

# Open Space

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Campaigning since  
**1865**

# Open Space

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## Cover story

The Edale valley from Hollins Cross, looking to Grindslow Knoll and the Pennine Way in the Peak District National Park, both offspring of the National Parks and Access to the Countryside Act 1949 whose seventieth anniversary we are celebrating. The Glover review proposes a step up for national parks and areas of outstanding natural beauty (see page 3). Photo: Youth Hostels Association.



## Bullies beware!

**Through our 154-year history, the Open Spaces Society has developed a proud record of legal action. We fought the enclosures, and defended commoners' rights; we have tested the law in the courts many times. We have suffered losses, but we also have landmark victories to our name.**

One such victory was our challenge to Dorset Council's decision to deregister part of Leigh Common to allow development (page 7). The council said, wrongly, that as the land was part of the highway it should not have been registered as common.

### Unimpressed

We threatened court action and the council backed down, but one of the developers, BDW Trading Ltd (part of Barratt Developments plc), refused to concede. We were granted permission for judicial review by a judge who was 'unimpressed by the bullying tone of the correspondence from BDW'. A month before the high court hearing BDW, no doubt swayed by the excellent arguments from our counsel, offered to settle.

The point was perhaps arcane and the area of land small, but the result is significant. If Dorset and BDW had succeeded, councils throughout England and Wales would have been encouraged to deregister pieces of highway which had been registered as common land, opening the door to development. We trust that our action has put a stop to that practice.

Nevertheless, local people up and down the country are bullied by developers who want to grab their open spaces. We help where we can but there is often no legal solution.

Once land in England has been identified for development it is too late to record rights of use by registering it as a village green. (In Wales, thanks to our efforts, it is not too late until planning permission is actually granted.) It is therefore vital to identify potential greens *before* the land is threatened.

### Comfort

Some comfort comes from the recent report of the English landscapes review, led by Julian Glover (see page 3). It calls for the areas of outstanding natural beauty (AONBS), many of which are under great development pressure, to be made statutory consultees in the planning system. We also welcome its proposals for more national parks—first off, the Chilterns, Cotswolds, Dorset, and East Devon AONBS.

Without suggesting anything specific, Glover calls for greater links between people and their natural spaces close to home—as demonstrated by the London National Park City. This all helps to show the importance of local green spaces to people's lives.

The Glover recommendations offer a real step up for England's landscapes and the ability of people to discover and enjoy them. Government must act on this report.

**KJA**

# 1949 and all that: part 3

This is our third article celebrating 70 years of the National Parks and Access to the Countryside Act 1949.

**In the previous two articles we told how the 1949 act gave us national parks, areas of outstanding natural beauty (AONBs), and definitive maps of public paths, among other things. It also introduced long-distance paths (now national trails) and took some faltering steps towards greater public access.**

Long-distance paths had been recommended by the committee, chaired by Arthur Hobhouse, in 1947 which declared (para 300): 'We also attach importance to the provision of long-distance paths and bridleways in and between National Parks ... . There should be continuous routes which will enable walkers and riders to travel the length and breadth of the parks, moving as little as possible on the motor roads.'

## Listed routes

The Hobhouse subcommittee on footpaths and access took up the idea, listing routes which today we recognise as the Pennine Way, Ridgeway, Offa's Dyke and others, as well as a coastal path (achieved in Wales in 2012 and to be completed around England by 2020). It recommended that the proposed National Parks Commission should take responsibility for drawing up plans for routes and grant-aiding local authorities for their creation. This far-sighted project has proved a success although today, in the age of austerity, long-term funding and sustainability are problems.

Conversely, the access provisions of the act were a failure. By 1949 it had been established in law that one could not claim a right to roam through long use,

and there was little legislation providing for access beyond section 193 of the Law of Property Act 1925, which gave the public the right to walk and ride on certain commons.

The voluntary bodies had long campaigned for freedom to roam on uncultivated land and were delighted when the Hobhouse subcommittee recommended 'a simple and comprehensive machinery for obtaining access to uncultivated land'. However, the provisions were so diluted in the 1949 bill as to be useless. This was because the government caved in to landowners and farmers: it was the government's policy to appease and subsidise farmers.

The act placed a duty on every local planning authority, within two years of commencement, to review what land in its area fell within the act's definition of 'open country' (ie mountain, moor, heath, down, cliff or foreshore) and decide whether it should take any action by making access agreements or access orders there. Few authorities carried out the review and only a handful even considered making agreements or orders.

*Cleveland Way national trail.*



Fifty years on, the right-to-roam campaigners used this failure to demonstrate to a dithering government that voluntary access provisions do not work. This is how we won the Countryside and Rights of Way Act 2000, which gave the public legal access to mapped open country, although on downland this was far too limited.

So we celebrate the 1949 act for giving us our wonderful national parks, AONBS,

national nature reserves, definitive maps of rights of way and long-distance paths—but we also note its flaws, the result of official timidity and of landowners' hostility, which we are still trying to rectify.

*A longer version of this article by Kate Ashbrook appeared in Winter Waymark 2018/2019. Waymark is the journal of the Institute of Public Rights of Way and Access Management.* □

## A hand up from Glover

The report of the English landscapes review, led by Julian Glover, was published on 21 September. We submitted evidence last year.

The review covered national parks and AONBS. It recognises the great importance of these landscapes and the affection for them, while noting that their founding mission has been eroded, and that they lack a common ambition.

There are 27 proposals. Held to account by a new National Landscape Service (NLS) with a small board, national parks and AONBS should be closely aligned. They should share the same purposes, to include nature recovery and enhancement, and connections with all parts of society. A new, third purpose should be to 'foster the economic and community vitality of their area in support of the first two purposes'.

### Central place

National landscapes should have a central place in the new environmental land management scheme for agricultural grants, and AONBS should have statutory consultee status in the planning system.

The recommendation, that every child in Britain must spend a night under the stars, was the eye-catching headline. However, proposals for people include a 1,000-strong, professional ranger service for the national landscapes; new long-term programmes to increase the ethnic

diversity of visitors; greater open-access rights; and inclusion of national trails within the NLS.

The process for designating national landscapes should be simplified. The Chilterns, Cotswolds, Dorset, and East Devon AONBS should be national parks, and other places should be designated.

There are proposed changes to governance, to be driven by the NLS.



*Ullscarf in the Lake District National Park. Photo: Ian Brodie.*

These include: fewer and more diverse members on boards, ambitious management plans for nature, people and communities, and a new financial model with more money for national landscapes.

We should have liked a recommendation for properly—enforced speed limits on unfenced roads across commons, to ensure grazing can thrive there—but generally we welcome the report. Now we must ensure that government acts—so a campaign is needed. □



## Finding lost commons

**Frances Kerner, our commons re-registration officer (funded by the Candy bequest), writes of her work to discover lost commons.**

I am looking for commons which are eligible for registration under part 1 of the Commons Act 2006. There are three elements to my research.

First, the circumstances of a common's provisional registration under the Commons Registration Act 1965 must be checked. This is to determine whether the reason for refusing to confirm the provisional registration meets the criteria in paragraph 4 of schedule 2 to the Commons Act 2006 (that the registration was cancelled in certain circumstances). I have started in Lancashire and Hertfordshire, and find that many commons that were not finally registered meet these criteria.

### Historical research

Having established that the common is eligible for re-registration, the second part of my work is to undertake historical research to determine whether the land was formerly waste land of the manor.

With many historical sources now online it is possible to cover some of this research at a desk. Eventually however, I need to visit at least one of the three main places where manorial documents are deposited (some are held privately or in other repositories). These are the National Archives, the British Library and the record office serving a county. Where manorial documents survive, they provide the best evidence in support of an application. I copy relevant documents to

submit as evidence when I make an application for re-registration.

The third and final part of the research is to check on the ground that the land has the physical characteristics of waste land, and to take photographs for the application. The land must be 'open, uncultivated and unoccupied'. In the context of the work I am doing these descriptors all have specific definitions. This means that in practice, determining whether the land meets the physical criteria is not always straightforward and sometimes necessitates a follow-up discussion with colleagues at the society.

I am working on several applications for commons, which are at different stages. For example, historical research into the provisional registration of a large area of land in Lancashire is ongoing following a site visit, and other areas will be visited in the near future. Two applications for re-registration of commons in Hertfordshire have been submitted to the commons registration authority. The first is for land at Batchworth Heath which

*One of four parts of land at Northchurch and Berkhamsted Common, Hertfordshire, submitted for re-registration.*





*Broadmoor Common , Herefordshire: scheme (left), commons register (right).*

was omitted from the final registration of the heath in 1970. Similarly, the second is for four parts of Northchurch and Berkhamsted Common which were omitted from the final registration of the common in 1981.

### Working through archives

*Richard Sanders of Landman consultants writes:* Since I started work for the society in January, I have focused on researching land which appears eligible to be registered as common land or village green under paragraph 2 of schedule 2 of the Commons Act 2006.

This means working through the society's large historical archive, and sometimes documents held in the National Archives, and comparing (a) the original plans that were used for schemes, provisional orders and deeds made under the Commons Act 1876 and subsequent acts of parliament to (b) plans held in the current commons registers.

One of the most interesting challenges is comparing with current Ordnance Survey maps what may be hand-drawn maps from around the 1900s and those from the 1960s or 70s on which the common registers are based. I use the most up-to-date digital-mapping software and the geographic information system (GIS) to speed up this comparison, but when I identify discrepancies that require further investigation, we need a site visit by an OSS representative.

One of the first applications I submitted was for part of Broadmoor Common, in Herefordshire, which is subject to a scheme of regulation and management under the Commons Act 1899, and where there are significant discrepancies between the scheme map and the map held by the registration authority, an example of which is shown above.

An application to register this area is now with Herefordshire Council and may go to a hearing.

### Successes in Cornwall

Meanwhile, in Cornwall, our consultant Tomas Hill has re-registered three commons: the half-hectare Viscar Common in Wendron; Cosgarne or Twelveheads Common near Chacewater, and Maenporth Beach at Falmouth. At Maenporth the inspector overruled an objection from the Prince of Wales (Duke of Cornwall), and agreed to register the whole beach except for a small part above the high-water mark. □

*Maenporth Beach. Photo: © N Chadwick, Creative Commons Licence.*



# From darkest Peru

Last summer our general secretary went to an international commons conference in Lima, Peru.

**For the past decade the society has attended the global conferences organised by the International Association for the Study of the Commons.**

Here we have endeavoured to instil a recognition of the importance of collective action and campaigning in the minds of academics. We are making progress: the Lima conference was called 'In defence of the commons'.

## Shared resources

'Commons' in the global sense are not only land but shared resources—water, air, the internet for instance. Our commons, with their special laws and history, are unique and widely respected.

The society was the first winner of the Elinor Ostrom award for practitioners (named after the great commons scholar). I presented the award, for which I had been one of the judges, to Liliana Pechene Muelas, an exceptional 34-year-old leader of the Misak indigenous people in Colombia. She has worked collaboratively to assert indigenous collective rights under Colombian law.

*Left: Kate Ashbrook presents the Elinor Ostrom award to Liliana Muelas. Right: statue of Paddington Bear in Miraflores, Lima.*



I joined a workshop organised by the Foundation for Ecological Security, a non-governmental body in India, to advise on its campaign 'Promise of the commons'. This aims to persuade the government to recognise the full extent of India's commons, which are of vital importance to its people. I presented papers at a workshop of academics and practitioners on conflict and conciliation on the commons; and on a panel debating public access and property rights in Japan, the USA, Norway and the UK.

On a day out with local campaigners I visited the *Lomas de Jatosisa*, a unique ecosystem on the hillsides to the south-east of Lima. The *Lomas* depends on the humid winter and constant fog for survival. It is a crucial buffer against flooding from the west but, disastrously, local and national governments are allowing development and industry to destroy it.

I do not recommend Lima in June, despite being only 12 degrees south of the Equator it is notoriously cool, humid and foggy. No wonder Paddington Bear wears a duffle coat. □





## Leigh Common saved Through court action the society has saved part of Leigh Common from developers.

Leigh Common is a nine-hectare woodland and grassland nature reserve in Colehill, near Wimborne in Dorset. As explained in previous editions of *Open Space* (spring 2019 page 9 and summer 2019 page 7), Dorset County Council (now Dorset Council) had agreed to an application from developers to deregister strips of the common which were said to be part of the highway adjoining Leigh Road, on the grounds that the council had made a mistake in 1967. When threatened with court action from the society, which argued that the council had made no mistake, it backed down.

However, one of the developers, BDW Trading Ltd, refused to accept the council's decision and decided to fight the matter in court.

### Obliged

The society was therefore obliged to apply to the high court for permission to bring an action for judicial review. BDW told the court that the society's application for leave was 'hopeless' and opposed our bid for a costs-capping order under the Aarhus rules on environmental litigation, but failed to address our key point: that no mistake had been made by the council in registering the land in 1967.

High court judge Mrs Justice Andrews DBE granted permission for judicial review, saying she was 'unimpressed by the bullying tone of the correspondence from BDW'. She granted a costs cap, describing it as 'plainly an Aarhus case'

and the society 'a paradigm example of the type of claimant who should be afforded costs protection in cases of this nature'.

Finally, less than a month before the high court hearing, having seen the society's admirable skeleton argument, prepared by George Laurence QC and barrister Ross Crail, BDW offered to settle.

After negotiation, BDW has agreed to the council's decisions being quashed, as we had originally sought, and to pay most of our costs (the council will also contribute). As part of the deal, we have agreed not to oppose a potential application for consent under section 38 of the Commons Act 2006 for a short section of cycle track on the south side of Leigh Road, to link sections of cycle track already authorised.

This is a major victory for the society. There are many commons in England which are partly or wholly highway land and, had BDW's view prevailed, it could have led to local authorities deregistering land all over the country and opening it up to development. We now expect other

*The common alongside Leigh Road, saved by the society. Photo: Google.*



local authorities to take note that the status of land as highway is not a reason for deregistration. If they don't, we shall see them in court.

### The meaning of 'curtilage'

Planning inspector Alan Beckett has granted the deregistration of 46 hectares of Blackbushe aerodrome on Yateley Common in Hampshire.

Much of the common was requisitioned as an aerodrome during the Second World War. A terminal building and three runways were laid out there. Derequisioning lapsed in 1960 and the site was acquired and reopened in 1962 as a private aerodrome. The terminal building remained lawful, buildings and structures erected subsequently were not.

### Deregister

In November 2016, Blackbushe Airport Ltd (BAL) applied to deregister as common the whole of the present aerodrome (much reduced in size from the original military airfield). The application, to Hampshire County Council (HCC), was made under the Commons Act 2006 (schedule 2, paragraph 6), on the basis that the land was 'covered by a building or within the curtilage of a building'. It was referred to the Planning Inspectorate because of an objection by commoner (and society member) Peter Tipton.

The inspector held a four-day inquiry in April. BAL, the society and HCC were represented by counsel—in our case, Philip Petchey.

BAL's argument was deceptively simple, if breathtakingly audacious. It argued that the entire airfield was the curtilage of the terminal building. In response, the society traced the confusing history of the use of the term 'curtilage' in legislation. We argued that parliament had intended curtilage in the 2006 Act to have the meaning used in conveyancing, ie a small



*Philip Petchey inspects the Blackbushe aerodrome boundary. This is alleged to be curtilage of the terminal building (in circle), 1,050 metres away.*

piece of land, part and parcel with the building and ancillary to it. A 46-hectare airfield could not, on any definition, form the curtilage of a terminal building.

The inspector rejected our submissions on the meaning of curtilage. 'Given the extent to which this subject has occupied the mind of the courts it appears that there is no hard and fast definition of curtilage'. He found that the operational area of the airport formed the curtilage of the terminal building. He did not address Peter Tipton's submissions that deregistration would deprive him of use of his common rights, in breach of the protection for property rights enshrined in the Human Rights Act 1998. He granted the application.

### Vexed

We are disappointed. How can a 46-hectare airfield be curtilage of a terminal building, any more than a railway station might be curtilage of the signal box? The meaning of curtilage has vexed the courts on many occasions, and has yet to acquire a settled meaning. A challenge could take us to the supreme court, and involve the interpretation of a term which has much wider use and importance in the planning field. HCC has filed its own application for leave to seek judicial review, which we shall follow closely. We wish it well. □



## Hangings Hill fence goes

Nottinghamshire County Council has persuaded a householder to remove an unlawful fence from Hanging Hill Lane common, Normanton-on-Trent. We urged the council to act after the environment secretary rejected a retrospective application for works on common land.

The common is a long strip, consisting of Hanging Hill Lane and a broad verge on either side. The verges are used by walkers and for access to adjoining fields. The one-metre-high iron railings enclosed 15 square metres, preventing public access and privatising the land.

Mr Andrew Winfrow, the occupant of the adjoining property 1 Skegby Manor Cottage, erected the fence and then applied retrospectively for permission to retain it for ten years. The society, Natural England and a number of individuals objected.

The inspector, Richard Holland, refused consent for the fence. We then

*The iron fencing around the common (the green patch) has been removed.*



approached Nottinghamshire County Council, which had successfully persuaded a previous owner to remove a similar unlawful fence in 2015, and asked it to ensure the fence was taken down.

Thanks to the council's efforts, the fencing has gone although the concrete footings remain. While congratulating Nottinghamshire County Council for its persistence, we hope it keeps a vigilant eye here because this common has twice been enclosed with unlawful fencing.

## Knutsford Heath protected

The Tatton Estate, owner of Knutsford Heath common in Cheshire East, has signed an agreement with Knutsford Town Council and the Friends of the Heath (an Open Spaces Society member) to provide guidelines for the use of the Heath for events.

These became necessary after TV chef Tom Kerridge planned to present 'Pub in the Park', a posh-food festival, on the Heath in September 2018. The society and the friends opposed this because it would have interfered with public access, deprived local people of the use of part of the Heath for ten days and involved possibly-unlawful enclosure.

Much to our relief, the organisers backed down because of the legal difficulties.

The new guidelines recognise the fragility of the Heath as a living ecosystem. The principles include an exhortation that events are limited in size and duration, so as not to deprive people of their right to use the Heath; the planning of major events should include wide consultation, and income generated from an event should be used to repair



*Maypole dancing on Knutsford Heath, Cheshire East. Photo: Kevin Griffiths.*

any damage, with the remainder invested in the maintenance and improvement of the Heath. This is a fine example to others.

### **Lambeth bows to pressure**

Such guidelines would be useful in Lambeth. The borough council has insisted that it has powers to permit 'temporary' structures, however large, in its parks and open spaces, without the environment secretary's consent under the Greater London Parks and Open Spaces Order 1967.

Local amenity groups, supported by the society, obtained a legal opinion that consent is needed for all structures. As a result, the council has agreed to consult and seek permission in future—but only on Clapham Common. We must ensure

*Clapham Common after the South West 4 festival in 2014.*



that it adopts the same policy for other open spaces such as Brockwell Park and Streatham Common.

The council has conceded that it will cost a staggering £200,000 to restore the heavily-used, so-called 'events site' on Clapham Common. Frequent exploitation of this supposedly-grassed area for music festivals and other events has reduced parts of the common to a muddy, rutted field and bare earth with a few weeds.

The public has been excluded from the 'events area' for long spells, covering not just the events themselves but the set-up and derigging periods, and then for months while attempts have been made to restore the site—only for this work to have to be repeated the next time the area is used and the same damage occurs.

The council has agreed that one of the most damaging events, Winterville, which has occupied Clapham Common 'events site' for a couple of months in the run-up to Christmas and the New Year, will be moved to a hard-surfaced area.

### **Saddleworth Moor**

Oldham Council has made a public spaces protection order (PSPO), under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014, for Saddleworth Moor, an extensive area of urban common to the east of Manchester. The purpose is to prevent a repetition of the devastating fires there over the last two years.

While we deplore the fires, we objected to the draft PSPO because it was, and remains, sloppily drafted. PSPOs create new criminal offences, so people must be crystal clear about where they apply and what the rules are.

This order relies on a woolly definition of the restricted area where the new offence applies. The order applies to public places which are 'those areas of moorland which consist of access

land...'. While access land has the same meaning as in section 1 of the Countryside and Rights of Way Act 2000, 'moorland' is defined as 'land covered by semi-natural upland vegetation', a vague designation.

The council claims there will be no adverse effect on landowners or businesses, but they will need the written consent of the council to light a fire or a barbeque in the restricted areas.

We were the only objector, and the council has granted the order. It must be reviewed after three years.

## Our AGM

We held our AGM in London on 11 July with 40 members of the society present.

Chris Beney chaired the event. After a ballot, three trustees were elected:

### Tara-Jane steps down

Our newly co-opted trustee, Tara-Jane Sutcliffe, has taken the job of director of the National Trust—on St Helena! She was already making an impact on our board and we are sorry to lose her, but wish her the best of luck with her new career.

Graham Bathe and Phil Wadey (standing again after a year off) and Steve Warr (our treasurer who has completed one three-year term). At the subsequent trustees' meeting, Phil Wadey was elected vice-chairman. John Lavery and Jean Macdonald stood down and we thanked them for their services.

The AGM passed three special resolutions to amend the articles, two were to tidy up the wording, the third was more substantive and extended the terms of trustees to three three-year terms

### AGM 2020

Our AGM next year will be on Thursday 9 July at Friends House, 173 Euston Road, London NW1 2BJ. Note it now.

(instead of two three-year terms) before they are required to stand down for at least a year.

## The Canyons are saved

We are delighted that the popular Canyons, near Pontypool in Torfaen, have been saved from devastation.

The Welsh Minister for Housing and Local Government, Julie James, has refused an appeal from Peakman Ltd for the extraction of aggregates and construction of an access road on Mynydd Llanhilleth Common.

Peakman wanted to deregister part of the common for the access road and to give in exchange an area of boggy, rough, forestry land to the north. It also intended to fence part of the common. Although the public inquiry inspector, Mr Clive Nield, did not reject the common-land applications, they fell with the planning appeal, which was refused largely because it would destroy ancient woodland.

Says our local correspondent Maggie Thomas: 'We fought this development because the Canyons is a popular beauty-spot and a green lung for those living in the nearby towns. While we are sorry that Mr Nield did not give greater weight to the importance of the common, we are delighted that the scheme as a whole has been rejected.'



*The Canyons. Photo: M J Roscoe.*



## We restore Norfolk footpath

**Thanks to the persistence of our local correspondent, Ian Witham a footpath in the parishes of Honing and East Ruston in north Norfolk has been reopened after more than 20 years.**

In 2012 Ian reported to the highway authority, Norfolk County Council, that part of footpath 15 in Honing and 27 in East Ruston was under water from the construction of a fishing lake and obstructed by fencing. The 700-yard footpath runs across part of Honing Common and an area of wetland.

The council took no action. Ian, with our trustees' support, served notice on the council under section 56 of the Highways Act 1980, requiring it to maintain the path. After a number of visits to the magistrates' court, the council agreed to a partial diversion of the route to overcome the incursion by the fishing lake and the lack of a bridge over the Hundred Stream, enabling people to use an old railway bridge.

Now, at last, the route is reopened after more than 20 years of disuse. However, *The reopened path on Honing Common.*



Ian is still pressing the council to ensure that it is well waymarked and that people are encouraged to use it.

Says Ian: 'While our aim was always to seek the opening up of the old, historic route, the new, partially-diverted route offers close views of the old East Ruston Branch of the North Walsham & Dilham Canal (now an anglers' lake); it runs alongside part of the Hundred Stream, and cuts across a beautiful, and otherwise inaccessible, part of Honing Common. This makes a more attractive and interesting alternative to the dismantled railway line that the county council has been—and still is—maintaining, and encouraging the public to use instead.'

Ian has asked the council to incorporate the route in its promoted Honing Lock circular walk; he will keep a close watch on the path—and the council.

## Ask for a date

When appealing to the Planning Inspectorate against a council's refusal to make a definitive map modification order, or its failure to consider an application, remember to ask the inspector to state the date by which the council must comply with any direction, otherwise the matter may continue to be unresolved.

## Diversion gets the raspberry

Sir Edward Milbank of Barningham Park in County Durham has failed in his attempt to divert footpath 18, Raspberry Lane, which runs through his estate. He wanted 'to provide increased security and privacy for the properties at Barningham Park', and proposed a route to the north.

Our local correspondent, Jo Bird, joined



*The footpath approaching Barningham Park turns right where the daffodils end and continues outside the garden's ha-ha wall. Photo: © T Eyre, Creative Commons Licence.*

Barningham Parish Meeting and village residents in objecting. Raspberry Lane is of significant historic importance and commands fine vistas.

Says Jo: 'Unusually, it is a woodland path offering a sweeping view. The alternative was just another meadow path. We are relieved the council has said no before even putting it to the highways committee.'

### **'Rich-list' developer thwarted**

Our Elmbridge correspondent, Rodney Whittaker, defended Surrey County Council's modification order to add restricted byway 41 at Walton and Weybridge to the definitive map.

Rodney had to contend not only with Burhill Golf Club, which boasts two 18-hole courses hosting national and international competitions, but also with Tony Pidgley, a property developer in the top 400 of the 2018 *Sunday Times* 'Rich List'.

In 2015 Surrey County Council agreed to make a modification order showing the 1,500-metre track as a restricted byway with no vehicular rights. This was despite opposition from Pidgley and the golf club (both of whom own land adjacent to the

track), who argued in favour of vehicular rights. The OSS and the Ramblers joined Surrey in opposing them, citing the 2006 Natural Environment and Rural Communities Act which extinguished vehicular rights of byways in most circumstances.

A public inquiry into the order was held in December 2018, where Pidgley was represented by a barrister.

### **Evidence**

The inspector, Martin Elliott, heard evidence from local walkers who praised the quiet rural nature of the track. The objectors' claims of 'predominant motor use' of the track were dismissed by the inspector who upheld the order, except for the short, initial, surfaced part leading to a council cemetery.

The modified order, for 1,141 metres of restricted byway on Turners Lane and Burhill Road, has now been confirmed. (Ref ROW/3194376, 22 January and 21 July 2019)



*Burhill Road, now a restricted byway.*

### **Hello and goodbye**

Welcome to Stuart Bain, our new local correspondent for Bridgend and the Vale of Glamorgan in south Wales.

We are sad to lose Yvonne Hunt (Rochdale Borough), Owen Morgan (south Herefordshire), and Mary Traynor (South Lakeland, Cumbria). We thank them all. □



## The common good

**Plunder of the Commons: a manifesto for sharing public wealth** by Guy Standing (Pelican, £9.99) considers the commons in the widest sense, of something that is universal or shared. It is far more than land, and the book covers five categories of commons: natural, social, civil, cultural and 'knowledge' commons, and how our shared wealth is being plundered.

It is far-reaching and thought-provoking. Our concerns are covered: the privatisation of parks and their abuse for entertainment; the loss of green spaces, the unfair subsidisation of landowners, and privately-owned public spaces (POPS) where we are lured into thinking we are enjoying a public space only to find that there are severe restrictions.

### Public art

Among much else, the book addresses the loss of social housing, closure of public libraries and educational institutions, and the disappearance of public art (Henry Moore gave his sculpture *Old Flo* to a deprived area of Tower Hamlets only for it to be removed to Yorkshire and then consigned to a POPS on Canary Wharf).

The book describes the 1217 Charter of the Forest, and proposes a Charter of the Commons, with 44 articles, aimed at restoring the commons and encouraging commoning. It will take some doing to get these articles adopted by government—but we should certainly try.

**Who owns England?** by Guy Shrubsole (William Collins £20 or e-book £9.99) tackles a similar theme but focuses on the injustice of land ownership. Shrubsole

has made use of every tool available to uncover who owns land, reporting that less than one per cent of the population owns more than half of England, with the aristocracy and gentry owning about a third. He pokes around country estates, abandoned Mayfair properties and Second World War tunnels under London to discover their secrets.

He too proposes a charter for reform, for instance: open up and complete the Land Registry; stop landowners from hoarding land and leaving homes empty; halt handouts to landowners for simply owning land; end unsustainable land-uses (eg grouse shooting); return wilderness to the uplands; give people a stake in the land by strengthening their statutory right to an allotment, and extend the right to roam to all uncultivated land. This is good stuff.

**The Cambrian Way** by George Tod with Richard Tyler (Cicerone, £14.95) is a neat guide to the 298-mile trail between Cardiff and Conwy. The way was devised by our member the late Tony Drake. In his will Tony expressed the



*Nicht in Snowdonia, crossed by the Cambrian Way. Photo: © Peter Trimming, Creative Commons Licence.*

wish for his work on the way to continue, and so the Cambrian Way Trust was formed and the way was completed and waymarked.

The route crosses the Brecon Beacons and Snowdonia National Parks, and the fine mid-Wales countryside in between, which has, wrongly, never been protected for its landscape (the Cambrian Mountains National Park was designated by the Countryside Commission in 1972 but the Welsh Secretary refused to confirm it). The path crosses much of the best of Wales, and the book does it full justice, with clear descriptions and maps, and lovely photographs.

**In Trust for Chislehurst** by Colin Yardley (£10 inc p&p from Old Chapel Books, Queens Passage, Chislehurst BR7 5AP) was written to celebrate the purchase of the common by the Chislehurst Society for the people. The book records the battles against enclosure and development, and acknowledges the role of the Open Spaces Society in helping to protect it. **KA**

**How Hampstead Heath was saved, a story of 'people power'** by Helen Lawrence (£14.95 from Camden History Society <https://bit.ly/2IDgxHx>) is the fascinating story of the battle to preserve one of London's most important open spaces.

This impressive, 264-page, lavishly-illustrated study is a complete history up to the present. But it focuses on the nineteenth century with the Commons Preservation Society (later to become the Open Spaces Society) featuring prominently in an account of probably the most important of its many battles to preserve open space for the public.

'Of all of them', writes Lawrence, 'the story of Hampstead Heath is the most extraordinary, involving legal stratagems of every kind, in and out of parliament,

national press campaigns, vitriolic character assassination, perjury, wholesale misinformation, and even accusations of bribery and blackmail.'

**The Common Story, a history of Tooting Common**, with contributions from local researchers, edited by Katy Layton-Jones (download from Tooting History Group website) is a more modest work. But despite that and a number of gaps in the story it is still worth a read. It too covers the role of the Commons Preservation Society in supporting residents in a famous legal battle against enclosure. With funding from the National Lottery it is published by Wandsworth Council as part of a heritage project.

Both books help underline the link with the past for today's campaigners against the loss and urbanisation of city commons. **Jeremy Clyne**

### Whither the legislation?

You may be wondering what is happening about the anticipated changes to rights-of-way and access legislation in England and Wales. Both governments do of course have other things on their minds.

In England, the rights-of-way provisions of the Deregulation Act 2015, including the 2026 definitive-map cut-off, have still not been commenced. The rights-of-way stakeholder group has not met for a year. Consequently, the case is stronger than ever for the 2026 guillotine to be deferred.

In Wales, we understand that the Welsh government has established a steering group of official bodies to consider the proposed changes to rights-of-way and access law and practice. We have asked to be on the relevant working groups which will look at the detail and make recommendations to government.

# Edgar Powell, 1936-2019

**Our vice-president Edgar Powell, has died aged 83. Edgar was our local correspondent for parts of Herefordshire and Worcestershire for 24 years (1992-2016), a trustee (1995-2003) and vice-chairman (2002-3). It is impossible to quantify all he did for the society and our members.**

Edgar was born in Colwall, Herefordshire but spent most of his life in Worcester. He qualified as an engineer, and was employed by the former Hereford and Worcester County Council for many years checking motorway bridges. Subsequently he worked for the countryside department on rights of way. After his retirement he continued to take up many occupations, making good use of his excellent brain. For instance he invented orienteering games which tested the intellect of children and adults while providing enjoyment.

## Town crier

Edgar became involved in numerous cases on our behalf. In 1994 he helped local people save Cripplegate Park in Worcester from becoming a superstore: dressing up as a town crier, with bell and tricorn hat, he delivered a petition to the mayor (pictured below). He represented us at a complex public inquiry into fencing on Wetley Moor common in Staffordshire in 2003 (which he won), and at Hartlebury Common in Worcestershire.

He willingly helped our local correspondents, writing erudite papers with ingenious solutions to problems they might face. His guidance for town and village green claimants, on preparation for and appearance at public inquiries, is invaluable. Nothing was too much trouble for Edgar; he was generous with his time and never demonstrated superiority over others.

Edgar played a vital role in the nationally-significant, 15-year campaign

against the deplorable rationalisation scheme involving about 100 paths in Ombersley and surrounding parishes in Worcestershire. He helped to ensure that Omrats (as he dubbed it) foundered. Had it succeeded, it would have been replicated throughout the country, causing mayhem to the path network and huge anxiety and work for user groups.

## Sage advice

He was also chairman of the Ramblers' Hereford and Worcester Area for many years as well as chairman of the Worcestershire Local Access Forum (LAF) to which he gave a series of lectures.

When he retired in 2013, the LAF presented Edgar with a walking-stick and framed citation. The chairman, Gerry Taggart, paid tribute: 'Edgar put in a huge amount of work for the LAF. He is an expert in all things connected with rights of way and commons, and his sage, considered and accurate advice to the LAF has been much appreciated over the years.' We echo that.

Edgar had unfailing support from his wife Audrey, and when he retired as local correspondent the society presented them both with honorary life membership—which was richly deserved. **KA**



*'Town crier' Edgar presents a petition to save Cripplegate Park in 1994.*

# Len Clark, 1916-2019

## **Another of our vice-presidents, Len Clark, has died aged 103.**

Len was a pillar of strength to, and wise critic of, numerous organisations: the Youth Hostels Association (YHA), National Trust, Campaign for National Parks and ourselves.

In 1978 he became our commons liaison officer, a roving researcher who travelled England and Wales on his Honda 50 motorbike to ferret out issues affecting



*Len with friends in 2016.*

commons and report on them. Commons at this time were in the doldrums: after the Commons Registration Act 1965 we were still awaiting the second-stage legislation for access and management.

Len organised a series of regional conferences for us, to raise the profile of commons, and he was secretary of the Common Land Forum which met regularly from 1983-86 and eventually agreed recommendations to government.

Len was born in Islington, London where he went to Highbury Grammar School. He left aged 16 to join London County Council as a clerk; when he retired in 1977 he was the senior administrator of the London Ambulance Service (by then part of the NHS).

From an early age Len rambled in the countryside around London, staying at youth hostels, the simplicity of which appealed to him. A Quaker and a pacifist, in 1940 Len registered as a conscientious objector but was refused exemption and was ordered to work for the non-combatant corps.

He joined the YHA executive committee in 1948, serving as national treasurer and then chairman. It was through the YHA that he met his wife Isobel: one of his first days out with her was spent in the public gallery of the House of Commons, listening to the second reading of the National Parks and Access to the Countryside Bill in 1949.

Len was appointed as the YHA representative on the National Trust council in 1961 where he joined a band of establishment and titled figures. He served on the properties and executive committees for 23 years, and his advice continued to be sought after his retirement.

As a member of the trust's properties committee he took to his Honda to view potential acquisitions, and argued forcefully and persuasively for the trust to acquire countryside rather than stately homes. Thus it acquired the 16,000-acre Abergwesyn commons in mid-Wales, saving them from afforestation.

## **Lifelong ambition**

Len was deeply involved in the campaign to create the South Downs National Park, a lifelong ambition. He worked quietly and determinedly as a member of the multi-organisation South Downs Campaign and was delighted when the park was confirmed in 2009.

After his retirement, Len volunteered for the Samaritans in Guildford, playing an active part for more than 30 years. He remained committed to our cause to the end of his life.

**KA**

The Open Spaces Society was founded in 1865 and is Britain's oldest national conservation body. We campaign to protect common land, village greens, open spaces and public paths, and your right to enjoy them. We advise local authorities and the public. As a registered charity we rely on voluntary support from subscriptions, donations and legacies.

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