".
8. Thus an SPA is regulated by laws emanating from the European Union, an SSSIs and Open Access Land are regulated by original UK laws. They are all regulated by Natural England but probably, because of their different legal origins, each are regulated by different parts of Natural England, and to some extent require application to separate departments of Natural England.
9. Just as an SPA has its origins in lands designated SSSI, so that part of the SSSI encompassing Yateley Common, and so designated because it is a rare survival of lowland heath, has its origins in having been designated Common Land, otherwise known as "waste of the manor" since "time immemorial". Time immemorial is legally designated as 1189, although recent archaeological investigations indicate that Yateley Common was in use in palaeolithic period perhaps 6 or 7 millennia before Christ.
10. Common land has been regulated by a succession of acts of parliament for the last 150 years. An attempt was made by the 1965 Act to register all Common Land and rights. A recent attempt was made to consolidate all laws relating to Common Land by the Commons Act 2006, but not all clauses of this act have yet been brought into force.
11. Enclosure of Common Land is controlled by s.38(1) of the Commons Act 2006. "A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies." The Secretary of State for Environment, Food and Rural Affairs now operates the decision making process through the Planning Inspectorate. In making his decision the Inspector must have regard to nature conservation, the conservation of the landscape, and the protection of public rights of access to any area of land. These constraints are very similar to those factors which the Local Planning Authority and Natural England must take into account when making decisions on planning applications and on "open access land." It makes good sense therefore for planning applications, such as those at Blackbushe, to be called-in by the Secretary of State for Communities and Local Government so that a single Inspector can hear all three Inquiries concurrently.
12. Considering the complexities of the matters at stake raised by this planning application by Rush Films the Society expects that if the planning application is approved by Hart District Council without an Environmental Impact Assessment accepted by Natural England as providing categorical evidence that no harm will come to the SPA/SSSI then this application will be called in for a full Public Inquiry. Our conclusion therefore is the impossibility of meeting Rush Films' production schedule.
13. If the development planning matters can be satisfactorily resolved, but no application is made under s.38 of the Commons Act 2006 then the structures and fencing will still

remain unlawful. In that case s.41 of the Commons Act 2006 provides the means of enforcement. "Any person" may apply to the County Court for removal of the works and restoration of the land to the condition it was in before the works were carried out. In such a case Rush Films lay themselves open to the risk of starting production but having to abort, perhaps at just the time when alternative locations are no longer available.

14. As trustees of a registered charity instituted to conserve and improve the biological diversity of the ecosystems of Yateley Common, the Society's Executive has a legal duty to support the expert advice of Natural England, and to assist Hampshire County Council and Hampshire Wildlife Trust in their efforts to improve the conservation status of the SPA/SSSI. The trustees also have a duty to try to explain the complexities of environment protection laws to others.